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MEMORANDUM

TO: Central Florida Expressway Authority Board Members

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

DATE: November 17, 2015

**RE: S.R. 429 Wekiva Parkway, Project 429-202; Parcel 123 (David Cipollone) -
Approval of Settlement**

Winderweedle, Haines, Ward & Woodman, P.A., right of way counsel, seeks this Board's approval of a settlement with David Cipollone (the "Owner"), for the acquisition of Parcel 123 (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 123 through a Stipulated Order of Taking entered on May 15, 2014.

DESCRIPTION and BACKGROUND:

Parcel 123 involves a partial taking from a 5.185 acre flag-shaped tract of land located along the south side of Yothers Road in unincorporated Orange County. CFX acquired 0.661 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, however this wall was subsequently removed from the plans. His revised appraisal estimated that the amount of compensation owed to the landowner was \$44,400.00, 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 1990, containing 1,718 square feet of gross living area. In addition, site improvements related to the current residential

usage include fencing, a detached covered pole structure, storage building, a 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 \$140,265.00 for the total land value of the subject property, and a compensation claim of **\$17,850.00** for the value of the land taken (\$27,000 per acre x .661 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 \$79,700 for the improvements, and an ultimate value of \$220,000 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 5.185 acres to 4.534 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 10%. This created severance damages in the amount of **\$18,250.00**.

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 **\$8,000.00**. Mr. Starkey also determined that a cost to cure was needed for **\$300.00** to replace a field gate.

The above analysis results in a total compensation estimate for Parcel 123 of \$44,400.00, as summarized below:

CFX Valuation of Parcel 123

Value of Parent Tract	\$220,000.00
Land taken (0.661 acres)	\$ 17,850.00
Improvements	\$ 8,000.00
Severance Damage (10%)	\$ 25,850.00
Total Compensation	\$ 44,400.00

The Owner, David Cipollone, 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 (\$26,440 for the part taken) and improvement value (\$10,345.00 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 50%, or \$118,320. 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 30%, or \$70,992. Mr. Ray's valuation conclusions are summarized as follows:

Landowner Valuation of Parcel 123

Value of Parent Tract	\$ 273,426.00
Land taken (.661 acres)	\$ 26,440.00
Improvements w/in taking	\$ 10,345.00
Severance Damage plus cure	\$ 109,792.00
Total Compensation	\$ 146,577.00

SETTLEMENT PROPOSAL:

The parties have been participating in settlement negotiations and have reached a proposed agreement for the acquisition of Parcel 123 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 123

Landowner (David Cipollone):	\$110,000.00
<u>Expert Fees and Attorneys Fees</u>	<u>(Not to Exceed) \$ 58,314.00</u>
Total	(Not to exceed) \$168,314.00

In sum, CFX would pay compensation to the Owner, David Cipollone, in the amount of \$110,000.00, less its good faith deposit of \$26,150.00, leaving a remaining balance of **\$83,850.00**. In addition, CFX would pay statutory attorney fees and expert fees in an amount not to exceed \$58,314.00. As mediation was completed on the evening of November 4, 2015 (the same day of 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 limit 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 owners' 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 recommend CFX Board approval of the proposed settlement in the amount of \$168,314.00 in full settlement of all claims for compensation for the acquisition of Parcel 123.

ATTACHMENTS:

Exhibit A - Sketch of Subject Property

SKETCH OF DESCRIPTION

0 100 200 400



Scale: 1" = 200'

SECTION 36,
TOWNSHIP 20 SOUTH,
RANGE 27 EAST

