IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

JACKSONVILLE TRANSPORTATION AUTHORITY,

Appellant,

v.

TITUS HARVEST DOME SPECTRUM CHURCH, INC., a Florida Non-Profit Corporation, TITUS SHEKINAH EVANGELISTIC HARVEST DOME CHURCH, INC., a Florida Non-Profit Corporation, CITY OF JACKSONVILLE, a municipal Corporation of the State of Florida, GBR GROUP, LTD., a Florida limited partnership, SPRINTCOM, INC., a foreign corporation licensed to do business in the State of Florida, VERIZON WIRELESS PERSONAL COMMUNICATIONS LP, d/b/a VERIZON WIRELESS, a foreign corporation licensed to do business in the State of Florida, JACKSONVILLE ELECTRIC AUTHORITY, a body politic and corporate, MIKE HOGAN, TAX COLLECTOR, DUVAL COUNTY, FLORIDA; if alive, or if dead, any unknown spouses, heirs, devisees, grantees, creditors and all parties claiming interest,

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 1D11-3206

by, through under or against
defendant named in this action,
and all persons having or claiming
to have any right, title or interest
in the property herein described,

Appellees.

_____/

Opinion filed June 1, 2012.

An appeal from the Circuit Court for Duval County.
Lance M. Day, Judge.

Ronald R. Austin of Austin & Austin, Jacksonville, Richard Milian and Edgar Lopez of Broad and Cassel, Orlando, and Beverly A. Pohl of Broad and Cassel, Fort Lauderdale; for Appellant.

Tyrie A. Boyer and Herbert T. Sussman of Boyer, Tanzler & Sussman, P.A., Jacksonville, for Appellees.

PER CURIAM.

AFFIRMED.

MARSTILLER and SWANSON, JJ., CONCUR; BENTON, C.J., CONCURS IN PART AND DISSENTS IN PART WITH OPINION.

BENTON, C.J., concurring in part and dissenting in part.

Except as to portions of the AVA Engineers, Inc. (AVA) order, I concur in the affirmance of the three post-judgment orders entered in favor of Titus Harvest Dome Spectrum Church, Inc. (Church) awarding costs incurred in defending an eminent domain proceeding instituted pursuant to section 73.091, Florida Statutes (2008). A portion of the costs awarded to AVA for services it rendered to the Church is duplicative of the "cost to cure" plan[*] the Church presented to the jury at trial as part of its proof of damages. Treating these AVA services as costs as well as part of the Church's "cost to cure" sought as damages was improper. The damages awarded by the jury greatly exceeded and presumptively included the "cost to cure." See Dade Cnty. v. Cross, 127 So. 2d 141, 142 (Fla. 3d DCA 1961), overruled in part on other grounds by Chatlos v. City of Hallandale, 220 So. 2d 353 (Fla. 1968).

[*] "In effect, the 'cost to cure' is the cost of an attempt to ameliorate the damage to value sustained by the property as a result of the partial taking by the government." Fla. Dep't of Transp. v. Armadillo Partners, Inc., 849 So. 2d 279, 285 (Fla. 2003). The "cost to cure" is an appropriate component of a damages award when there has been a partial taking. Id.