

2012 DESIGN TRAINING EXPO

OFFICE OF RIGHT OF WAY

RIGHT OF WAY FOUNDATION OF OUR DESIGN

- "Right of Way" means land in which the state, the Department...owns the fee or has an easement devoted to or required for the use as a transportation facility. Section 334.03(22), F.S.

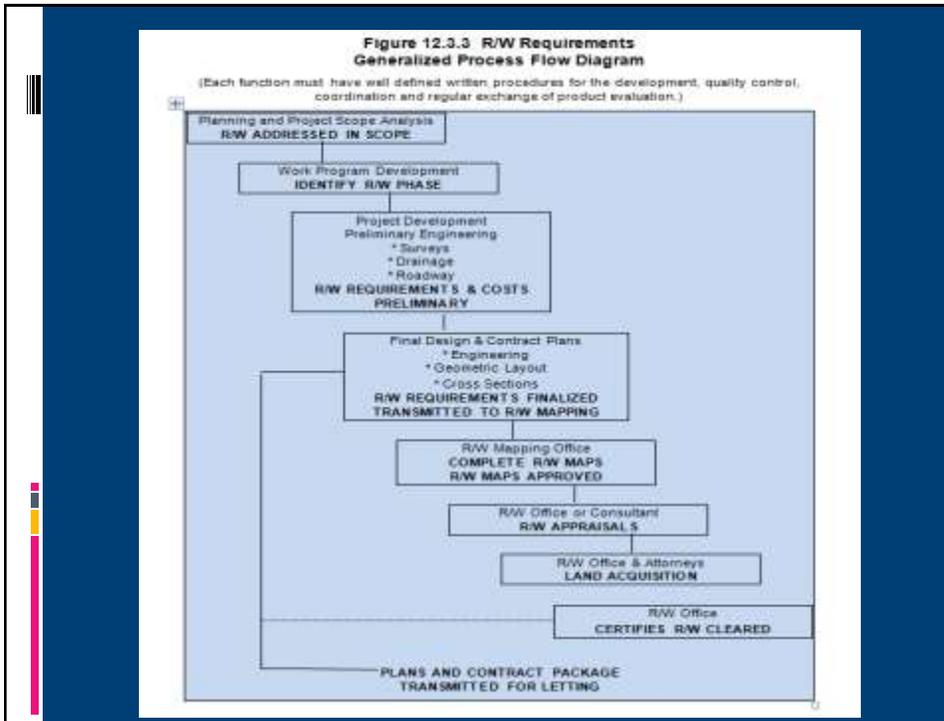


DESIGN DECISIONS CAN SIGNIFICANTLY AFFECT RIGHT OF WAY COSTS AND SCHEDULES

How Design Affects Right of Way Schedules

- “No advertisement for bids shall be published and no bid solicitation notice shall be provided until title to all necessary rights of way and easement for construction of the project . . . has vested in the state . . .” Section 337.11(3)(c) F.S.

- Design Build – slightly different . . .
“Construction activities . . . may not begin on any portion of such projects . . . which the department has not yet obtained title to the necessary rights of way and easements for the construction of . . . the project” Section 337.11(7)(a) F.S.
- “Certification” the primary function of the right of way office in the department’s production chain.



METHODS OF ACQUIRING RIGHT OF WAY

1. Voluntary Acquisition—similar to any purchaser except
 - Appraisals
 - Offers
 - Negotiate in Good Faith
 - Pay Fair Market Value
 - Accept Donations still must advise property owner of rights to compensation

2. Involuntary Acquisitions Use of Eminent Domain Power

Two Step Process:

 - Must Have Authority, Public Purpose, Necessity
 - Determine Full Compensation

HOW DESIGN AFFECTS RIGHT OF WAY SCHEDULES

AS A PREDICATE TO ACQUISITION OF RIGHT OF WAY (NECESSITY) DESIGN MUST ADEQUATELY CONSIDER:

- Alternative Designs or Route considerations
- Environmental considerations
- Long range planning considerations
- Safety considerations
- Reasonable probability of meeting all permitting requirements
- If these predicates cannot be met the eminent domain acquisition will be denied by the courts resulting in a delayed project

HOW DESIGN AFFECTS RIGHT OF WAY COSTS

- Property owners are entitled to full compensation for the right of way acquired
- Full compensation consists of the value of all land and improvements acquired, damages to remaining property, attorney fees and expert witness costs of defending the acquisition
- Property owner may also be entitled to business damages, relocation benefits and moving costs

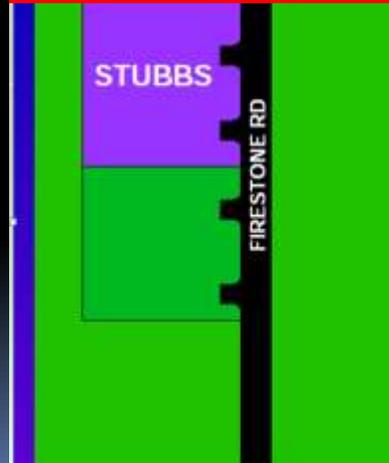
- Design may affect the amount of property taken, shape and confirmation of the remaining property, external and internal access, usability of parking, buildings and other improvements
- Damages to the owner's remaining property are known as severance damages.

SEVERANCE DAMAGES MAY CONSIST OF THE FOLLOWING:

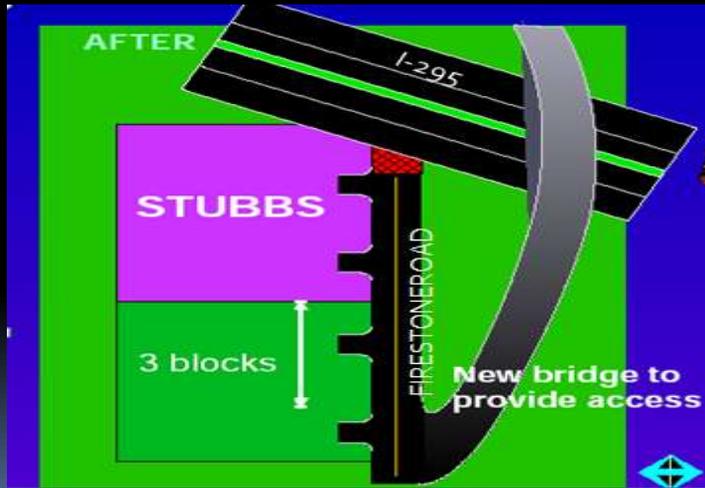
- Reduction in value due to the reduced size and shape of the remaining property
- Reduction in value because of the use to which the Department intends to put the property actually taken
- Reduction in value caused by the change of grade between the owner's property and the property taken
- Reduction value because of the loss of access. Easement and facility of access to and from an existing highway constitute value property rights and an owner must be compensated for any destruction or substantial diminution of this access

■ EXAMPLES

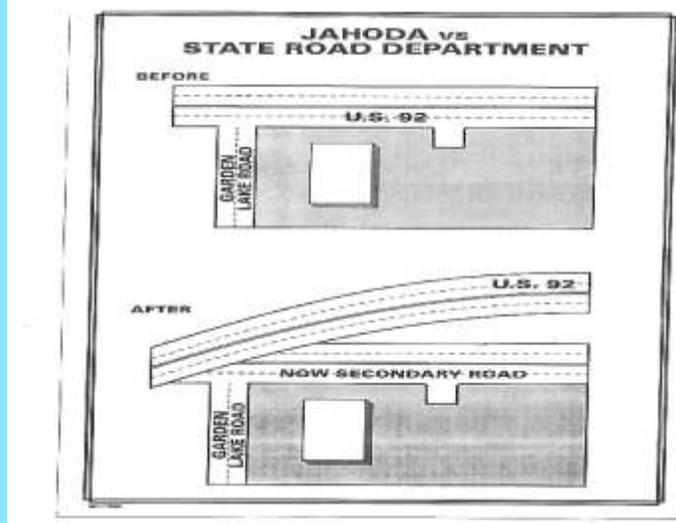
SMALL TAKINGS/ACQUISITIONS

BEFORE	<i>STUBBS</i>
	<ul style="list-style-type: none"> • FDOT built I-295 in Jacksonville. • FDOT closed portion of Firestone Road serving Stubbs' property. • Built new bridge for access. • FDOT condemned portions of Stubbs property. • There was a physical taking of property. • No similar physical taking from neighbors. <p>DOT v. Stubbs 285 So.2d 1 (Fla. 1973)</p>

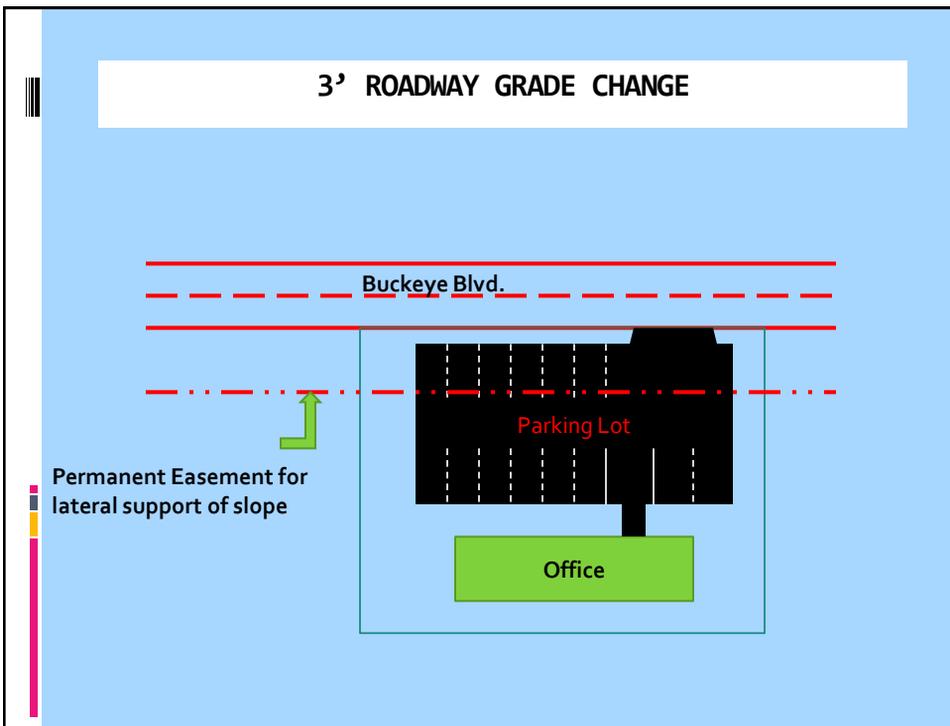
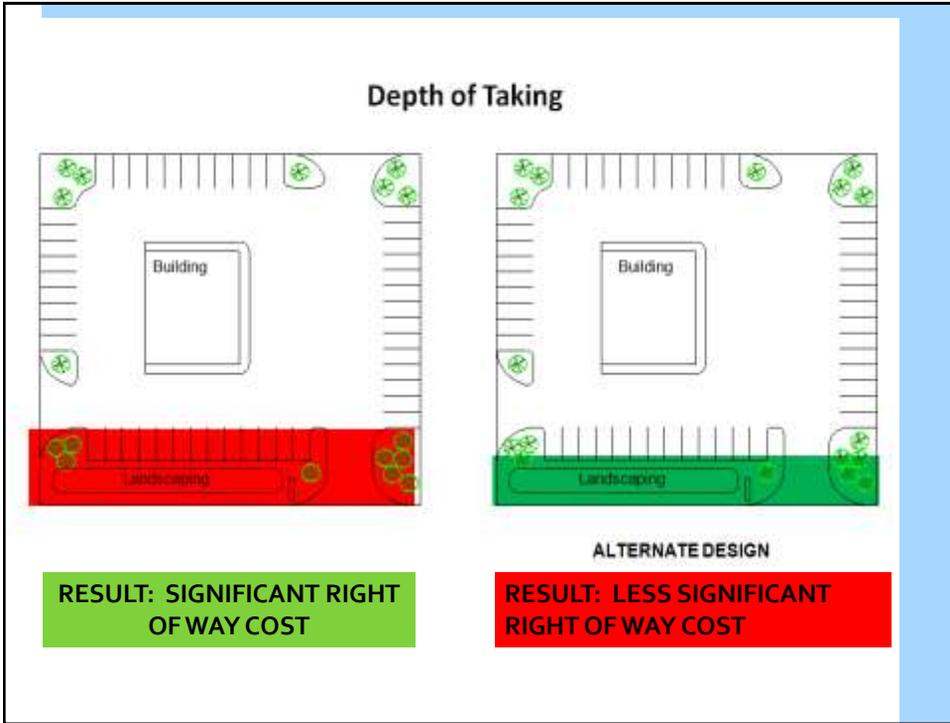
SMALL TAKINGS/ACQUISITIONS RESULT: SIGNIFICANT RIGHT OF WAY COST

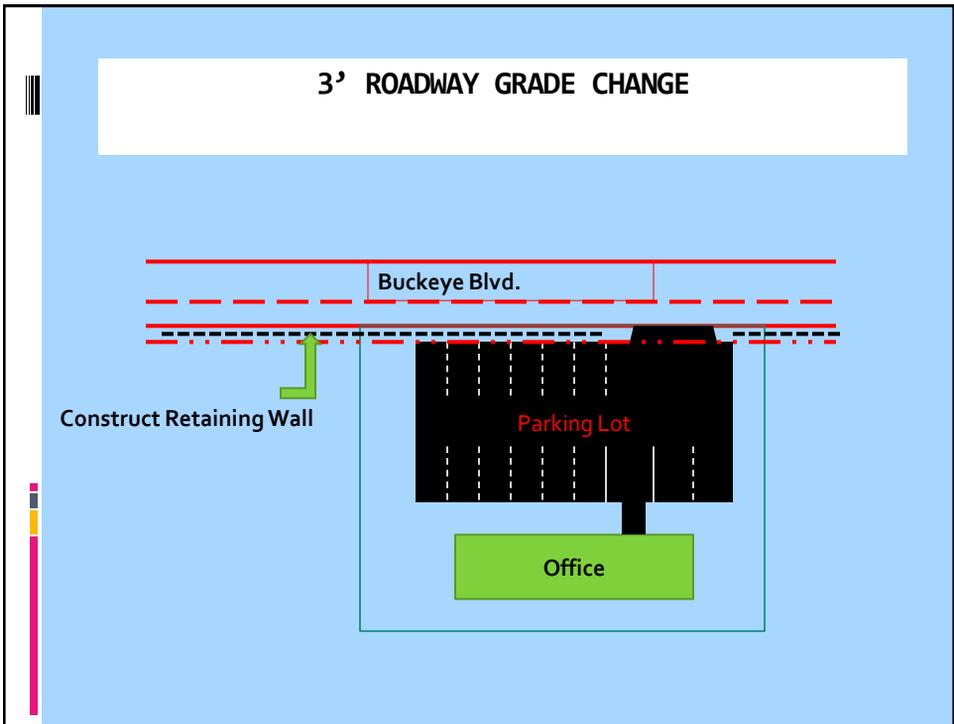
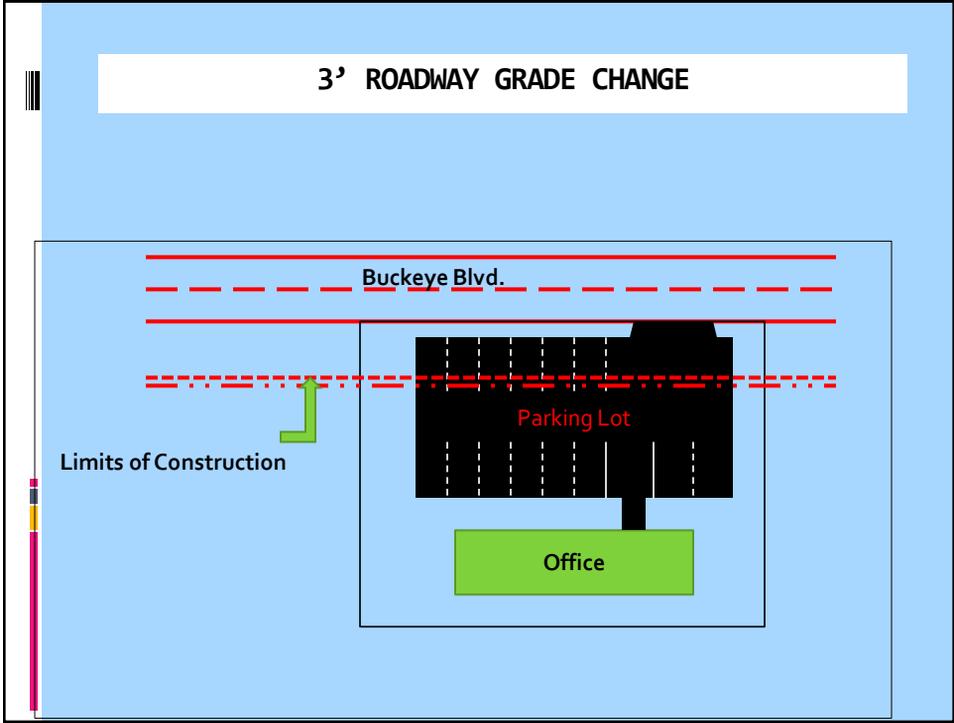


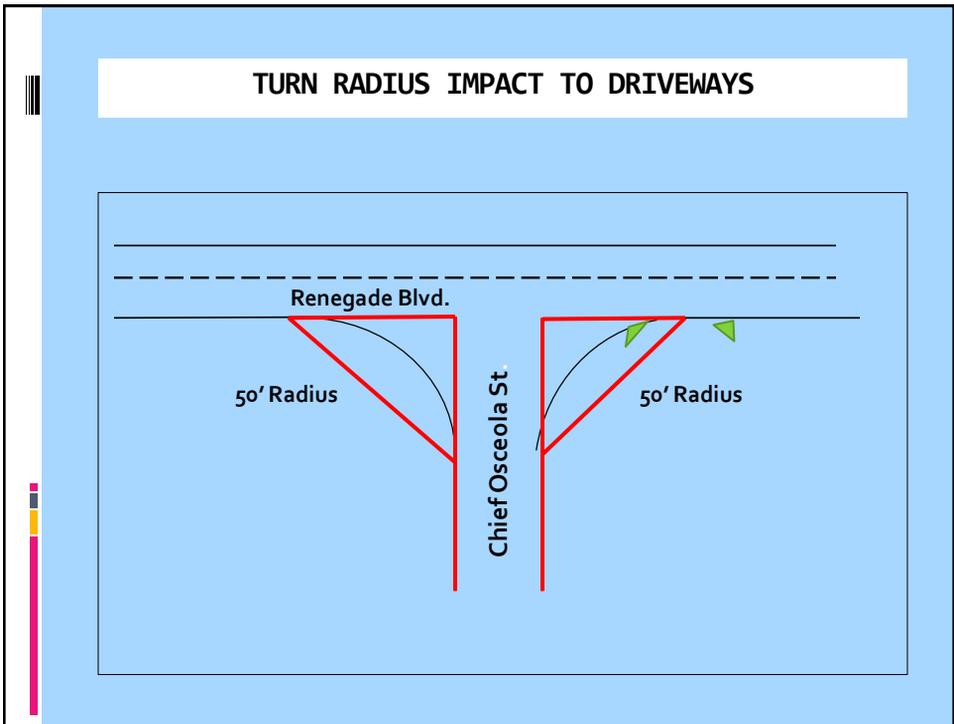
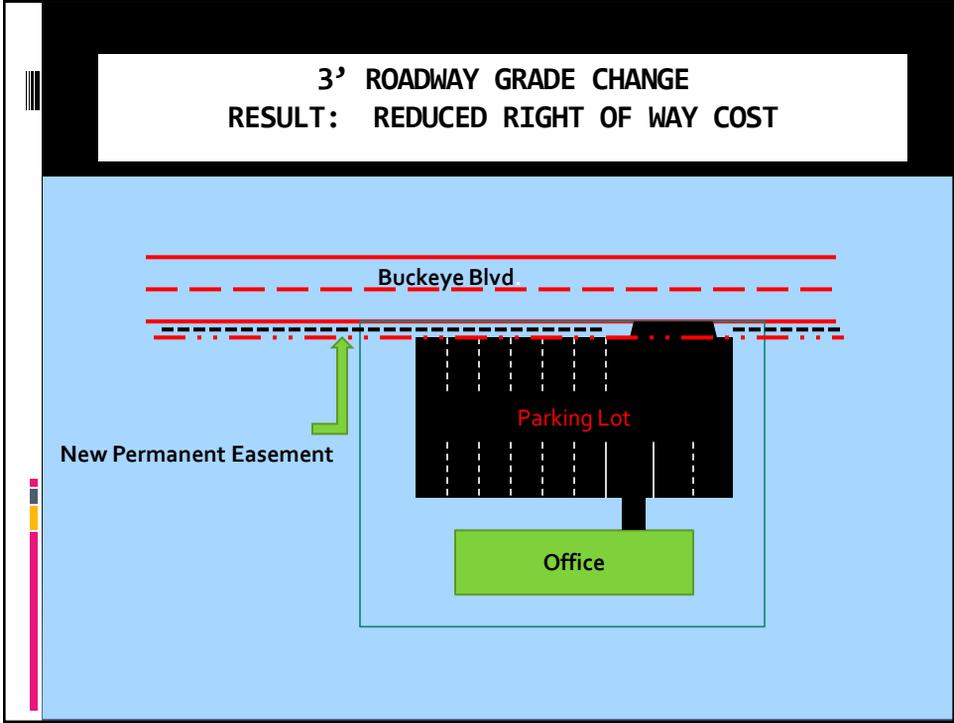
JAHODA vs STATE ROAD DEPARTMENT

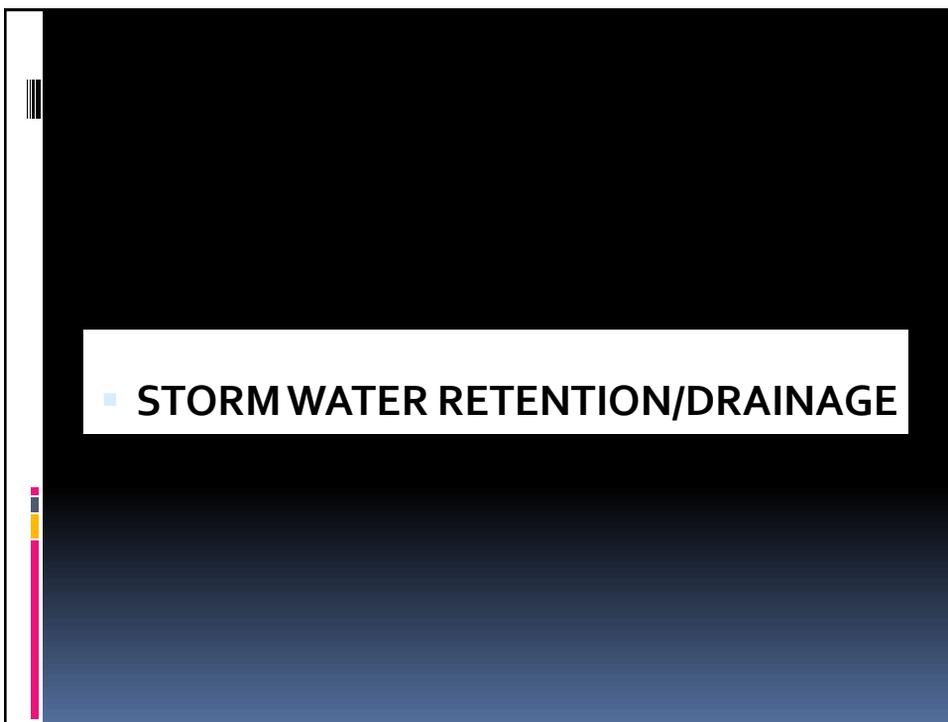
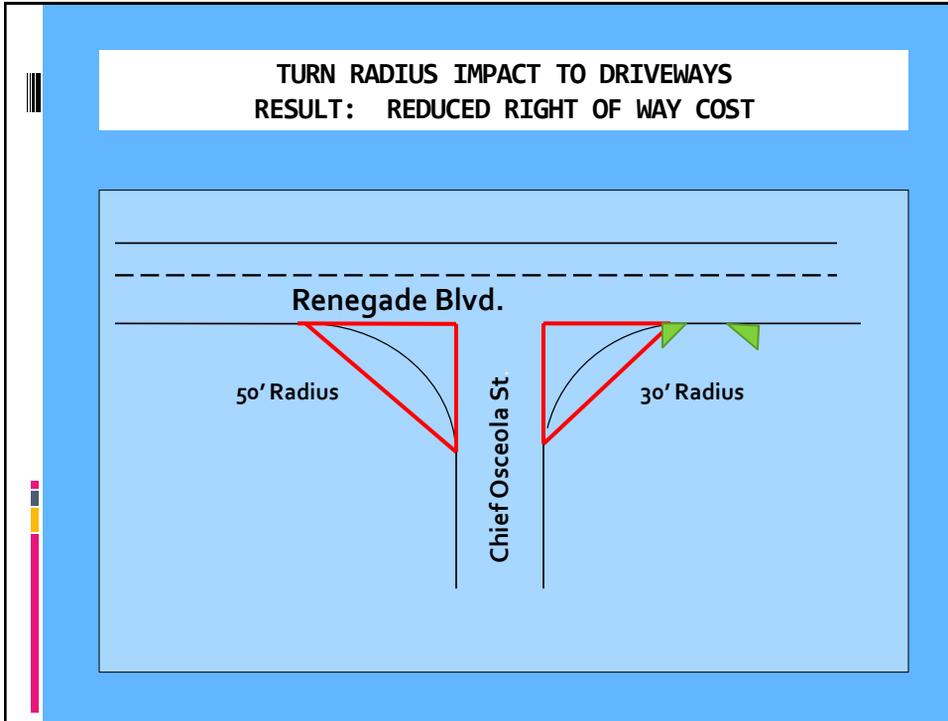


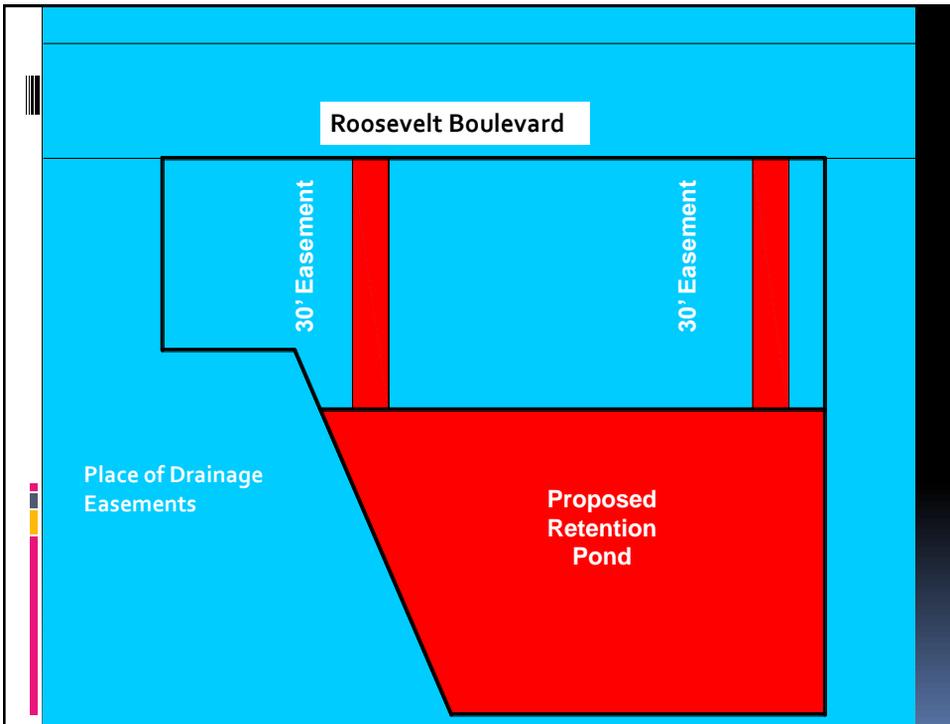
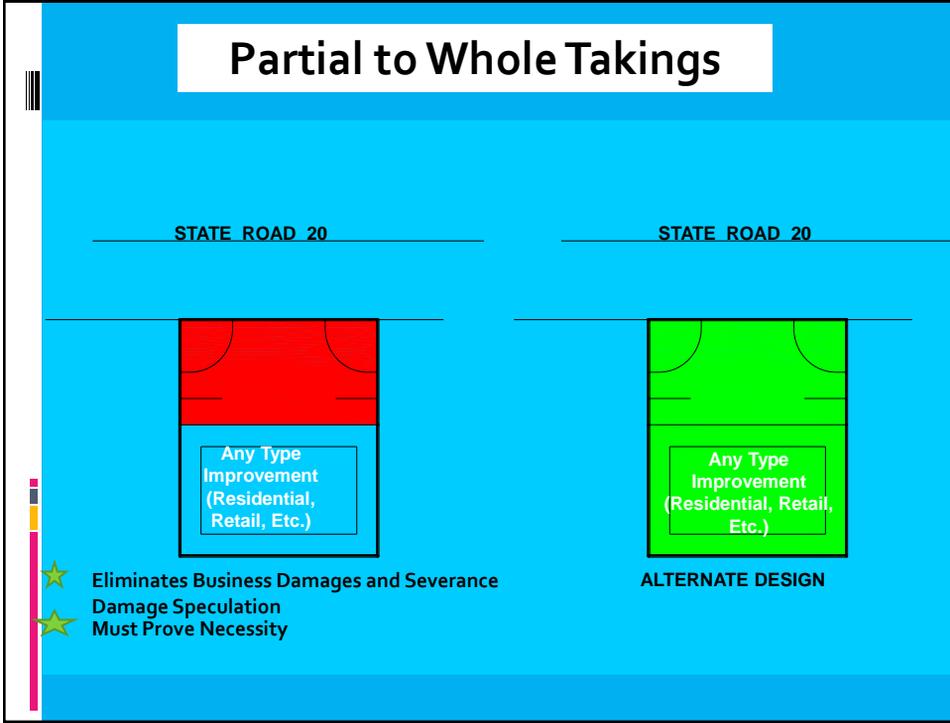
RESULT: NO RIGHT OF WAY COST

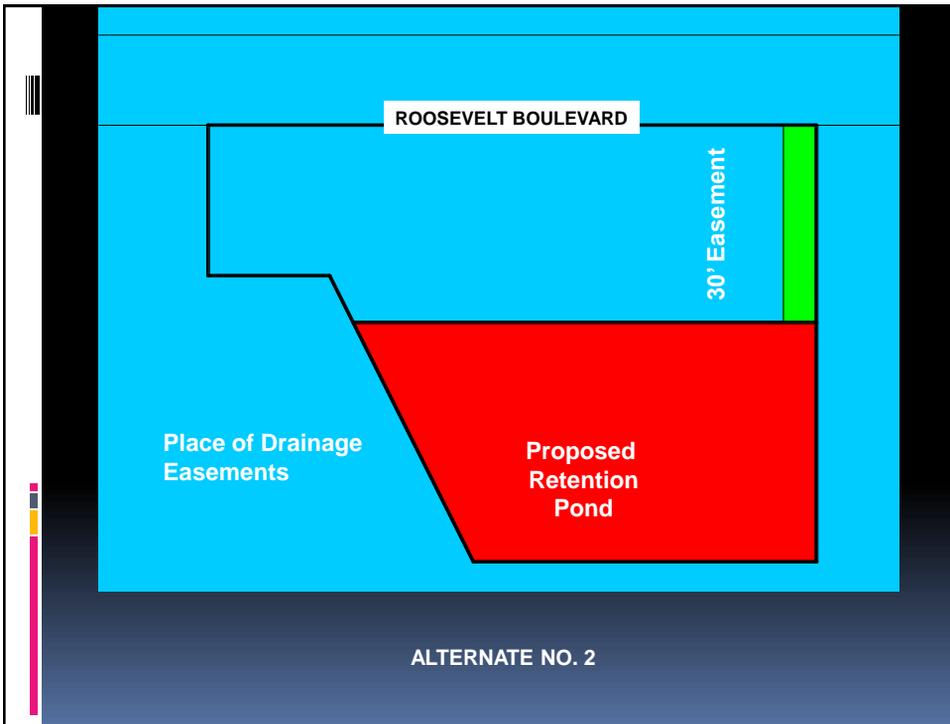
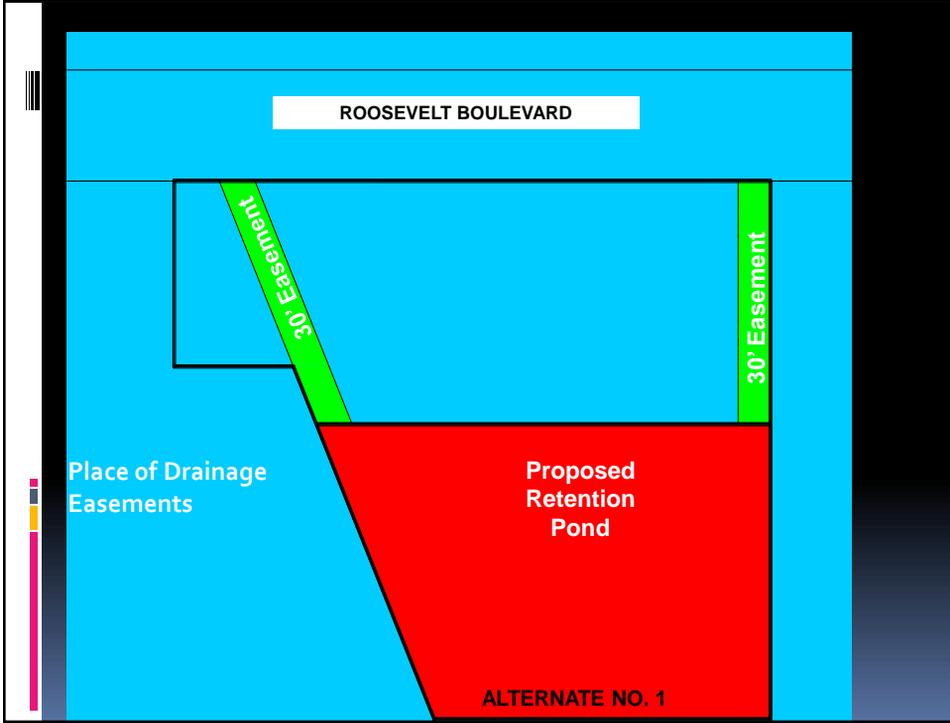


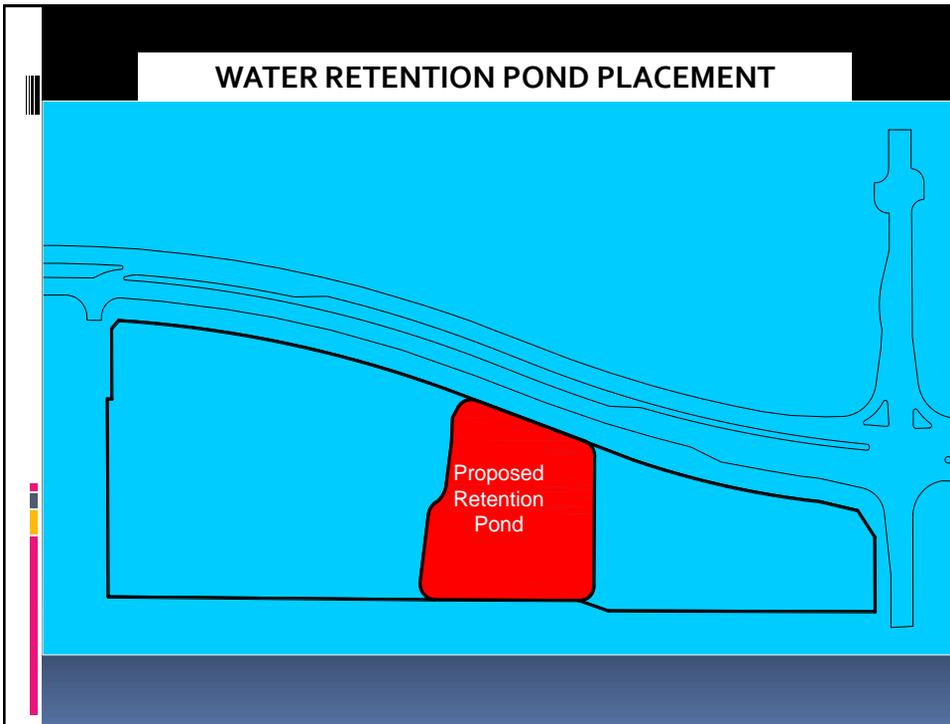
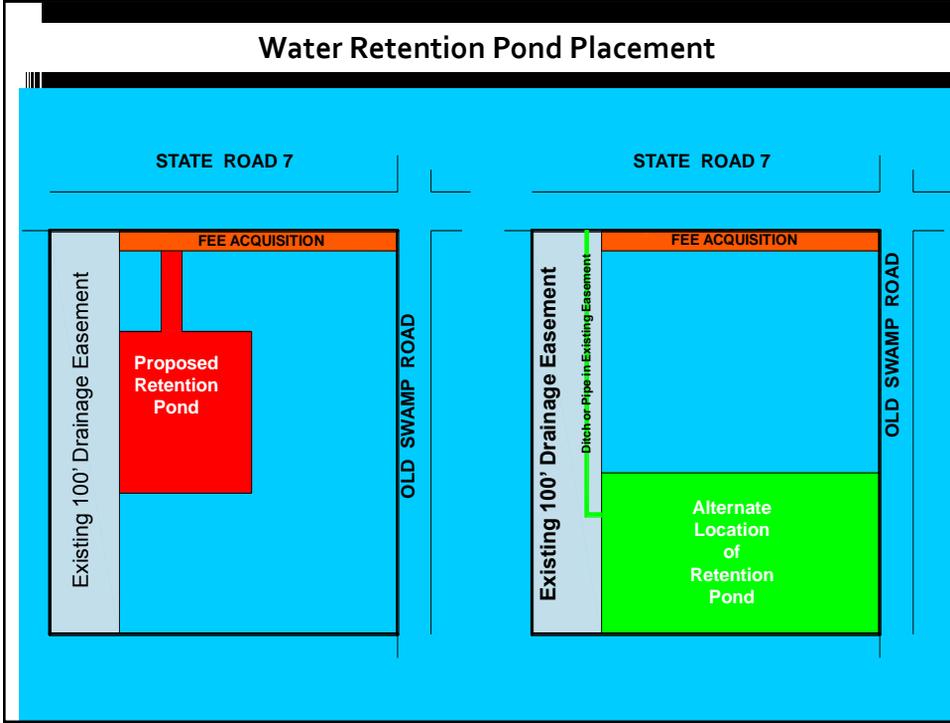


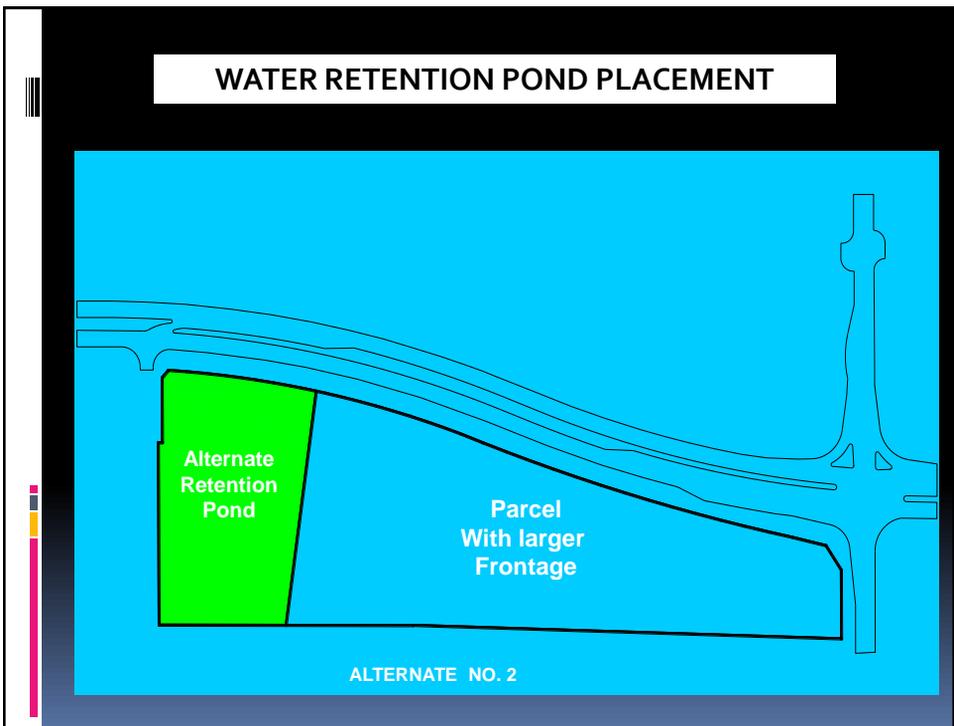
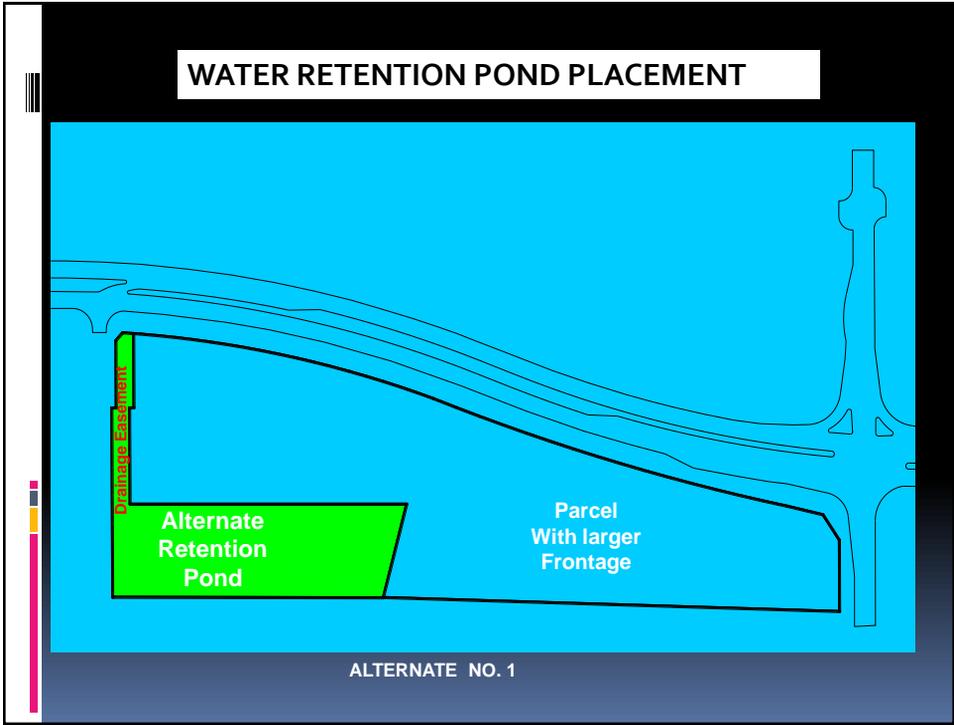


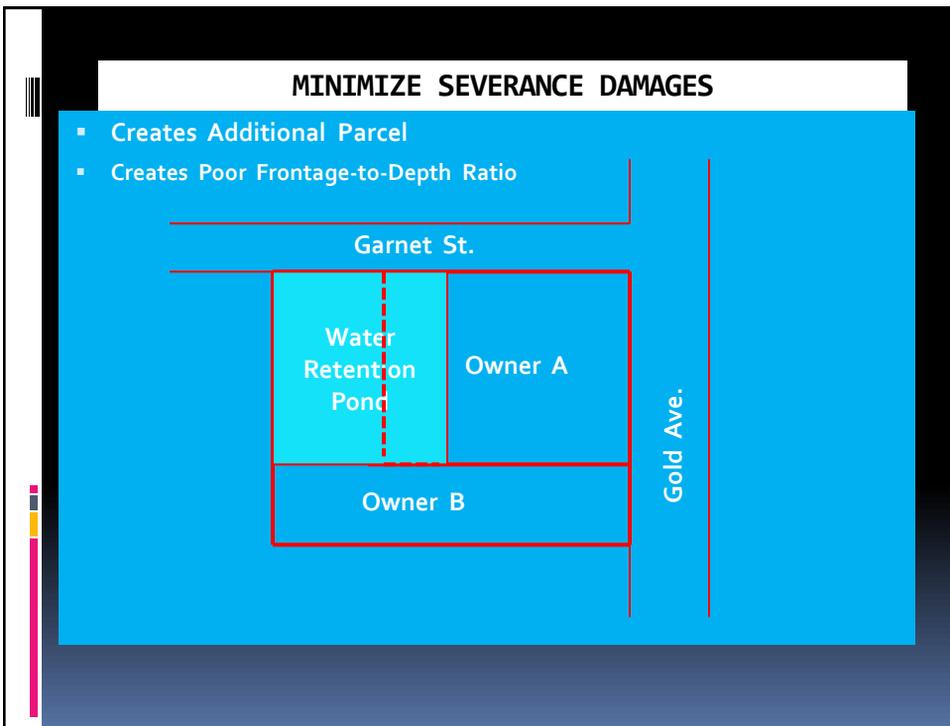
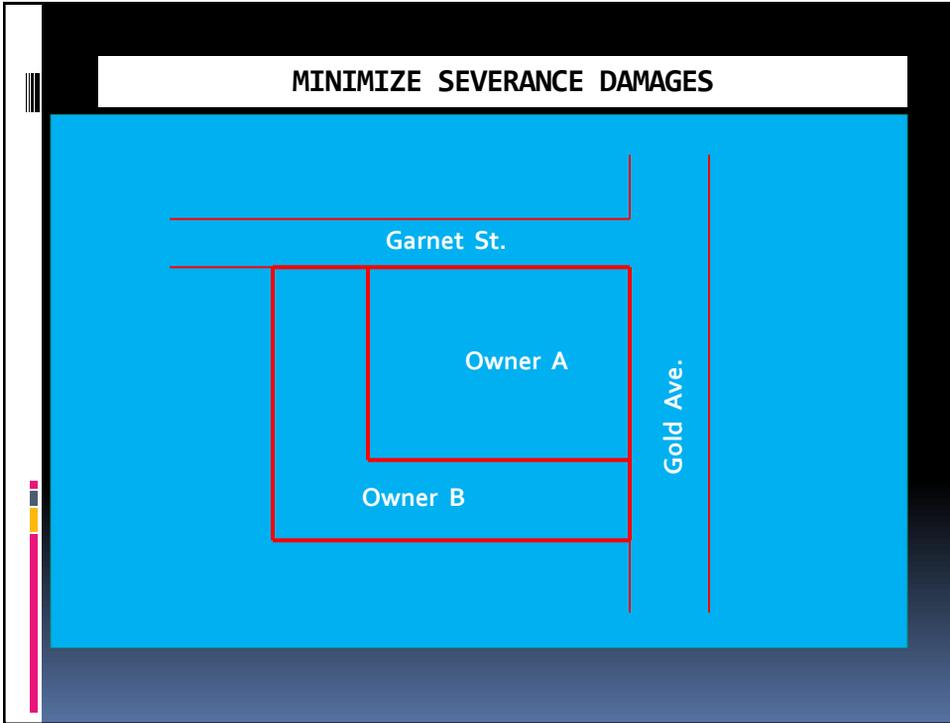






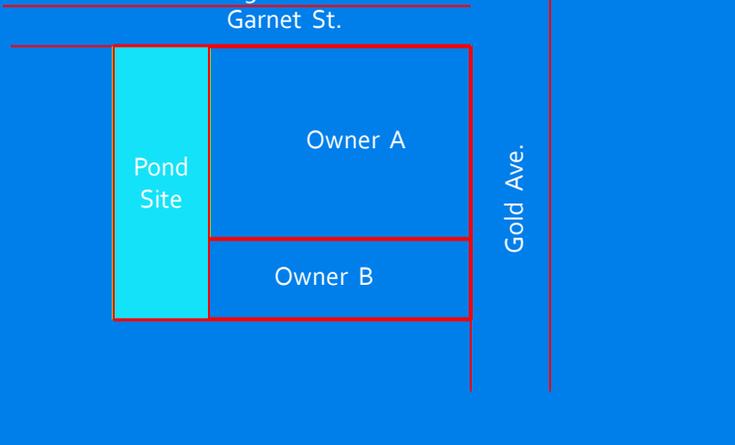






MINIMIZE SEVERANCE DAMAGES

- Eliminates Parcel
- Minimize Severance Damages



- **ACCESS/RIGHT OF ACCESS**

BEFORE

STUBBS

FIRESTONE RD

STUBBS

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AFTER

I-295

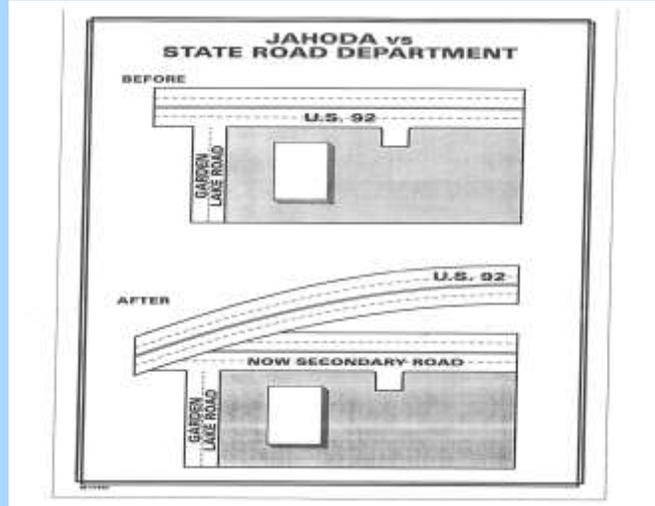
STUBBS

FIRESTONE ROAD

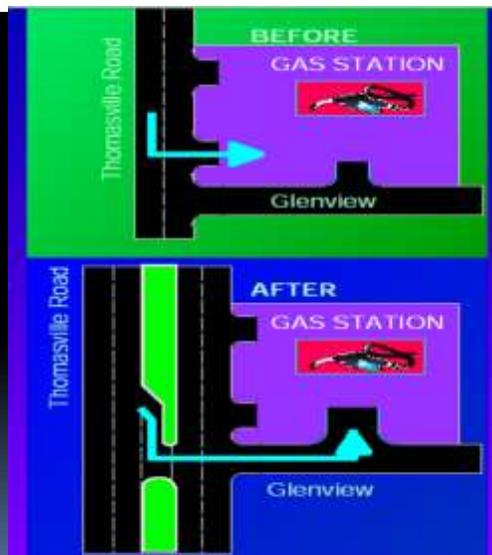
3 blocks

New bridge to provide access

JAHODA vs STATE ROAD DEPARTMENT

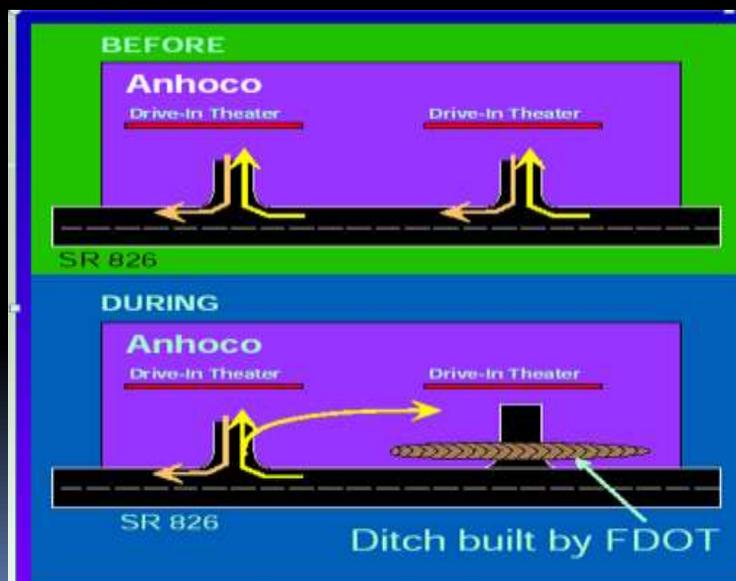


DOT vs CAPITAL PLAZA



▪ RIGHT OF WAY
ACQUISITIONS CAN BE
TEMPORARY

ANHOCO vs DADE COUNTY



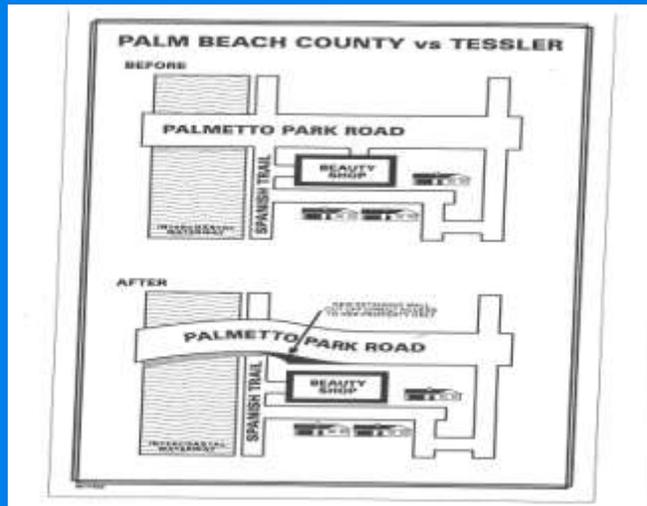
ANHOCO vs DADE COUNTY



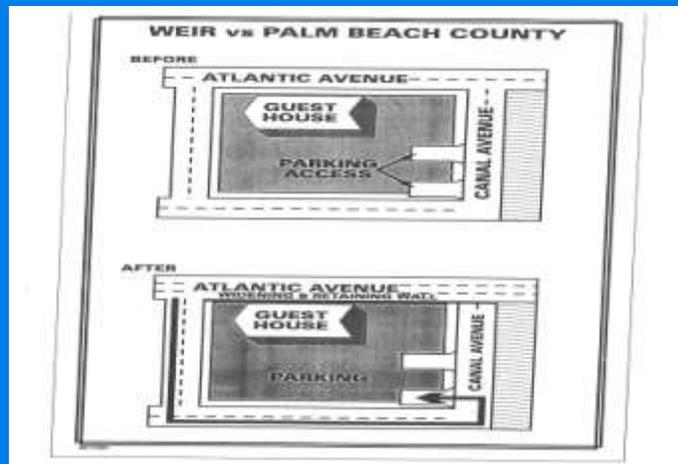
RIGHT OF WAY COSTS MAY BE INCREASED IN SOME DESIGNS EVEN IF THERE IS NO APPARENT ACQUISITION OF PROPERTY

- INVERSE ACQUISITIONS & TAKINGS

PALM BEACH COUNTY vs TESSLER



WEIR vs PALM BEACH COUNTY



BURGER KING

Broward County

BEFORE

- Prior to reconstruction
Burger King abutted SR 84.

CIRCUITY: Burger King v. FDOT, 574 So. 2d 1229 (Fla. 4th DCA 1991)

COURT:

The appellate court affirmed without opinion. The trial court had determined that right of access had been substantially diminished and neither the remaining access nor the several lengthy and circuitous alternative routes were suitable for the property's use.

BURGER KING

AFTER:

SR 84 is elevated and east-bound traffic rerouted to u-turn, travel under SR 84 to connect with a ramp abutting the property.

No Burger King property was taken
Same lane that served Burger King before still serves it

Burger King v FDOT, 574 So.2d 1229 (Fla. 4th DCS 1991)

PLANS PREPARTION MANUAL, VOL 1

- **12.2 Procedures for Establishing R/W Requirements**
- The procedures for addressing R/W requirements require engineering analyses, economic comparisons and professional judgments. Consultation with the District R/W Surveyor and District R/W Manager is required. One excellent method of providing the consultation is the "R/W Partnering" concept with all parties that have a vested interest participating in the decision making process.

12.2.1 Open Cut and Fill Roadway Sections

- R/W requirements along the project boundaries are dictated by the actual construction limits plus a reasonable maintenance buffer. The roadway cut and fill slopes, drainage ditch slopes and other construction elements are used to define the construction limits, which are generally shown on the roadway cross sections. R/W requirements are determined by reviewing the plotted cross sections after the roadway and drainage design elements have been established and major revisions are highly unlikely.

- The procedures should, at this point, include a joint review of the proposed R/W, including a field review if necessary. The design details and the property information must be reviewed by the designer, personnel from the R/W Office and the R/W Mapping Office. This review should be scheduled during the Phase II design process as defined in this manual and should address such issues as:
 1. Will additional R/W be required for project access, maintenance of the facility, or transit facility needs? Check pond sites, high embankment slopes, bridges, outfalls, canals and similar sites.

2. Can acquisitions be avoided or design modified to avoid substantial damages to remainder property or businesses? Examples include designing retaining walls or by adjusting slopes or grades to reduce the difference in evaluation between the remainder and the project grade at the R/W line.
3. Can the roadway grades be revised or connections relocated so access to the remainders can be constructed without damaging the use of the remainder, thereby minimizing or avoiding severance and business damages caused by altering the access?
4. Can drainage facilities (outfalls, ponds, ditches, etc.) be maintained without additional R/W space? Can

Uneconomic remainders be used for storm water treatment?

5. Has consideration been given to joint use ponds (including golf course ponds) and/or regional treatment facilities?
6. Check the suitability and cost effectiveness of storm water treatment facilities and the status of permit approval.
7. What types of legal instruments are likely to be required to secure the appropriate property rights for the project?

8. Review the status of R/W activities by others in the project area. Avoid multiple acquisitions from the same owner at ramp terminals, intersections and by future FDOT projects.
9. Check for potentials of hazardous materials, "4F" parcels, utility easements, landlocked remainders and parcels, which could be eliminated.
10. Check for acquisitions involving existing treatment systems which could be mitigated within the FDOT system.
11. Discuss the possibility of advance acquisition of any parcel where development is imminent.

12. Check for incidental work which will fall outside of R/W such as trenching, wall forms, or equipment maneuvering space.
13. Check for availability of offsite property owned by FDOT which could be used for mitigation sites.
14. Discuss status of any R/W being claimed by maintenance pursuant to Section 95.361, F.S. (Maintenance Statute).

RECOMMENDATIONS

- ✓ Involve Right of Way and Legal expertise early
- ✓ Do not make Design promises to adjacent owners without Right of Way or legal involvement early
- ✓ Consider alternatives
- ✓ Have an awareness of the uses and configuration of adjacent property and property needed for the project

RECOMMENDATIONS

- ✓ Have pride in your design but consider the input of others
- ✓ Right of Way and Design – Work as a team

ONE DOT

■ **QUESTIONS**

THAT'S ALL FOLKS

