



2015
Design Training
Expo

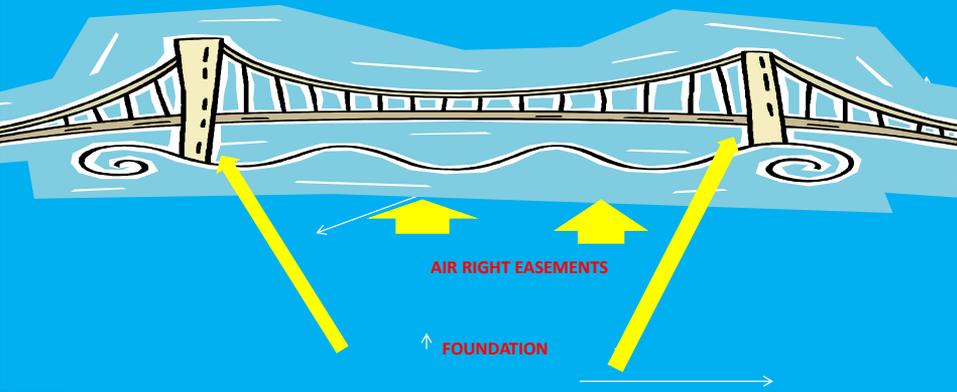
OFFICE OF RIGHT OF WAY



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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.



AIR RIGHT EASEMENTS

FOUNDATION



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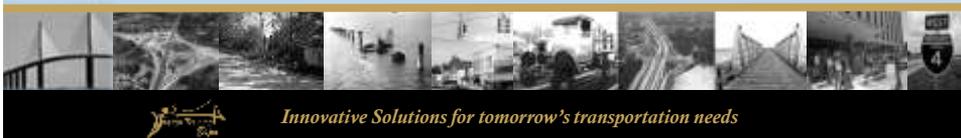
DESIGN DECISIONS CAN SIGNIFICANTLY AFFECT RIGHT OF WAY COSTS AND SCHEDULES

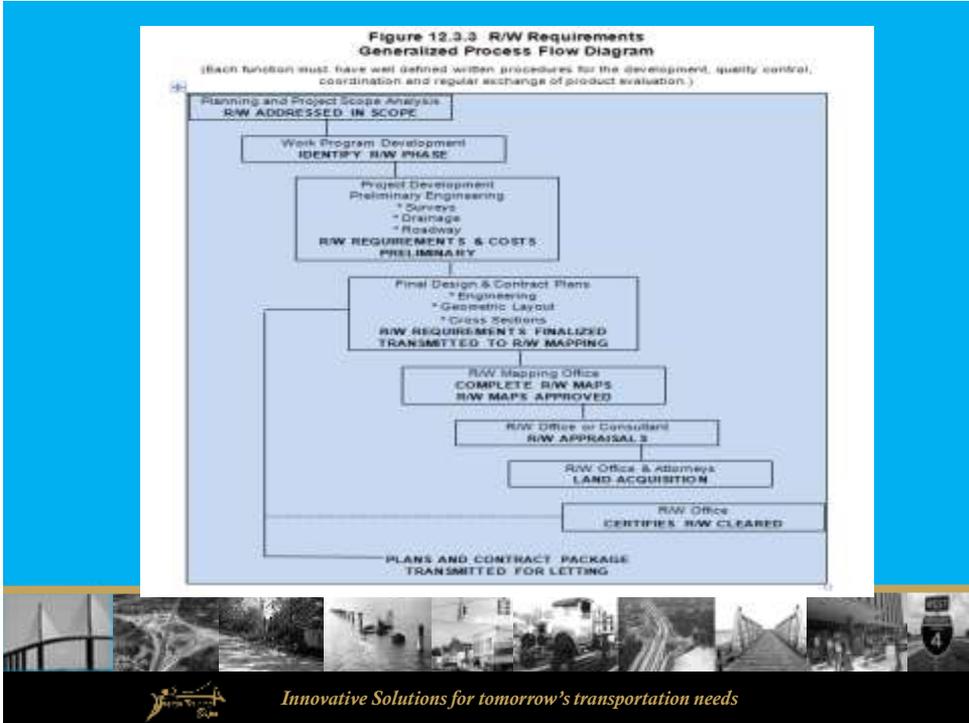
How Design Affects Right of Way Schedules

- “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. The District R/W Manager must certify that all R/W is available prior to advertisement for bids.





WHY ROW DESIGN SUPPORT

- 12.1 “To assist the roadway designer’s **understanding** of right of way requirements which must be addressed during the project development and design phase of projects...”
- 12.2 “The procedures for addressing right of way requirements require engineering analyses, economic comparisons and professional judgments. Consultation with....District Right of Way Manger is **required.**”



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
- 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:

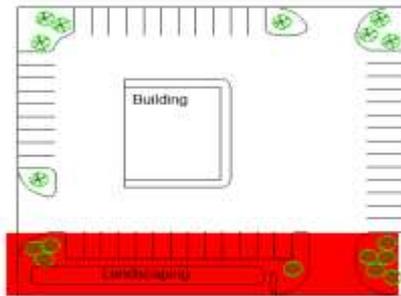
- Reduction in value due to the reduced size and shape of the remaining property
- Reduction in value because of the use to which the Department intends to put the property actually taken
- Reduction in value caused by the change of grade between the owner's property and the property taken
- Reduction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



•EXAMPLES

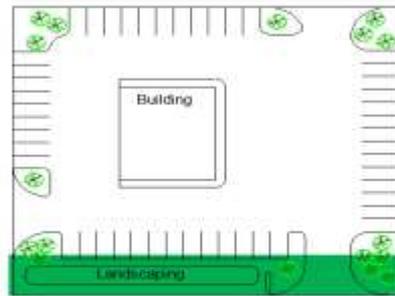


Depth of Taking



RESULT: SIGNIFICANT RIGHT OF WAY COST

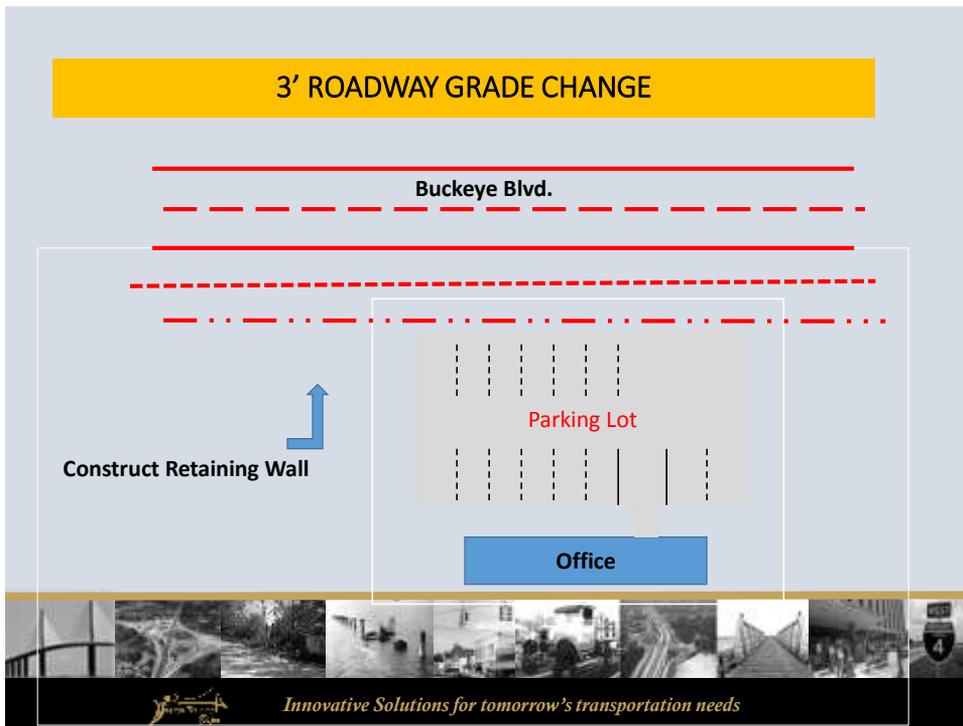
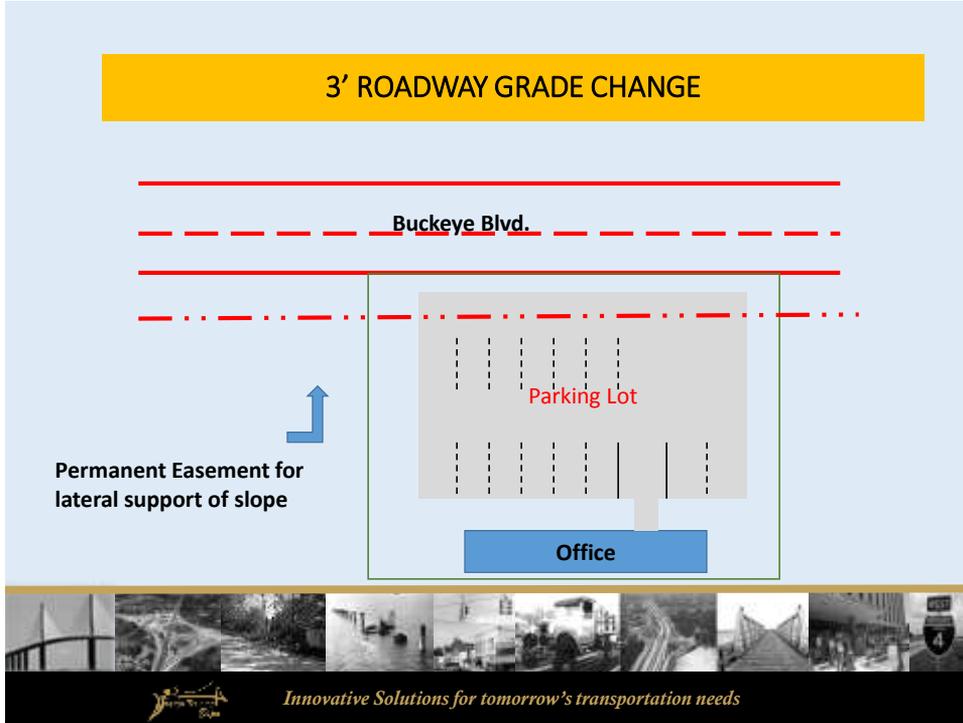
Loss of 13 Parking Spaces



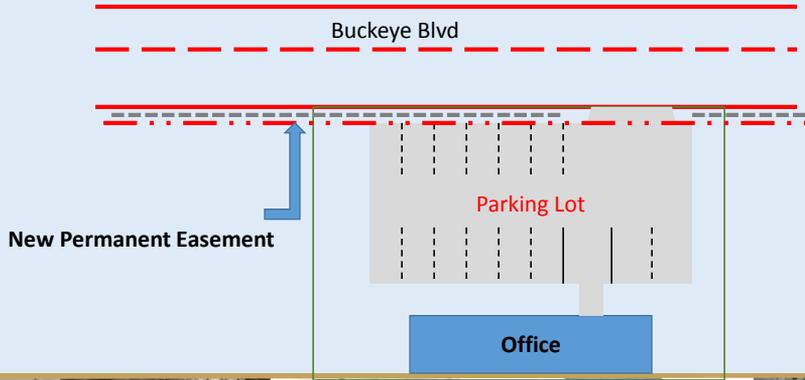
RESULT: LESS SIGNIFICANT RIGHT OF WAY COST

Loss of No Parking

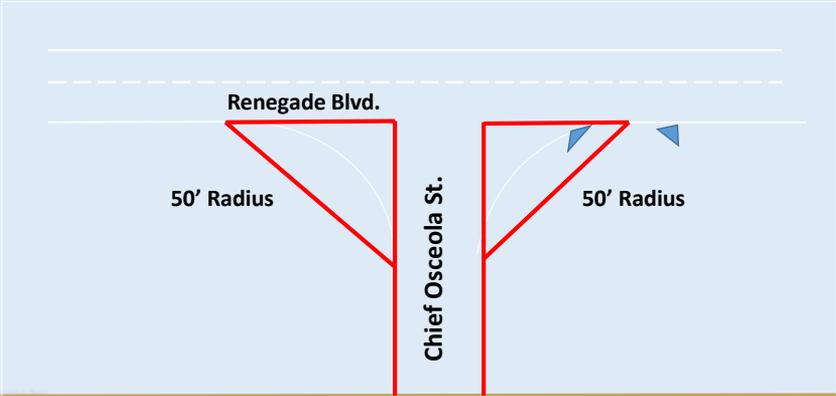




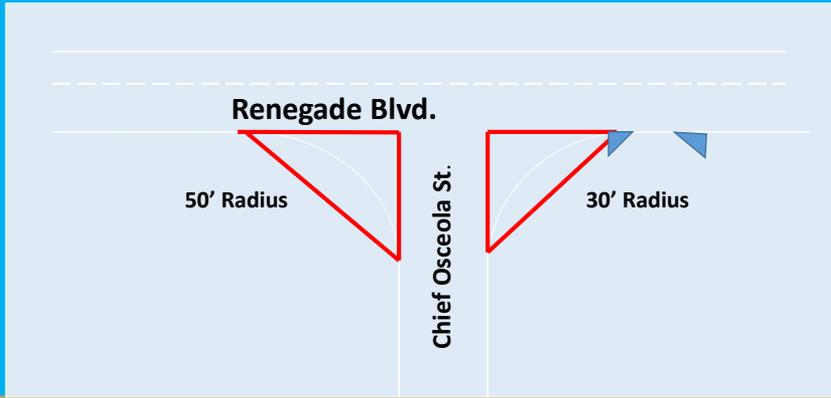
3' ROADWAY GRADE CHANGE RESULT: REDUCED RIGHT OF WAY COST



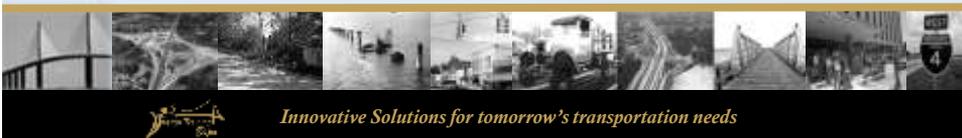
TURN RADIUS IMPACT TO DRIVEWAYS



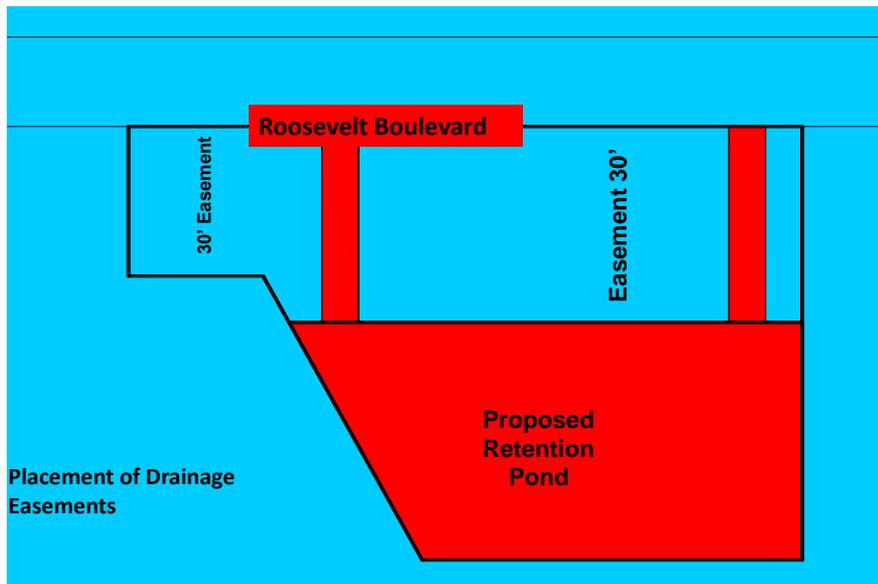
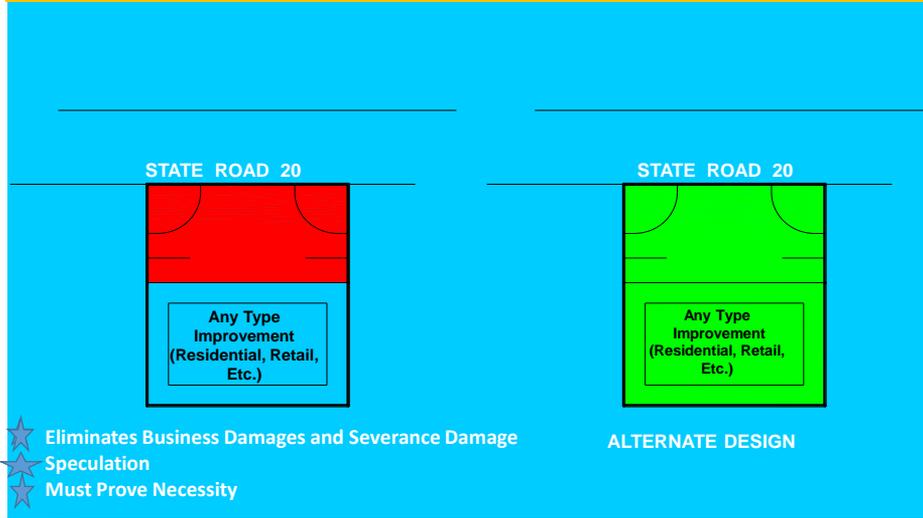
**TURN RADIUS IMPACT TO DRIVEWAYS
RESULT: REDUCED RIGHT OF WAY COST**

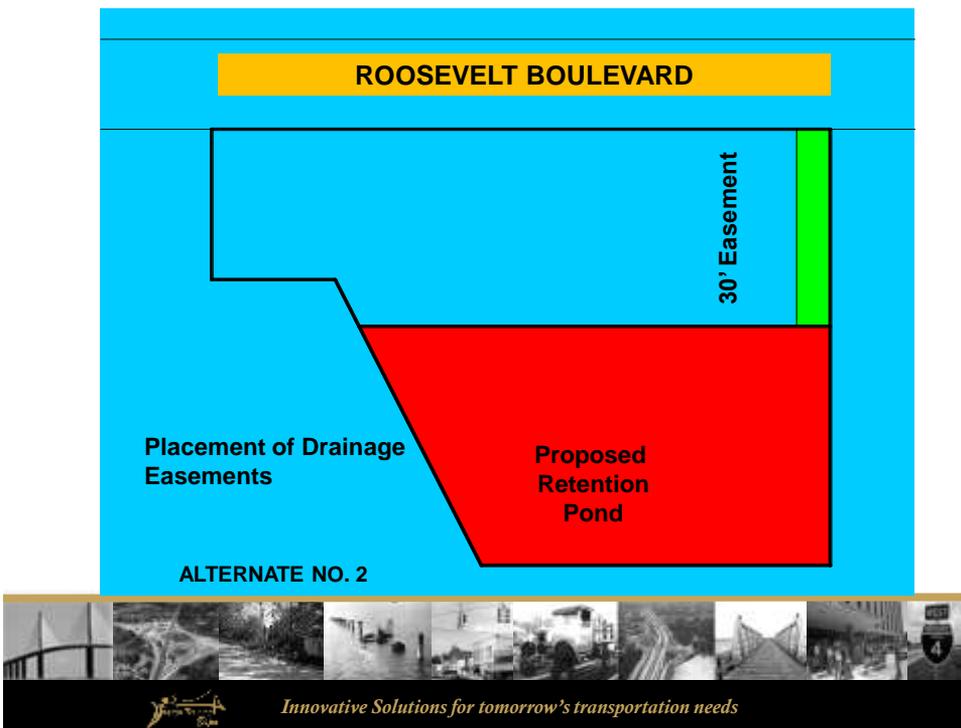
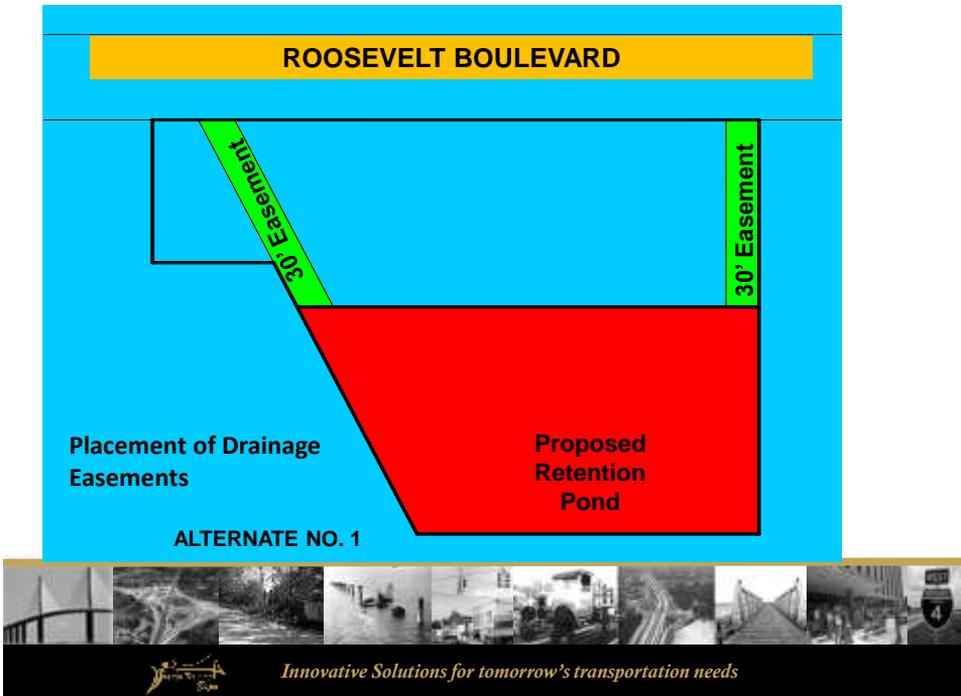


• STORM WATER RETENTION/DRAINAGE



Partial to Whole Takings





Water Retention Pond Placement

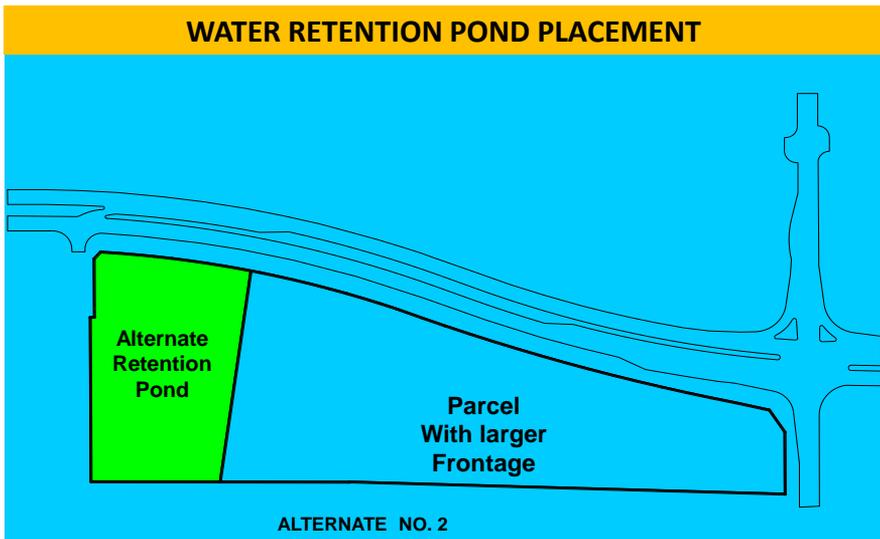
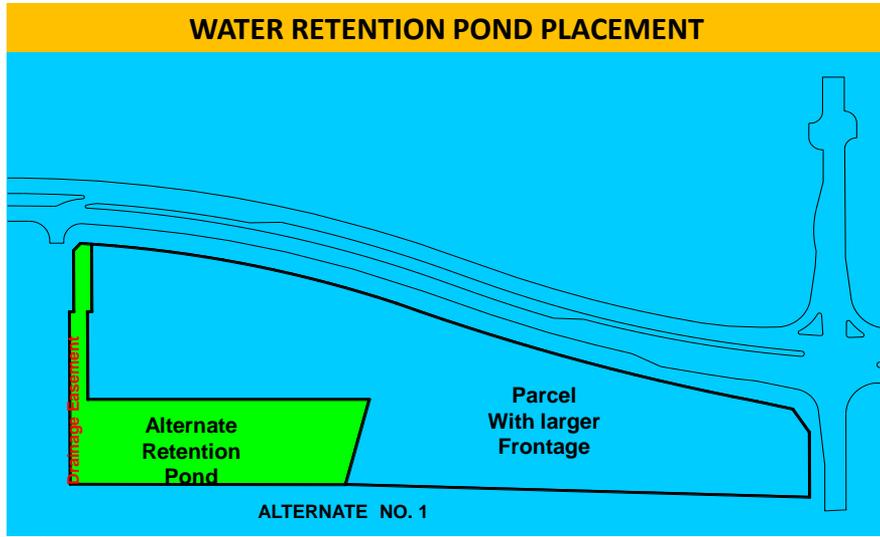
The diagram illustrates two potential locations for a water retention pond situated between State Road 7 and Old Swamp Road. On the left, a red rectangular area labeled 'Proposed Retention Pond' is located within a grey-shaded 'Existing 100' Drainage Easement'. On the right, a green rectangular area labeled 'Alternate Location of Retention Pond' is shown, with a green line representing a 'Ditch or Pipe in Existing Easement' connecting it to the drainage easement on the left.

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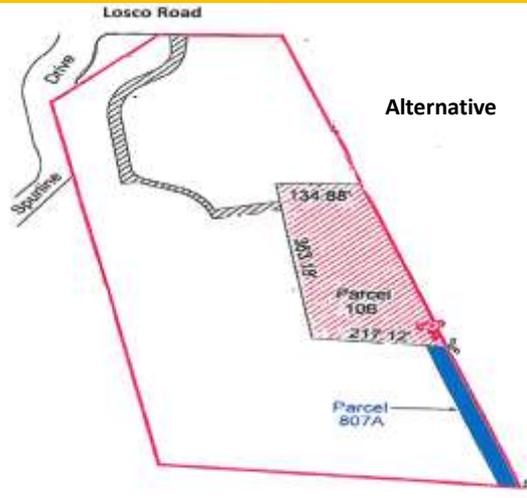
WATER RETENTION POND PLACEMENT

This site plan diagram shows a 'Proposed Retention Pond' (red) located near a road intersection. The pond is situated in a blue-shaded area, likely representing a drainage basin or easement. The road intersection is shown on the right side of the plan.

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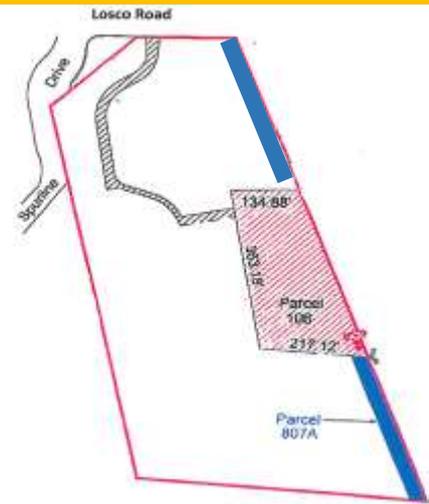


WATER RETENTION POND PLACEMENT



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WATER RETENTION POND PLACEMENT



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MINIMIZE SEVERANCE DAMAGES

The diagram shows a blue rectangular area representing a property. A horizontal line at the top is labeled "Garnet St.". A vertical line on the right side is labeled "Gold Ave.". Inside the blue area, there are two irregular shapes representing "Owner A" and "Owner B". "Owner A" is a larger shape in the upper right, and "Owner B" is a smaller shape in the lower left. The shapes are outlined in red.

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MINIMIZE SEVERANCE DAMAGES

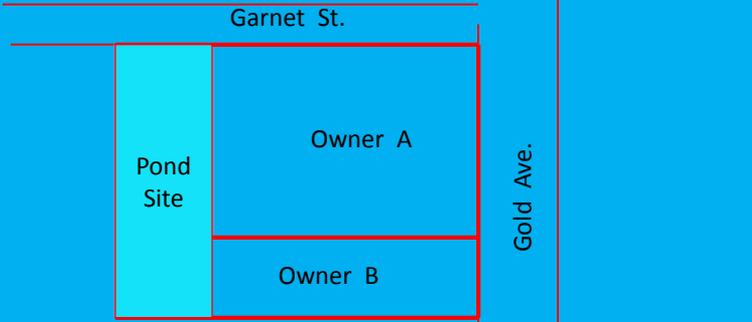
- Creates Additional Parcel
- Creates Poor Frontage-to-Depth Ratio

The diagram is similar to the one above, but with a modification. A vertical dashed red line is drawn through the "Owner A" parcel, creating a narrow strip labeled "Water Retention Pond". The rest of the "Owner A" parcel is now a wider, shallower shape. "Owner B" remains in the lower left. The streets "Garnet St." and "Gold Ave." are also present.

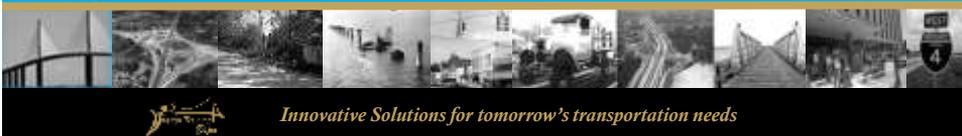
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MINIMIZE SEVERANCE DAMAGES

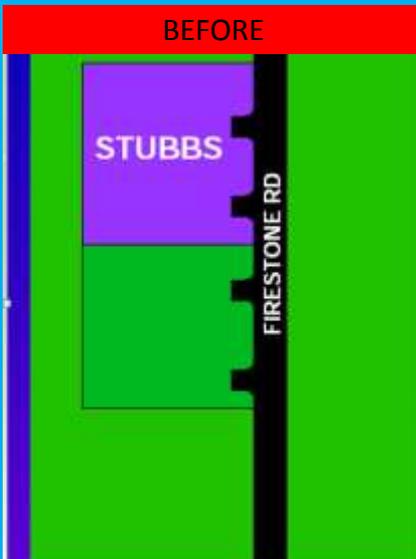
- Eliminates Parcel
- Minimize Severance Damages



• ACCESS/RIGHT OF ACCESS



BEFORE



STUBBS

- 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.

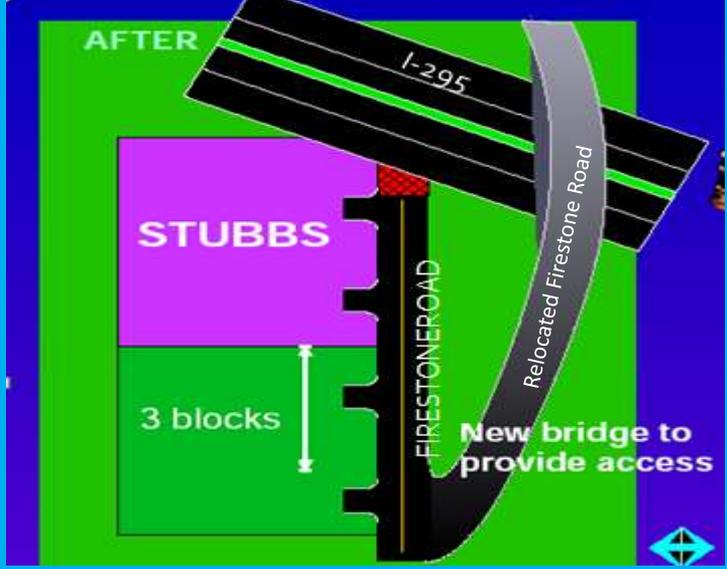
DOT v. Stubbs 285 So.2d 1 (Fla. 1973)





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AFTER



STUBBS

3 blocks

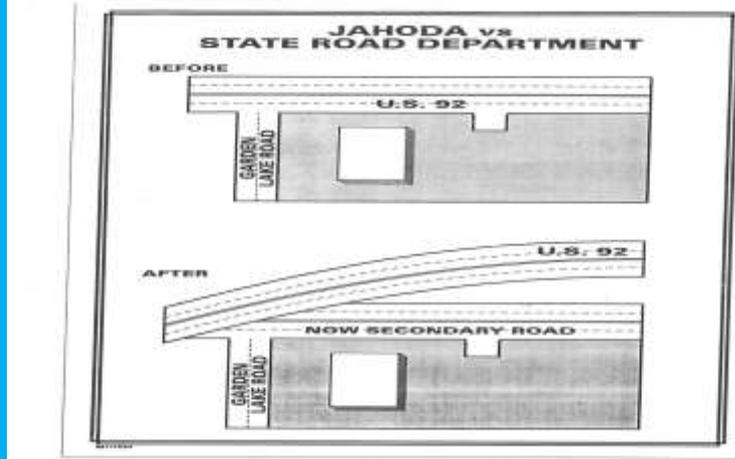
New bridge to provide access





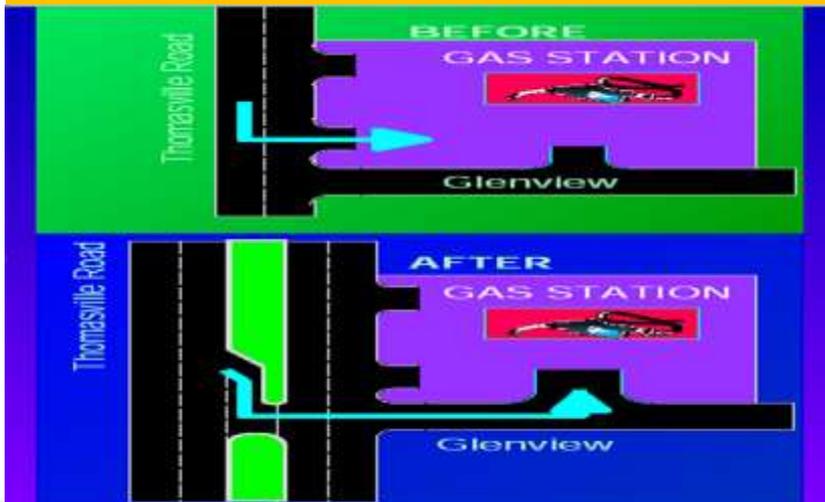
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JAHODA vs STATE ROAD DEPARTMENT



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DOT vs CAPITAL PLAZA



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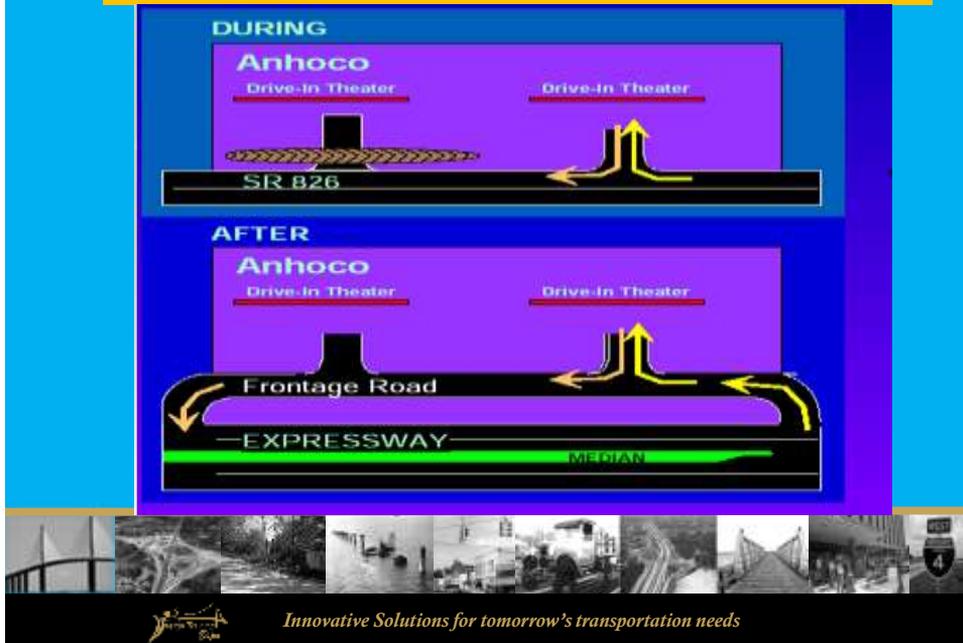
- RIGHT OF WAY ACQUISITIONS CAN BE TEMPORARY



ANHOCO vs DADE COUNTY



ANHOCO vs DADE COUNTY

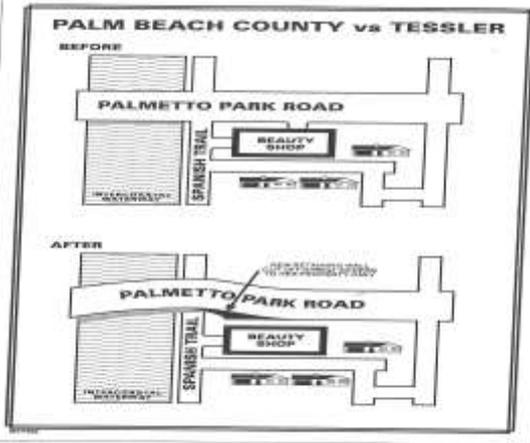


RIGHT OF WAY COSTS MAY BE INCREASED
IN SOME DESIGNS EVEN IF THERE IS NO
APPARENT ACQUISITION OF PROPERTY

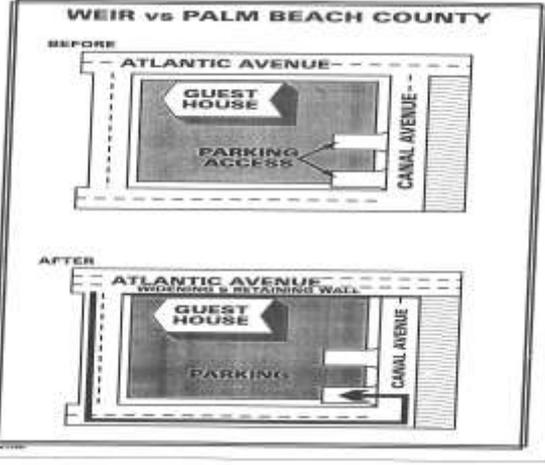
• INVERSE ACQUISITIONS & TAKINGS

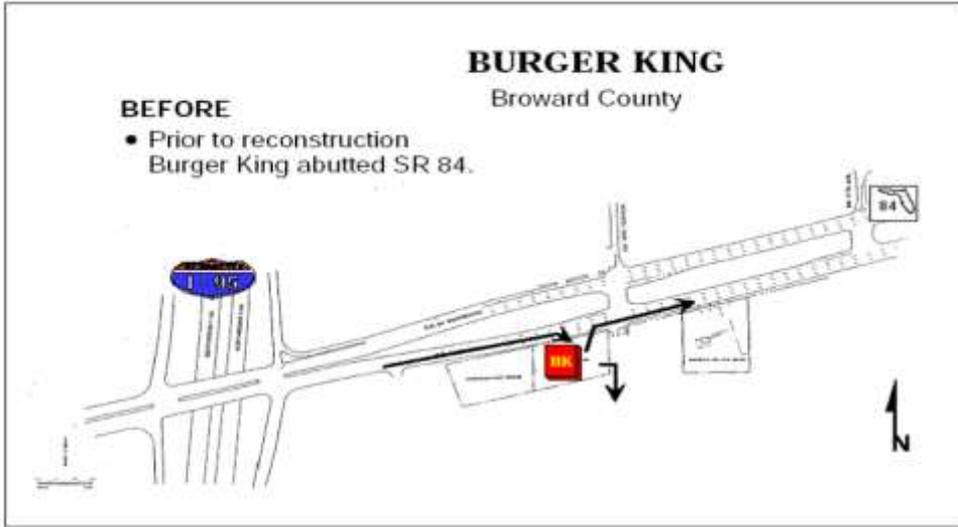


PALM BEACH COUNTY vs TESSLER



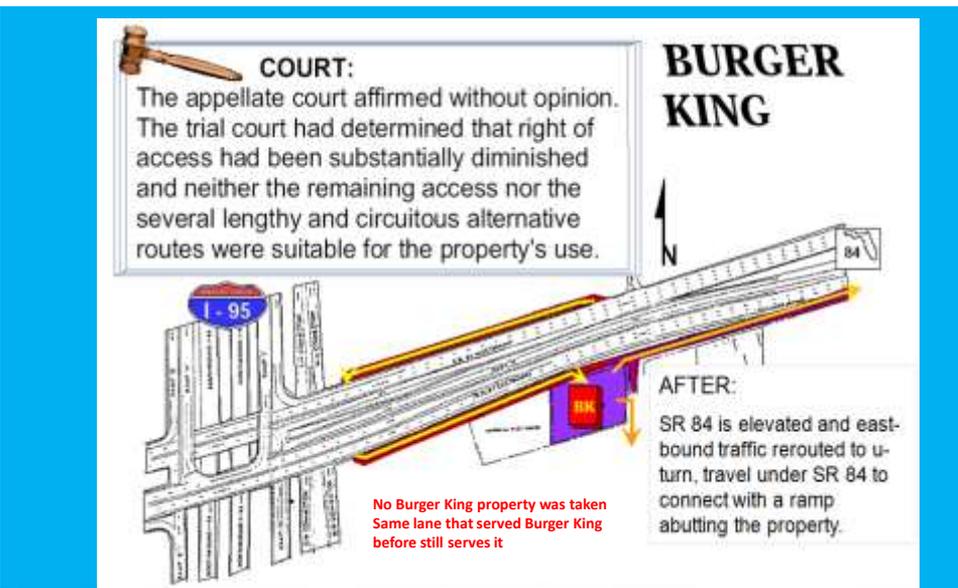
WEIR vs PALM BEACH COUNTY





CIRCUITY:

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



Burger King v FDOT, 574 So.2d 1229 (Fla.

PLANS PREPARATION 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.



- 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.

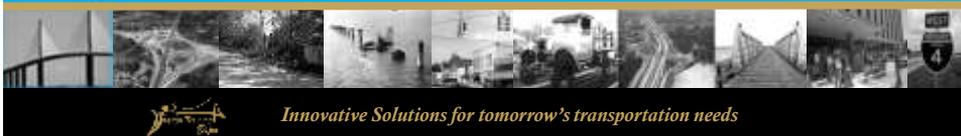


2. Can **acquisitions be avoided** or design modified to avoid substantial damages to remainder property or businesses? Examples include designing retaining walls or by adjusting slopes or grades to reduce the difference in elevation between the remainder and the project grade at the R/W line.
3. Can 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

