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MEMORANDUM

TO: Central Florida Expressway Authority Board Members

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

DATE: May 26, 2015

**RE: S.R. 429 Wekiva Parkway, Project 429-202; Parcel 800 (Parts A & B) –
Approval of Settlements and Offers of Judgment**

Winderweedle, Haines, Ward & Woodman, P.A., right of way counsel, seeks the Board's approval of a settlement with multiple landowners for the acquisition of their fee simple interests in Parcel 800 (Parts A & B) (the "Taking" or "Property") for the construction of the S.R. 429 Wekiva Parkway, Project 429-202. Counsel also seeks Board approval to serve Offers of Judgment for the remaining interests in this Parcel. CFX filed its eminent domain action on August 12, 2014. Due to the number of potential fee owners named in the eminent domain proceedings, the Court entered three (3) separate Orders of Taking on September 24, 2014, two of which were stipulated.

DESCRIPTION and BACKGROUND:

This case involves the taking of an easement interest over portions of Southfork Drive west of Plymouth Sorrento Road. It consists of 1.95 gross acres and is utilized as a private right-of-way with multiple ownership interests which provides access to ten individual lots. **Parcel 800 (Part A)** involves the taking of a perpetual easement interest in 17,436 square feet of land for construction of the elevated limited access right-of-way for S.R. 429 to bridge over Southfork Drive as well as for perpetual maintenance. Specifically, CFX has acquired a perpetual air-rights easement above the plane that is fourteen feet, six inches (14'6") above the highest point of the property. The highway facilities will be elevated over the Property, allowing continued access to and from Plymouth Sorrento Road both during and after construction, and will allow for the use of the land surface for other uses that do not interfere with the Authority's easement rights. **Parcel 800 (Part B)** is an easement interest in 3,528 square feet of land to be used by Duke Energy Florida, Inc. for a transmission line.

CFX's appraisal of the property was prepared by Mr. Christopher D. Starkey of Integra Realty Resources-Orlando, with a date of value of February 7, 2014. Mr. Starkey used the "Across the Fence" valuation technique to appraise this property, since the property is vacant and too small to be used as a stand-alone parcel. The "Across the Fence" methodology assumes that

the subject property is typical, in all respects, to the adjoining property use. Based on this assumption, the appraiser develops a unit of value for the typical adjoining property, and then applies this unit of value in developing an estimate of value for the subject property.

Since the ten adjoining properties are predominately improved with single-family residences and nurseries, the reasonable use of the subject property would be similar. The ten parcels are zoned A-1, Citrus Rural district and have a future land use designation of rural. Mr. Starkey concluded that the Property's highest and best use is continued access road right-of-way. Mr. Starkey estimated the value of the Taking to be **\$13,200.00**.

EXPERT AND ATTORNEY FEES:

None of the landowners are to receive payment for appraisal or other expert fees or costs in this proposed settlement.

CFX retained the appraisal services of Christopher D. Starkey, MAI, of Integra Realty Resources. Mr. Starkey has submitted invoices in a total amount of \$5,125.00 to appraise the subject property.

Robert Grossenbacher, Scott and Todd Grossenbacher, Carolyn Ditch, Marky Frisbie and Elizabeth Townsend retained the legal services of Joseph Hanratty of Forman Hanratty & Montgomery. Mr. Hanratty has agreed to accept \$3,000.00 in total compensation for his representation of all of the aforementioned landowners. He has no other costs or fees for this parcel.

Earl D. Wilson and Adelaida Diaz Wilson, husband and wife, retained the legal services of Kurt Bauerle from the law firm of Harris Harris Bauerle Ziegler & Lopez, P.A. Mr. Bauerle has agreed to accept \$2,000.00 in total compensation for representing their interests. He has no other costs or fees as it relates to these property owners for this parcel.

Patrick Rogers Connelly and James Ted Smith did not retain counsel and therefore have not submitted a claim for attorneys' fees or costs.

In sum, the landowner fees in this case would total **\$5,000.00** for the parties that have agreed to a negotiated settlement. Counsel has reviewed the amounts sought by the owners' counsel and paid to CFX's experts and believes them to be reasonable.

PROPOSED SETTLEMENT:

Counsel has been participating in settlement negotiations with several different landowners and landowner attorneys and have reached a proposed agreement for most of the interests in Parcel 800 (Parts A & B). The parties have conditionally agreed to the following settlement terms, subject to CFX Board approval:

LANDOWNERS/ATTORNEYS	PROPOSED SETTLEMENT
ROBERT M. GROSSENBACHER	\$2,000.00
SCOTT GROSSENBACHER and TODD GROSSENBACHER	\$2,000.00
CAROLYN DITCH	\$2,000.00
MARY K. FRISBIE	\$2,000.00
ELIZABETH G. TOWNSEND	\$2,000.00
EARL D. WILSON, JR. and ADELAIDA DIAZ WILSON, husband and wife	\$2,000.00 ¹
PATRICK ROGERS CONNELLY and the HEIRS OF JANET R. CONNELLY	\$3,500.00
JAMES TED SMITH and the HEIRS OF TEDDY LAWRENCE SMITH	\$3,500.00

The above-named landowners are not entitled to relocation benefits under the Federal Relocation Act for the acquisition of the subject Property.

CFX has already deposited \$13,200.00 into the Court Registry as its Good Faith Deposit. The above described settlement totaling \$24,000.00 (\$19,000.00 for the real estate interests + \$5,000.00 for attorneys' fees) would necessitate an additional payment of \$10,800.00, inclusive of fees and costs.

Acceptance of the proposed settlement is recommended and is in CFX's best interest. Prolonging litigation will subject CFX to additional attorneys' fees and costs as well as additional expert fees and costs, which CFX would ultimately be responsible for as part of the landowners' compensation as provided by Florida Statutes §73.091 and §73.092. Acceptance of the proposal will eliminate further risk and unnecessary expenses for CFX in this case.

¹ The Wilson's were paid \$3,825.00 for a previous interest in the property through a purchase agreement, but construction changes necessitated the acquisition of additional property rights in this action.

OFFERS OF JUDGMENT

The above settlement proposal will resolve most of the potential real estate interests in the subject taking. For the remaining interest, it is requested that this Board approve service of an Offer of Judgment. Offers of Judgment are authorized in eminent domain actions under §73.032, Florida Statutes, which provides that if a defendant rejects an Offer of Judgment and the verdict or judgment is less than the amount of that offer, the court shall not award any costs incurred by the defendant after the date the Offer was rejected. A defendant has up to 30 days after an Offer of Judgment is served to reject the offer. A defendant is also entitled to serve an Offer of Judgment on the Petitioner for an amount that is under \$100,000.00. If the judgment or verdict is equal to or more than the amount of the Offer, landowner's counsel can recover attorneys fees based on the factors set forth in §73.092(2) and (3) (which considers attorney time and labor, difficulty of the case, etc.), rather than on statutory betterment.

The undersigned counsel seeks Board approval to serve an Offer of Judgment in the amount of \$3,500.00 to Freddy T. Jones and Eula Jones, as husband and wife, and Sandra L. Jones, and \$3,500.00 to Itay Shruga Guy. Each of these landowners have an ownership interest in Parcel 800 (Parts A & B) and own land adjoining the subject Property.

RECOMMENDATION:

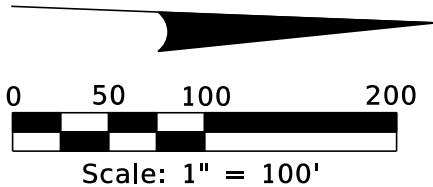
The proposed settlement was recommended for Board approval by the Right of Way Committee at the May 27, 2015 meeting. We respectfully request that the Board approve the proposed settlement in the amount of \$24,000.00 in full settlement of all claims for compensation by the various landowners identified above for the acquisition of Parcel 800 (Parts A & B).

We further respectfully request that this Board approve the service of Offers of Judgment totaling \$7,000.00 for the remaining landowner interests in this case. Specifically, \$3,500.00 to Freddy T. Jones and Eula Jones, as husband and wife, and Sandra L. Jones, and \$3,500.00 to Itay Shruga Guy. The proposed Offers of Judgment were similarly recommended for approval by the Right of Way Committee on May 27, 2015.

ATTACHMENTS:

Sketch of Subject Property
Map Depicting Location of Property

SKETCH OF DESCRIPTION

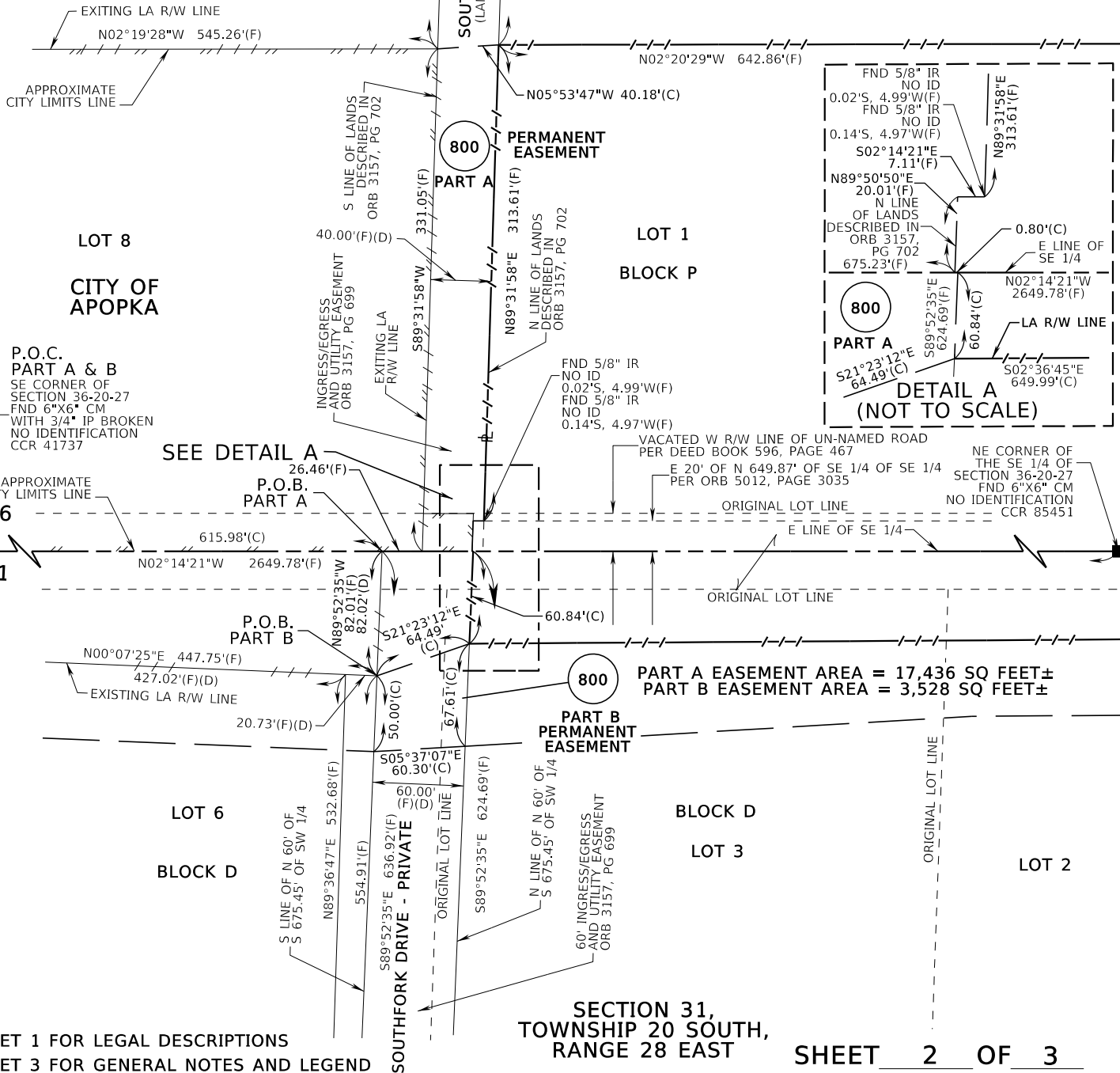


LOT 7
BLOCK P

LOT 2
BLOCK P

MAP OF PLYMOUTH
PB B, PGS 17-18

SECTION 36,
TOWNSHIP 20 SOUTH,
RANGE 27 EAST



SEE SHEET 1 FOR LEGAL DESCRIPTIONS
SEE SHEET 3 FOR GENERAL NOTES AND LEGEND

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. 800



GEODATA CONSULTANTS, INC.

SURVEYING & MAPPING

1349 SOUTH INTERNATIONAL PARKWAY
SUITE 2401

LAKE MARY, FLORIDA 32746

VOICE: (407) 732-6965

LAND SURVEYOR BUSINESS LICENSE NO. 6556

SHEET 2 OF 3

Tax Map (Parent Tract)



Aerial Map (Parent Tract)

