

# RIGHT-OF-WAY SECTION

A SECTION OF THE  
ROADWAY PRODUCTION DIVISION

PALM BEACH COUNTY  
ENGINEERING & PUBLIC WORKS  
DEPARTMENT



WORKING WITH YOU TO HELP  
MEET OUR GROWING  
TRANSPORTATION NEEDS

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## INTRODUCTION

Palm Beach County is a great place to live. We have mild weather, a rich culture and environmental diversity. We boast 47 miles of coastline on the Atlantic Ocean, 55 miles of rivers and Intracoastal water way, and over 30 miles of shoreline on Lake Okeechobee.

We have more than 185 public schools, 31 hospitals, 44 libraries, over 81 County parks and 127 public and private golf courses. We have an International airport, a shipping and cruise port, many fine restaurants and full range of arts, recreational and sports facilities. Each year features a full calendar of special events and activities all over the County.

Yes, we all have a lot to see and do, and this is a great place to live, work, and play. The one thing that links all of us to these amenities is our transportation system. We must continually upgrade and improve our existing roads and create new ones to ensure that we can easily and safely enjoy all that Palm Beach County has to offer.

Because of this continuing need for roadway improvements, we often need to acquire private land for this important public purpose. This process is known as Eminent Domain.

This brochure is designed to help answer your questions about the acquisition process and eminent domain. The offer package you have received contains material that will be referred to in this brochure. Please review it carefully.

This brochure may not answer all of your questions. On the last page you will find information on who you can contact to get more answers.

## **GENERAL QUESTIONS**

### **What is eminent domain?**

Government has certain powers which are necessary for it to operate effectively. For example, it has the power to levy taxes and the power to maintain order. Another governmental power is the power to acquire private land for public purposes. This is known as eminent domain.

The rights of each of us are protected, however, by the Fifth and Fourteenth Amendments of the U.S. Constitution, by the State Constitution and by eminent domain laws which guarantee that if a public agency takes private property it must pay "just compensation" to the owner.

### **What is just compensation?**

Just compensation is sometimes described as fair market value. It is the amount of money a property could reasonably expect to bring on the open market, where the buyer and seller are prudent and knowledgeable about the property and its prospects, and the transaction is an "arms length" transaction, meaning that neither the buyer nor seller was forced to conclude the deal.

In eminent domain, this includes the value of the land being acquired; the improvements on the land, or the costs to replace or relocate the improvements; and any damages to the remaining property, if applicable. In the case of an easement, the right to use the property for specific purposes is valued.

## ***OFFER LETTER QUESTIONS***

### **What do all of these numbers and road names mean?**

The "Project No." identifies this particular job. Each job has a unique number assigned to it. This number is used to identify the work and the funding for the life of the project.

The "Project Name" also identifies this job. It is usually the name of the road to be worked on.

The "Job Limits" basically identifies the beginning and ending points of this particular project, or in some cases, the intersection, geographical area or nature of the work to be done.

The "Parcel No." is the number assigned to the portion of your property that is needed for this project. There may be more than one number shown. That is because we need to acquire a portion of your property, and sometimes we may also need to acquire some easement rights as well (i.e., a drainage or embankment easement, or a temporary construction easement).

### **What does this break down mean?**

This shows you how the money we are offering is divided by the type of compensation. The land value is for the portion of your property that is needed for the project.

The improvements value is for the improvements on the property, such as fencing, paving or landscaping.

This relates to real property, things that are fairly permanent, as opposed to personal property, which are things that can easily be moved, such as small potted plants or a small yard statue.

The damages value is for any damages to the remaining property (the property we are not acquiring).

The cost-to-cure value is for relocating or replacing improvements instead of pay a straight value for them, as in the improvements value. Examples would be the cost to move a chain link fence or replace a hedge.

The easements value is for the easement rights needed on the property. In this case, we are not acquiring part of the property, but a right to use a portion of it for a specific purpose.

### **How was the value of my property determined?**

The Right-of-Way Section maintains a list of local, professional appraisal firms, usually about ten, who bid for the contract to appraise the property required, on a project by project basis. The appraisal firm is selected using certain criteria, of which the fee to the job accounts for only 40% of the points needed to award the project. Other considerations are the firm's analysis of the special features of the project; their past performance appraising road jobs; and their utilization of minority and women owned businesses in their bid.

Once the firm is selected, they are given a specific amount of time to appraise all of the parcels in the project. This is usually from 30 to 90 days, depending on the size of the job. The appraisals are submitted to our office and after we review and approve them, we send you our offer.

The appraisal firm uses recent sales of properties like yours to determine a value for the portion of your property we need to acquire. The price of each sale is adjusted up or down to come as

close as possible to what the sales price of your property would likely be.

They also look at the current cost to replace improvements and then deduct any depreciation for age; and they look at the current costs to relocate improvements to the new property line after the acquisition.

If the appraiser determines there is any damage that is, loss of value to the remaining property because of the portion we are acquiring, that amount will be added into the amount of money you will be offered.

### **I rent or lease property, is that important?**

Yes. In the offer package we sent to you, you received a form to fill out and return about the leasing or renting of your property. In order to properly consider all aspects of your property and its unique situation, we need this information. You will not receive any less compensation because the property produces income.

## ***NEGOTIATION QUESTIONS***

### **If I agree with the offer, what do I need to do?**

All you need to do is properly execute the deed, and easements if any, included in the offer package and return them to us for processing. Instructions on how to execute the instruments are also included in your offer package.

### **Who pays the closing costs?**

We will pay most of them. We cover the costs of the appraisal, the title work, document preparation and all recording fees. In most cases, you will only be responsible for the pro-rated taxes. We will order a tax pro-ration statement from the Tax Collector and we will give you the exact dollar amount due on the day of closing.

A check for the full amount of the offer will be issued in your name. We will collect a check from you for the taxes due.

### **How long will it take to get my money?**

That depends on whether or not the property is free and clear of encumbrances. If there are none, we should be able to close in a few weeks.

If there are encumbrances, such as mortgage, a lien or an easement, we will need to get a subordination or release for the portion of the property we need to acquire.

Usually we ask the encumbrance holders to subordinate their rights to that particular portion of the property. The subordination does not actually remove the encumbrance, but makes it inferior, or

second, to our claim on that portion of the property. This normally takes about 4 weeks.

As soon as the encumbrances are cleared, we will order the check and tax-proration, and be able to close within a few weeks.

**Must I accept the offer?**

No, you are not required to accept our offer. If you have reason to believe that you are entitled to more money than we have offered you, you may make a counter-offer.

**How do I make a counter-offer?**

To make a counter-offer, you will need to give us your reasons for the value difference in writing. You should be as specific as possible. If you have had an appraisal done on your property, you will need to include that appraisal, if it is part of the basis for your counter-offer. If you have estimates from contractors, or other experts or professionals, those will need to be included also.

You will also need to return a copy of the deed, fully and properly executed. You may keep the original until your counter-offer is approved.

**How long does this take?**

Counter-offers that meet certain criteria will be reviewed by the County Engineer and approval may be given by him/her, or his/her designee, to accept the counter-offer. This will take about 2 weeks from the time we receive your proposal with the back-up information.

Counter-offers that exceed the established criteria to be accepted by the County Engineer will need to be approved by the Board of County Commissioners. This process takes approximately 8 weeks.

Once your counter-offer is approved, the time frame will be the same as if you had accepted the original value. If your counter-offer is not approved, we will let you know the basis for the denial, and you may resubmit your counter-offer after addressing the concerns expressed by either the County Engineer or Board of County Commissioners.

## ***CONDEMNATION QUESTIONS***

### **What if we just can't agree on value?**

We make every reasonable effort to reach a fair and equitable settlement with owners for the property we need, but occasionally we are unable to come to mutually agreeable terms for the acquisition of the property.

If we are unable to resolve these differences, we will need to begin condemnation proceedings for the required property. This is basically a two step process. This first step is the Order of Taking. The second step is the Final Judgment.

### **What is Order of Taking?**

An Order of Taking is a legal document, signed by a judge, transferring title of the property to the condemning authority. We will need to show the court that the property is needed for a public purpose and that we have made an effort to properly estimate the amount of money you should receive for the property. We are then required to deposit, with the Registry of the Court, the full amount of our good faith estimate of value (the amount of our offer). The next step will be the Final Judgment.

### **What is Final Judgment?**

A Final Judgment is also a legal document, signed by a judge. It says exactly how much money you are to receive for the property that we have acquired.

Title to the property was transferred in the Order of Taking. This step is about how much additional money, if any, we will have to pay. Following the Final Judgment, there may be an apportionment

hearing. If there are other individuals or companies with a claim on the property, such as a mortgage company or lien holder, they may be entitled to some of the money in the judgment. This hearing is to determine how much money each claimant is to receive of the Final Judgment amount.

Finally, there may be a hearing to assess costs and fees. At this hearing, the judge will decide how much money we will pay to the attorneys and experts, if any.

### **How long does this take?**

We will usually begin condemnation processing about 30 to 60 days after our initial contact with you and the other property owners in the project. There are several steps we must take before the Order of Taking. Once we start the process, it will be about 60 to 90 days before we have an Order of Taking. It could be an additional 3 to 9 months, or more, before the Final Judgment is signed.

If at any time we are able to come to an agreement, we can enter into Stipulated Orders (statements of agreement) to conclude the process.

### **Can I have someone represent me?**

Yes. Included in the offer package, you will find a statement of your statutory rights, including our obligation with regard to your representative. Please review it carefully. It will tell you how and when we are required to pay for your representative.

## **WHO TO CONTACT FOR INFORMATION**

Good communication is always the key to success and we look forward to working with you on this project. If you have any questions we want to answer them. Let's get together.

To get more information, you may contact the Right-of-Way Specialist whose name appears on your letter.

## **DISCLAIMER**

This is a publication of the Palm Beach County Right-of-Way Section. As much as possible, this brochure has been written in nontechnical terms, avoiding the use of formal legal language. If questions of interpretation arise as a result of trying to make this easy to understand, the Florida Statutes and Palm Beach County Policies and Procedures must remain the final authority.

The information provided in this brochure is based on Florida Statutes and Palm Beach County Policies and Procedures as of April 2015, and is subject to change or modification based on changes in the Statutes, Policies or Procedures.

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