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**M E M O R A N D U M**

**TO: Central Florida Expressway Authority Board Members**

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

**DATE: March 24, 2015**

**RE: S.R. 429 Wekiva Parkway, Project 429-202; Parcels 106/806 (Charles and Marian Revell) - Approval for Settlement**

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Winderweedle, Haines, Ward & Woodman, P.A., right of way counsel, seeks the Board's approval of a settlement with Charles and Marian Revell (the "Owners"), for the acquisition of Parcels 106/806 (the "Taking" or "Property") for the construction of the S.R. 429 Wekiva Parkway, Project 429-202. The Central Florida Expressway Authority ("CFX") took Parcels 106/806 on September 18, 2014 through a Stipulated Order of Taking.

**DESCRIPTION and BACKGROUND:**

Parcels 106/806 involve a partial taking from a 4.696 acre tract of land located along the west side of Plymouth Sorrento Road, approximately 250 feet north of Southfork Drive, in unincorporated Orange County. CFX acquired 18,388 square feet, or 0.422 acres, of land in fee simple (Parcel 106) and an additional 16,584 square feet, or 0.381 acres, of land (Parcel 806) as a permanent easement primarily for utility relocation. CFX's appraisal of the property was prepared by Richard K. MacMillan of the Appraisal Group of Central Florida, Inc., with a date of value of March 21, 2014. Mr. MacMillan estimated that the amount of compensation owed to the landowner was \$89,600.00, based on the following analysis.

The Property is zoned A-1, Citrus Rural District, by Orange County. The future land use designation is R-Rural/Agricultural (1 unit/10 acres). The Property is currently improved with a single-family residence that was constructed in 1988, containing 1,803 square feet of gross living area. In addition, site improvements related to the current residential usage include fencing, a septic tank and drain field, well, landscaping, a metal utility building, irrigation, concrete driveway and sidewalk. Mr. MacMillan concluded that the Property's highest and best use "as if vacant" would be for a single-family residential homesite 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. MacMillan used the Sales Comparison Approach and considered four vacant land sales ranging from \$21,795.00 per acre to \$33,505.00 per acre. Mr. MacMillan ultimately reconciled on a value of \$30,000.00 per acre. This resulted in a finding of \$140,880.00 for the total land value of the subject property, and a compensation claim of \$23,600.00 for the value of the land taken (\$30,000 per acre x 0.422 acres in Parcel 106 *plus* \$30,000 per acre x 0.381 acres property x 95% for Parcel 806).

Mr. MacMillan used three comparable sales that were improved with a single-family residence to determine the value of the subject "as improved." The three sales ranged in value from \$217,500.00 to \$268,600.00. The most weight was placed on the sales which were most recent and located closest to the subject. Mr. MacMillan reconciled on an "as-improved" value of \$260,000.00 for the subject property.

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 4.696 acres to 4.274 acres, of which 16,584 square feet will be encumbered by an easement to provide for relocation of Duke Energy power poles and transmission lines. The remainder property will have 331.62 feet of frontage along the limited access right of way of State Road 429. At the subject property, the Expressway is comprised of three southbound lanes including the exit ramp to the connector road to the south. The top of the guardrail at the south property line is approximately 16½ feet above natural grade at the right-of-way/fence line with approximately 11 feet of exposed retaining wall, and at the north property line, the top of the guardrail is approximately 11½ feet above natural grade. A north facing exit sign will be located over the southbound exit lane near the northwest property corner. The Expressway and bridge will be lit and a drainage swale will run parallel to the north 230 feet of the fence line. Mr. MacMillan determined that the proposed taking will have an adverse influence on the remainder improvements by diminishing their rural character. The distance of the residence to the proposed limited access right of way will be approximately 370 feet. The appraiser analyzed data which showed a decrease in value ranging from 20% to 38% for properties adjacent to a limited access right of way. Based on this analysis, the appraiser concluded that the site will have a 25% diminution in value caused by proximity to the expressway. This creates severance damages in the amount of \$58,100.00.

In addition, Mr. MacMillan appraised the value of the improvements located within the area of take. In Parcel 106, the part taken includes 227 linear feet of field fence with two strands of barbed wire and one strand of electrified wire, 156 linear feet of 4 inch field fence with one strand of electrified wire, and 18,300 square feet of pasture grass. Parcel 806 contains an additional 57 feet of 4 inch field fence. These improvements were valued at a total of \$3,900.00.

The remainder will require a cure to reestablish the well and other items necessary to restore function to the remainder improvements. The net cost to cure has been estimated to be \$3,900.00. This results in a total compensation estimate for Parcels 106 and 806 of \$89,600.00, as summarized below:

	<b>Parcel 106</b>	<b>Parcel 806</b>	<b>Total</b>
<b>Land</b>	\$12,700.00	\$10,900.00	\$23,600.00
<b>Improvements</b>	\$ 3,700.00	\$ 300.00	\$ 4,000.00
<b>Severance Damage</b>	\$58,100.00	\$ 0.00	\$58,100.00
<b>Net Cost to Cure</b>	\$ 3,900.00	\$ 0.00	\$ 3,900.00
<b>Total Compensation</b>	\$78,400.00	\$11,200.00	<b>\$89,600.00</b>

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The Owners, Mr. and Mrs. Revell, retained the services of appraiser Gary Pendergast from Florida Real Estate Analysts, Inc. Mr. Pendergast consulted with Ed Williams, of Williams Development Services, Inc., to assist in the highest and best use analysis and to identify damages that are a direct result of the taking. Parcel 106 is currently under the jurisdiction of Orange County, which has designated the property for rural land use and has an Agricultural zoning, which allows a density of 1 unit per 10 acres. However, Mr. Williams noted that the property is located one lot from the City of Apopka boundary to the south. The owners of that lot have indicated their willingness to annex into the City. Annexation into the City would allow the property to be developed with additional home sites up to 3.5 dwelling units per acre.

Mr. Pendergast concluded that the highest and best use of the property "as vacant" is for single family residential use. The highest and best use "as improved" is for continued use of the residential improvements. He estimated that the value of the land "as vacant" is \$211,300, based on a \$45,000 per acre land value (4.696 acres x \$45,000 per acre). This is based on his comparable sales analysis that considered four vacant land sales ranging in price from \$32,805 per acre to \$50,000 per acre. Mr. Pendergast estimated the value of the land "as-improved" to be \$285,000, based on comparable sales that ranged in value from \$235,000 to \$370,000. Mr. Pendergast, relying on the "after" analysis of Ed Williams, damaged the remainder property by 50%, to yield \$122,400 in severance damages, plus an additional \$4,100 for cost to cure, mostly related to fencing. This results in a total value for the part taken and damages of **\$166,700**, as summarized below:

	<b>Parcel 106</b>	<b>Parcel 806</b>	<b>Total</b>
<b>Land</b>	\$ 19,000.00	\$16,300.00	\$ 35,300.00
<b>Improvements</b>	\$ 4,600.00	\$ 300.00	\$ 4,900.00
<b>Severance Damage</b>	\$122,400.00	\$ 0.00	\$122,400.00
<b>Net Cost to Cure</b>	\$ 4,100.00	\$ 0.00	\$ 4,100.00
<b>Total Compensation</b>	\$150,400.00	\$16,300.00	<b>\$166,700.00</b>

## **EXPERT AND ATTORNEY FEES:**

The Revells retained the appraisal services of Gary Pendergast, of Florida Real Estate Analysts, Inc. Mr. Pendergast submitted an invoice for 73.50 hours at \$180.00 per hour, for a total fee request of \$13,230.00. During negotiations, Mr. Pendergast agreed to accept \$11,300.00 for his services. CFX retained the services of Richard MacMillan, of The Appraisal Group of Central Florida, Inc. CFX compensated Mr. MacMillan a total of \$13,750.00 to appraise the subject property. Payment was based on a negotiated flat-fee whereby Mr. MacMillan also appraised several other properties in the same vicinity, and could spread out certain costs over several parcels. Mr. MacMillan was initially retained to appraise Parcel 106 only. Before the completion of the appraisal for Parcel 106, an easement (Parcel 806) was added to the Taking primarily for the purpose of relocating the utility poles. With the addition of Parcel 806, Mr. MacMillan was required to appraise the additional easement area, include it in his appraisal and update the appraisal to a current date of value. The total compensation paid to Mr. MacMillan includes payment for both Parcels 106 and 806.

The Revells also retained the land planning services of Ed Williams, of Williams Development Services Inc. Mr. Williams submitted an invoice for 15.8 hours at \$250.00 per hour, for a total fee request of \$3,950.00. During negotiations, Mr. Williams agreed to accept \$3,350.00 for his services. Because of the proximity of the Property to the boundary of the City of Apopka and the complexity of potential developmental rights in the City as opposed to the County, CFX retained the services of Donald W. McIntosh Associates, Inc. ("DWMA") to prepare a Site Evaluation report. DWMA submitted invoices for approximately 113 hours of time ranging from \$85.00 to \$300.00 per hour and \$6.23 in reimbursable expenses. The total compensation paid to DWMA for its services was \$20,907.48.

Additionally, CFX retained the services of Speer Construction, LLC to estimate the costs of the improvements within the area of take and to estimate the costs of establishing a partial severance damage cure for the remainder parcel. CFX compensated Speer Construction, LLC at an hourly rate of \$100.00 per hour for a total amount of \$1,000.00 for its services. The landowner did not have a corresponding expert invoice for this service.

Lastly, the landowners retained the legal services of Joe Hanratty, of the law firm of Forman Hanratty & Montgomery. Mr. Hanratty would be entitled to recover \$14,223.00 based on the standard "betterment" payment provided for in §73.092(1)(c), *Florida Statutes*, which provides for attorneys to receive 33% of the difference between the final written offer and the amount of the settlement or final judgment. However, Mr. Hanratty agreed to accept \$12,962.00 for his services in this case.

Counsel has reviewed the rates, hours and amount sought by the owner's experts and paid to CFX's experts and believes them to be reasonable.

## SETTLEMENT PROPOSAL:

The parties have been participating in settlement negotiations and have reached a proposed agreement on the purchase price for the acquisition of Parcels 106/806 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:

<b>Total Settlement Proposal for Parcels 106/806</b>	
Charles and Marian Revell (landowners):	<b>\$132,700.00</b>
Gary Pendergast (appraiser):	11,300.00
Ed Williams (land planner):	3,350.00
Joe Hanratty (attorneys fees):	<u>12,962.00</u>
<b>Total</b>	<b>\$160,312.00</b>

In sum, CFX would pay compensation to the Owners, Charles and Marian Revell, \$132,700.00, less its good faith deposit of \$89,600.00, leaving a remaining balance of \$43,100.00 to be paid at this time. CFX would also pay statutory attorneys' fees and expert fees in the amount of \$27,612.00 in accordance with §73.092(1)(a) and §73.091(1), *Florida Statutes*.

Acceptance of the proposed settlement is recommended and is in CFX's best interest. Prolonging litigation will subject CFX to additional attorney's 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 attorneys fees and expert costs.

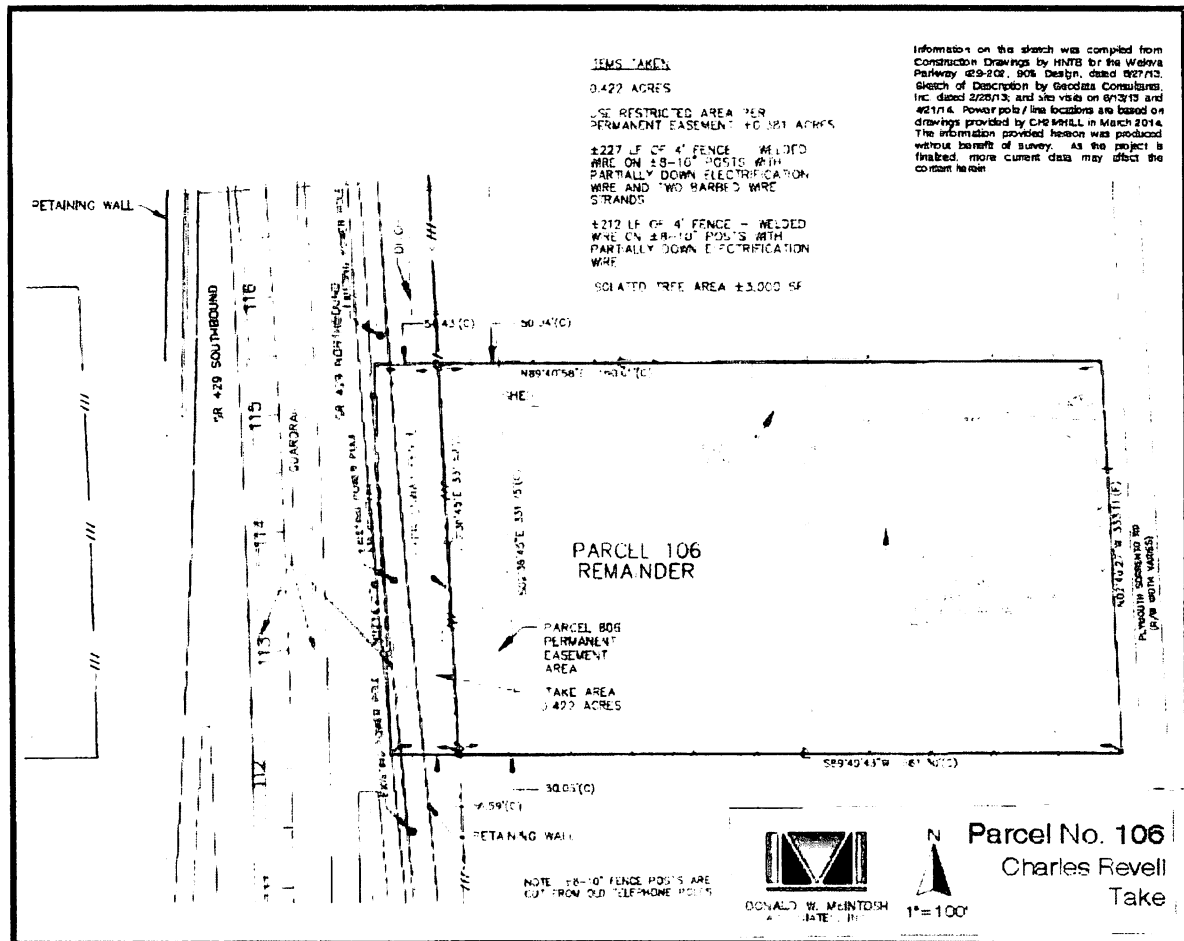
## RECOMMENDATION:

The proposed settlement was recommended for Board approval by the Right of Way Committee at the March 25, 2015 meeting. We respectfully request the Board's approval of the proposed settlement in the amount of \$160,312.00 in full settlement of all claims for compensation for the acquisition of Parcels 106/806.

## ATTACHMENTS:

- Exhibit A - Sketch of Subject Property
- Exhibit B - Map Depicting Location of Property

Sketch of parent tract and area of taking



**EXHIBIT "A"**

# Subject Location Map

