

NEW POLICY 7.172

4-F I recommend the Board adopt the proposed new Policy 7.172, to be entitled "Granting Drainage Easements."

[Contact: Kristin Garrison, 434-8935; or Joseph Sanches, 357-7573.]

Adoption

CONSENT ITEM

- At the March 13, 2002, Board meeting, the Board requested that a new Policy be proposed to provide consistent valuation procedures for granting of drainage easements to private developers or land owners adjacent to Board property.
- Staff from Facilities Management, Legal, Planning, and Real Estate cooperated to generate this proposed text.
- On Sept. 30, the Board approved the proposed text for a second reading/ adoption on Nov. 18 (rescheduled to Dec. 2).

PROPOSED NEW POLICY 7.172

GRANTING DRAINAGE EASEMENTS

1 **1. Purpose.--** The School Board of Palm Beach County ("Board") recognizes that
2 private developers or property owners may, from time to time, need access to
3 drainage canals in order to meet state or local requirements for legal positive
4 outfall, and that the most direct path of access to some of these canals may be
5 across lands owned by the Board.
6

7 **2.** The Board adopts this Policy to establish a consistent, equitable method for
8 establishing the fair market value of drainage easements to be granted to
9 developers or land owners who demonstrate a legitimate need as described in
10 Section (1), above, and to set forth a consistent procedure for granting such
11 easements.
12

13 **3. Definition.--** "Drainage easement" means a right, created by agreement, of a
14 private person to drain land under or through a strip of land owned by the Board,
15 generally using a pipeline, provided that the title to the Board's property shall
16 remain in the name of the Board, subject to the right of use by the
17 developer/property owner designated in the reservation of the servitude.
18

19 **4. Application Procedure.--** A developer/property owner ("Applicant") requesting a
20 drainage easement or right-of-way shall formally request same by written
21 application to the School District's Chief of Facilities Management. The Applicant
22 must provide "as-built" drawings, at his/her expense, clearly identifying the
23 proposed location of the installation. The placement of any drainage easement
24 must be consistent with SREF § 1.4 (2)(o): "easements [should] not . . . infringe
25 on useable acreage." All costs and fees associated with evaluating the
26 application, such as technical and engineering fees, shall be the responsibility of
27 the Applicant.
28

29 **5. Valuation.--** The consideration for the grant of easement shall be established in
30 an agreement between the Applicant and the Board. The application and
31 agreement shall specify the period of time during which the grant of easement is
32 to be in effect, and the valuation may be reflective of such terms. The
33 consideration and terms of the easement agreement must be such as the Board
34 deems reasonable, based on the appraised value. Specifically, the consideration
35 to be received by the Board for the grant of easement shall be set as follows:
36

37 a. The Applicant must contract with an independent appraisal firm to
38 determine the value of the easement at the time the agreement is entered
39 into. The Applicant shall be responsible for the appraisal fee.

40
41 b. The appraisal firm retained by the Applicant must meet the same criteria
42 that the Board imposes on appraisal firms retained by the Board. The
43 appraiser must be a "Licensed" or "Certified General" appraiser certified
44 under Fla. Stat. § 475.615.

45
46 c. By making an application for the grant of an easement, the Applicant is
47 deemed to agree that the Board has the right to seek a second appraisal
48 from another Licensed or Certified General appraiser at the
49 developer's/property owner's expense, and to require the *higher of the two*
50 appraisal values as the consideration for the easement.

51
52 6. Payment.-- Upon the Superintendent's recommendation and Board approval of
53 an easement agreement with the consideration established pursuant to Section
54 (5) above, the developer/property owner (hereinafter "Grantee") shall make full
55 payment within 90 days after receipt of notification that the easement has been
56 granted by the Board. In addition, the Grantee shall post a bond to ensure
57 faithful performance of all parts of the easement agreement. The minimum bond
58 amount shall be at least \$25,000.

59
60 a. The Chief of Facilities Management/designee shall make the notification of
61 Board approval by regular U.S. mail (and also by certified mail, return
62 receipt requested, in order to document the date notice was received).

63
64 b. If the Grantee's payment and proof of bond are not received within 90
65 days of receiving notification, the grant of the easement shall be invalid
66 and void, and the instrument shall not be recorded with the clerk of courts.

67
68 7. Terms of the Easement Agreement.-- The non-negotiable terms and
69 conditions of the drainage easement agreement shall include, but not be limited
70 to, the following:

71
72 a. Installation.-- The Grantee shall bear all costs of installation of any
73 drainage apparatus and must ensure that any resulting disturbance or
74 damage of any school property (including, but not limited to, sod, sprinkler
75 systems, sidewalks, etc.) is promptly repaired at the Grantee's expense to
76 the satisfaction of the District and in compliance with any applicable

77 standards and codes. The District shall be the sole determiner as to when
78 repairs shall be deemed necessary.

79
80 **b. Capacity.--** The Grantee shall ensure the construction of the drainage
81 apparatus is of sufficient length, diameter, and capacity to carry water
82 from a hundred-year flood without such water overflowing onto District
83 property. Such design requirements must take into consideration any tie-
84 ins of District drainage lines, existing or planned.

85
86 **c. Maintenance.--** The Grantee shall maintain the drainage pipe (or other
87 drainage apparatus) and related portions of the easement in safe and
88 proper condition, including any walkways or sidewalks within or above the
89 easement area. The Grantee shall bear all such maintenance costs.
90 Should the Grantee fail to properly maintain the line, the Grantee shall be
91 held responsible for all damage caused to Board property and shall
92 reimburse the Board for any repairs made by the School District, and the
93 easement may be subject to reverter as set forth in subsection (h), below.

94
95 **d. Board's Right to Tie-In.--** The Board shall have the right to tie in
96 drainage lines to the Grantee's drainage apparatus. If the Board does tie
97 in to this drainage apparatus, the Board will install and maintain its lines
98 up to the joining point; but the Grantee shall maintain the tie-in joint itself
99 and all other portions of the Grantee's apparatus, as set forth in
100 subsection (c) above.

101
102 **e. Pollutants.--** The Grantee shall not cause or allow the drainage
103 apparatus to be the source or transporter of any prohibited pollutants or
104 hazardous materials as defined or restricted by Fla. Stat. Chapter 376 or
105 other applicable state laws and/or the federal Comprehensive
106 Environmental Response, Compensation and Liability Act, as amended by
107 the Superfund Amendments and Reauthorization Act of 1986.

108
109 **f. Hold Harmless.--** The Grantee should demonstrate adequate insurance
110 coverage for the drainage apparatus, as well as pollution insurance. The
111 property and pollution insurance shall name the School Board as an
112 additional insured at no cost to the District. The Grantee shall hold the
113 Board harmless for any damage, depreciation, or wear and tear to the
114 easement and drainage apparatus therein. The Grantee shall also
115 indemnify and hold the Board harmless for any and all liability whatsoever

116 arising out of the installation or maintenance of the drainage easement
117 and apparatus.

118
119 **g. Right of Relocation or Modification.--** The Board shall have the right to
120 require relocation or repair of the easement and drainage apparatus to a
121 different part of the property at the Grantee's expense, whenever the
122 Board deems such relocation to be in the Board's best interests or when
123 deemed necessary for school purposes due to, for example,
124 reconfiguration of the site. Further, the Grantee shall cause modifications
125 to the pipeline or other apparatus, or its operation, in the event another
126 governmental entity requires changes to the pipeline or its operation, and
127 Grantee shall make such modifications at no cost or liability to the District.

128
129 **h. Reverter Clause.--** All drainage easements shall be subject to reverter
130 upon failure of the Grantee to begin using the easement, as proposed in
131 the application, within one (1) year. Further, the easement shall be
132 subject to reverter to the Board if the Grantee fails to adequately maintain
133 the installation.

134
135 **i. Removal and Restoration.--** Unless the contract is extended by further
136 agreement of both parties before the expiration date, the Grantee shall
137 remove the pipelines or other drainage apparatus at Grantee's expense
138 before termination of the easement agreement and restore the easement
139 area to its highest and best use by the expiration date.

140
141 **j. Recordation.--** Any drainage easement must be evidenced by a written
142 instrument recorded in the office of the clerk of the circuit court.
143 Recordation and cost thereof shall be the responsibility of the Grantee.

144
145 STATUTORY AUTHORITY: §§ 230.22(2); 230.23(22); 230.23005(4),
146 Fla. Stat.

147 LAWS IMPLEMENTED: §§ 235.002; 230.23(9); 230.23005(4); 230.33(4);
148 230.33(11); 376.301, Fla. Stat.

149 HISTORY: _____ / ____ / 02

Legal signoff

The Legal Department has reviewed proposed Policy 7.172 and finds it legally sufficient for development by the Board.

Attorney

Date