

WINDERWEEDLE, HAINES, WARD & WOODMAN, P.A.

329 Park Avenue North

Second Floor

Post Office Box 880

Winter Park, Florida 32790-0880

Telephone (407) 423-4246

Facsimile (407) 645-3728

MEMORANDUM

TO: Central Florida Expressway Authority Board Members

FROM: James Edward Cheek, III, Right of Way Counsel
Winderweedle, Haines, Ward & Woodman, P.A.



DATE: November 17, 2015

**RE: S.R. 429 Wekiva Parkway, Project 429-202; Parcel 122 (Randy and Mary Sparks) -
Approval of Settlement**

Winderweedle, Haines, Ward & Woodman, P.A., right of way counsel, seeks this Board's approval of a settlement with Randy and Mary Sparks (the "Owners"), for the acquisition of Parcel 122 (the "Taking" or "Property") for the construction of the S.R. 429 Wekiva Parkway, Project 429-202. The Central Florida Expressway Authority ("CFX") acquired Parcel 122 through a Stipulated Order of Taking entered on May 15, 2014.

DESCRIPTION and BACKGROUND:

Parcel 122 involves a partial taking from a 5.678 acre flag-shaped tract of land located along the south side of Yothers Road in unincorporated Orange County. CFX acquired 1.115 acres of land in fee simple. The property is used as a rural residential home site and is improved with a single-family residence. The property is accessed by a long, narrow driveway off Yothers Road. The taking basically acquires this driveway, and replaces it with a public roadway in order to provide access to the subject, as well as several other properties. In addition, traffic will be diverted temporarily from Yothers Road to Belgian Street while the Yothers Road bridge is constructed.

CFX's appraisal of the property was prepared by Christopher D. Starkey, MAI, of Integra Realty Resources – Orlando. Mr. Starkey performed several appraisals of the subject property because construction plans initially included a noise wall, but this wall was subsequently removed from the plans. His updated appraisal estimated that the amount of compensation owed to the landowner was \$92,400.00, based on the following analysis.

The Property is zoned A-1, Citrus Rural District, by Orange County. The subject is currently improved with a single-family residence that was constructed in 1993, containing 1,901 square feet of gross living area. In addition, site improvements related to the current residential

usage include fencing, a detached garage, septic tank and drain field, well, landscaping, and other associated residential improvements. Mr. Starkey concluded that the Property's highest and best use "as if vacant" would be for a single-family residential home site or agricultural use. The property "as improved" would have a highest and best use for the existing single-family residential use.

To determine land value, Mr. Starkey used the Sales Comparison Approach and considered four vacant land sales ranging from \$24,000 per acre to \$47,000 per acre. Mr. Starkey ultimately reconciled on a value of \$27,000.00 per acre. This resulted in a finding of \$153,300.00 for the total land value of the subject property, and a compensation claim of **\$30,100.00** for the value of the land taken (\$27,000 per acre x 1.115 acres).

Mr. Starkey used the cost approach and the comparable sales approach to determine the value of the subject "as improved." These approaches resulted in a contributory value of \$166,700 for the improvements, and an ultimate value of \$334,000 for the total value of the parent tract.

The most significant issue in this case is the degree to which the remainder property will be affected by the taking. The proposed acquisition will reduce the subject parent tract from 5.678 acres to 4.563 acres. More significantly, the taking will eliminate the landowner's private access driveway with a public roadway that will not only serve the subject parcel, but other properties in the vicinity. The alleged loss of privacy and increased traffic, noise, lights, and diminished rural character allegedly diminishes the value of the property by about 20%. This created severance damages in the amount of **\$58,300.00**.

In addition, Mr. Starkey appraised the value of the improvements located within the area of take. These improvements included landscaping and the access road, and were estimated to be worth **\$4,000.00**.

This results in a total compensation estimate for Parcel 122 of \$92,400.00, as summarized below:

CFX Valuation of Parcel 122

Value of Parent Tract	\$334,000.00
Land taken (1.115 acres)	\$ 30,100.00
Improvements	\$ 4,000.00
Severance Damage (10%)	\$ 58,300.00
Total Compensation	\$ 92,400.00

The Owners, Mr. and Mrs. Sparks, retained the legal services of Andrew Brigham, Esquire, and the appraisal services of Matthew P. Ray, MAI of Cantrell Ray Real Estate, LLC. Mr. Ray

consulted with land planner Sue Murphy of P & M Consulting Group, Inc., and engineer Reginald Mesimer, P.E. of Mesimer and Associates, Inc., to assist in the highest and best use analysis and to identify damages that result from the taking.

Mr. Ray's appraisal opinion was similar to Mr. Starkey's regarding land value (\$44,600 for the part taken) and improvement value (\$6,105.00 for improvements within the area of taking). The significant issue on which the appraisers differed related to severance damages. Mr. Ray concluded that the property was damaged by 40%, or \$131,718.00. He then determined that these damages could be partially cured by the construction of a noise wall for \$38,800.00, and this would reduce severance damages to 25%, or \$82,324. Mr. Ray's valuation conclusions are summarized as follows:

Landowner Valuation of Parcel 122

Value of Parent Tract	\$380,000.00
Land taken (1.115 acres)	\$ 44,600.00
Improvements	\$ 6,105.00
Severance Damage plus cure	\$121,124.00
Total Compensation	\$171,829.00

SETTLEMENT PROPOSAL:

The parties have been participating in settlement negotiations and have reached a proposed agreement for the acquisition of Parcel 122 and expert fees and costs. The parties have conditionally agreed to the following settlement terms, subject to Right of Way Committee recommendation and final CFX Board approval:

Total Settlement Proposal for Parcel 122

Landowners (Randy and Mary Sparks):	\$132,700.00
<u>Expert Fees and Attorneys Fees</u>	<u>(Not to Exceed) \$ 64,627.00</u>
Total	(Not to exceed) \$197,327.00

In sum, CFX would pay compensation to the Owners, Randy and Mary Sparks, in the amount of \$132,700.00, less its good faith deposit of \$34,100.00, leaving a remaining balance of **\$98,600**. In addition, CFX would pay statutory attorneys' fees and expert fees in an amount not to exceed \$64,627.00. As mediation was completed on the evening of November 4, 2015 (the same day as this Right of Way Committee's agenda deadline), all expert invoices and amounts were not available for inclusion in this memorandum, so a cap was negotiated to set the upper limits for outstanding fees and costs.

Under the proposed settlement, CFX will not be responsible for constructing a wall, which is an estimated savings of \$38,800.

Acceptance of the proposed settlement is recommended and is in CFX's best interest. Prolonging litigation will subject CFX to additional attorney fees and costs as well as additional expert fees and costs, which CFX would ultimately be responsible for as part of the landowner's compensation as provided by §73.091 and §73.092, *Florida Statutes*. Acceptance of the proposal will eliminate further risk and unnecessary expenses for CFX in this case. The proposed settlement will resolve all pending matters in this case, including the property owner's attorney fees and expert fees and costs.

RECOMMENDATION:

The proposed settlement was recommended for Board approval by the Right of Way Committee at the November 18, 2015 meeting. We respectfully request CFX Board approval of the proposed settlement in the amount of \$197,327.00 in full settlement of all claims for compensation for the acquisition of Parcel 122.

ATTACHMENTS:

Exhibit A - Sketch of Subject Property.

SKETCH OF DESCRIPTION

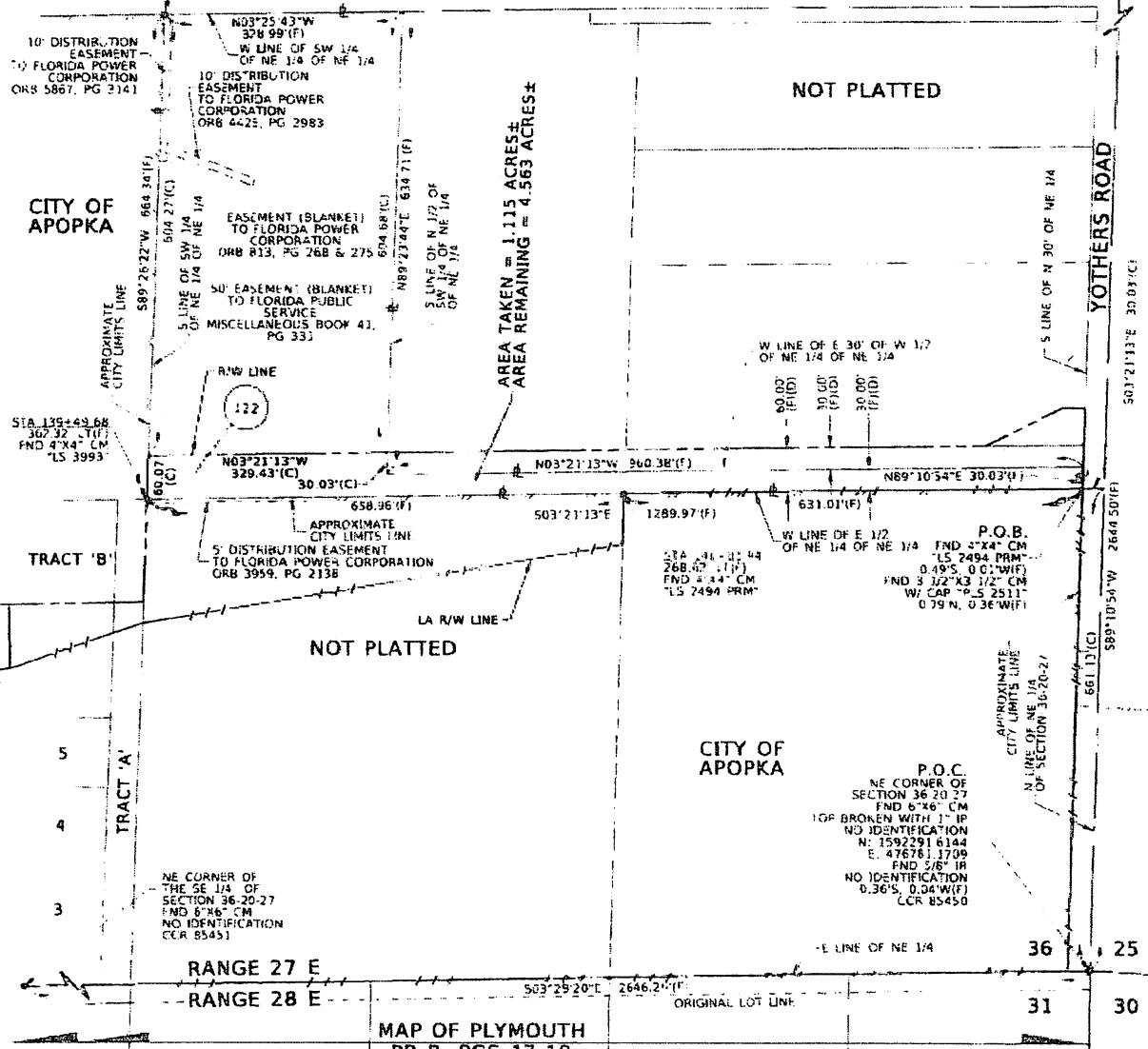


Scale: 1" = 200'

FND 4"x4" CM
LS 3993

SECTION 36,
TOWNSHIP 20 SOUTH,
RANGE 27 EAST

NW CORNER OF
THE NE 1/4 OF
SECTION 36-20-27
FND RAILROAD SPIKE
NO IDENTIFICATION
N: 1592253 8508
E: 474136 9390
CLR 85449



LOT 10 LOT 7 LOT 3 LOT 2
SEE SHEET 1 FOR LEGAL DESCRIPTION
SEE SHEET 3 FOR GENERAL NOTES AND LEGEND
SECTION 31, TOWNSHIP 20 SOUTH, RANGE 28 EAST
SHEET 2 OF 3

FOR: ORLANDO-ORANGE COUNTY
EXPRESSWAY AUTHORITY
DATE: APRIL 25, 2013
PROJECT NO.: H20-01
DRAWN: PMM CHECKED: JMS

STATE ROAD 429
OOCEA PROJECT NO. 429-202
PARCEL NO. 122

GEODATA CONSULTANTS, INC.
SURVEYING & MAPPING
2700 WESTHALL LANE
SUITE 137
MAITLAND, FLORIDA 32751
VOICE: (407) 660-2322 FAX: 660-8223
LAND SURVEYOR BUSINESS LICENSE NO. 6556

Exhibit "A"