

TO: ALL COUNTY PERSONNEL
FROM: VERDENIA C. BAKER
COUNTY ADMINISTRATOR
PREPARED BY: COUNTY ATTORNEY'S OFFICE
SUBJECT: EMINENT DOMAIN SETTLEMENTS AND PAYMENT OF
LITIGATION EXPENSES FOR RIGHT-OF-WAY ACQUISITIONS
PPM#: CW-F-068

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ISSUE DATE
April 10, 2019
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EFFECTIVE DATE
April 10, 2019
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PURPOSE:

To establish procedures for the approval and payment of settlements in eminent domain matters, pre-suit and during suit, and for the payment of the County's litigation-related expenses. This PPM applies to right-of-way and easement acquisitions only.

UPDATES:

Future updates to this PPM are the responsibility of the County Attorney.

AUTHORITY:

Administrative Code, Section 305.08.1

POLICY:

Palm Beach County must acquire property from time to time for road and utility rights-of-way and easements. In each situation, the County obtains an appraisal for the property interests that it intends to acquire.

Formal eminent domain proceedings (lawsuits) substantially increase the County's cost of acquiring property for these matters. In order to avoid or minimize the increased cost that litigation necessarily entails, the County requires flexibility in negotiating with property owners and/or their representatives.

When litigation is likely or has commenced, the County must retain experts and consultants to assist counsel and to testify regarding issues that may arise in the lawsuit; the County must also incur other

litigation-related expenses, such as court filing fees, service of process fees, the cost of publication, court reporter charges, and the like.

PROCEDURE:

A. Settlements

In negotiating a voluntary pre-suit purchase or in negotiating a settlement of a pending eminent domain lawsuit, the County may agree to pay up to \$50,000.00 to obtain a particular parcel of property upon the written approval of the County Administrator, or the County Administrator's designee, with the recommendation of the County Engineer, or the County Engineer's designee, and the concurrence of the County Attorney or the County Attorney's designee. With respect to properties that exceed \$50,000.00 in price, the County may agree to pay up to and including twenty-five percent (25%) above the appraised value of the property (based upon the most current appraisal performed at the County's request, that includes all aspects of damages, including business damages, if any), but not to exceed \$250,000.00 in total price for the property, also upon the written approval of the County Administrator, or the County Administrator's designee, with the recommendation of the County Engineer, or the County Engineer's designee, and the concurrence of the County Attorney or the County Attorney's designee. In lawsuits in which the County is represented by outside counsel, the outside attorney shall also provide his or her written recommendation of the settlement.

The County may also agree to pay the property owner's costs and attorney's fees incurred in connection with a voluntary pre-suit purchase or settlement of a pending eminent domain lawsuit to the extent that Florida Statutes authorize such costs and fees. Where a property owner's costs or attorney's fees do not exceed \$10,000.00, the determination of the reasonableness of the attorney's fees and costs may be made by the Engineering Department in conjunction with the County Attorney's Office, and the approval and payment process shall be the same as in other settlements of this amount, i.e., of less than \$50,000. Where a property owner's costs or attorney's fees exceed \$10,000.00, the attorney's fees and/or costs shall be submitted to an outside expert or attorney for review of the reasonableness of the time and rates charged (unless the attorney's fees are calculated pursuant to the statutory mathematical calculation). Following any required review by outside expert or attorney, the fees and/or costs shall be paid upon the written approval of the County Administrator or the County Administrator's designee, with the recommendation of the County Engineer or the County Engineer's designee, and the concurrence of the County Attorney or the County Attorney's designee. In lawsuits in which the County is represented by outside counsel, the outside attorney shall also provide his or her written recommendation of the fee and/or cost payment.

B. Litigation-Related Expenses

The attorney representing the County in anticipated or pending eminent domain litigation shall retain, on the County's behalf, such experts and consultants (that are on the County's approved vendor list) as counsel determines to be necessary after consultation and approval of the Engineering

Department (and the County Attorney's Office when outside counsel is representing the County). Counsel shall provide written notification to the Engineering Department (and to the County Attorney's Office when outside counsel proposes to retain the expert or consultant) of the need for, identity of, and rates charged by each expert and/or consultant that he or she intends to retain.

The attorney who retained the expert or consultant on the County's behalf shall provide written verification to the Engineering Department that the invoices submitted by each expert or consultant are for work the attorney requested and that the time spent was reasonably necessary. In lawsuits handled by the County Attorney's Office, the Assistant County Attorney handling the case shall approve invoices for all other litigation-related expenses. Outside counsel's agreement with the County shall address payment of other litigation-related costs.

In cases handled by outside counsel, the County Attorney's Office shall assign an Assistant County Attorney to monitor the progress of the lawsuit and to act as liaison with the outside counsel. Outside counsel's invoices shall be reviewed for reasonableness and consistency with the terms of the County's agreement with outside counsel and approved by the assigned Assistant County Attorney before payment.



VERDENIA C. BAKER
COUNTY ADMINISTRATOR

Supersession History

1. PPM CW-F-068, issued 3/1/2002
2. PPM CW-F-068, reviewed and current 2/25/11
3. PPM CW-F-068, issued 4/10/19