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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 107/807 (Glen Revell) -
Approval for Settlement**

Winderweedle, Haines, Ward & Woodman, P.A., right of way counsel, seeks the Board's approval of a settlement with Glen M. Revell (the "Owner"), for the acquisition of Parcels 107/807 (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 107/807 on September 18, 2014 through a Stipulated Order of Taking.

DESCRIPTION and BACKGROUND:

Parcels 107/807 involve a partial taking from a 1.747 acre tract of land located along the west side of Plymouth Sorrento Road, approximately 1,130 feet north of Southfork Drive, in unincorporated Orange County. CFX acquired 10,250 square feet, or 0.235 acres, of land in fee simple (Parcel 107) and an additional 9,552 square feet, or 0.219 acres, of land (Parcel 807) 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 \$76,300.00, 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 manufactured single-family residence that was constructed in 1993, containing 728 square feet of gross living area, plus 200 square feet of porch area. In addition, there are site improvements related to the current residential usage, including a 1,242 square foot barn, cattle pen, 548 square foot barn/utility structure, chicken coop, perimeter post and wire fencing, a septic tank and drain field, a well, landscaping and irrigation. 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 \$52,410.00 for the total vacant land value of the subject property, and a compensation claim for \$13,400.00 for the value of the land taken (\$30,000 per acre x 0.235 acres for Parcel 107 *plus* \$30,000 per acre x 0.219 acres x 95% of the fee for Parcel 807).

Mr. MacMillan used three comparable sales improved with a single-family residence to determine the value of the subject "as improved." The three sales ranged in value from \$78,500.00 to \$97,200.00. 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 \$90,000.00 for the subject property.

In addition, Mr. MacMillan appraised the value of the improvements located within the area of take. In Parcel 107, the part taken includes 145 square feet of the wooden storage shed, 345 feet of various types of fencing, a portion of the water line with 4 sprinklers, and 10,000 square feet of pasture grass. These improvements are valued at \$3,400.00. Additional improvements are located within Parcel 807, including portions of the shed, a farm gate, a wire cage structure, chicken coop, fencing and part of the drainfield. Mr. MacMillan values the improvements on Parcel 807 at \$10,500.00.

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 by 13.5%, plus another 14% of the remainder will be encumbered with a new permanent utility easement for Duke Energy power poles and transmission lines. The remainder property, previously rural in character, will now front the new Wekiva Parkway, which will contain five lanes transitioning to six lanes near the remainder. The new road will be elevated between 11½ feet to 29 feet above the existing ground elevation. There will also be a retaining wall near the subject, with between 7.5 feet and 20 feet of exposed wall. The roadway construction will include parts of the new expressway, a large retaining wall, drainage swale, and lighted exit sign.

In addition to being generally affected by the elevated roadway, the taking of Parcel 807 will also impact a portion of the septic tank drainfield. As a result, the property is no longer operable or useful as a residential home site. Mr. John Speer of Speer Construction provided a "cost to cure" estimate to relocate the drainfield. Since the cost to cure would be higher than the remainder value, the appraiser concluded that the remaining improvements except for the perimeter fencing and gates should be razed. Mr. Speer estimated the cost of razing the improvements to be \$11,800.00. Thus, the highest and best use of the site will change as a result of the proposed acquisition, and will now be valued as vacant single-family residential property (as opposed to improved). The property, as vacant, will be adversely affected by the presence of the expressway. Mr. MacMillan 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 35% diminution in value caused by proximity to the expressway. This creates severance damages in the amount of \$49,000.00 (\$13,600.00 for Parcel 107, and \$35,400.00 for Parcel 807, including the cost of demolition).

This results in a total compensation estimate by Richard MacMillan for Parcels 107 and 807 of **\$76,300.00**, as summarized below:

	Parcel 107	Parcel 807	Total
Land	\$ 7,100.00	\$ 6,300.00	\$13,400.00
Improvements	\$ 3,400.00	\$10,500.00	\$13,900.00
Severance Damage	\$13,600.00	\$35,400.00	\$49,000.00
Total Compensation	\$24,100.00	\$52,200.00	\$76,300.00

The Owner, Mr. Glen 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. 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 and agricultural improvements. He estimated that the value of the land "as vacant" is \$78,400.00, based on a \$45,000.00 per acre land value (1.747 acres x \$45,000 per acre). This is based on his comparable sales analysis that considered four vacant land sales ranging in price from \$32,805.00 per acre to \$50,000.00 per acre. Mr. Pendergast estimated the value of the land "as-improved" to be \$110,000.00 before the taking, based on comparable sales that ranged in value from \$77,000.00 to \$120,000.00. Mr. Pendergast's appraisal of the value of the improvements within the area of taking is nearly identical to CFX's appraisal.

Mr. Pendergast analyzed the value of the property after the taking and, after relying on the cure estimates of Mr. Williams, similarly found that the highest and best use after the taking would be to demolish the existing improvements and market the property for residential use. Relying on the "after" analysis of Ed Williams, Mr. Pendergast damaged the remainder property by 50% because of proximity to the expressway, to yield \$29,300.00 in severance damages, plus an additional \$15,000.00 to demolish the improvements. This results in a total value for the part taken and damages of **\$95,700.00**, as summarized below:¹

	Parcel 107	Parcel 807	Total
Land	\$10,600.00	\$ 9,400.00	\$20,000.00
Improvements	\$ 3,500.00	\$10,500.00	\$14,000.00
Severance Damage*	\$23,500.00	\$38,200.00	\$61,700.00
Total Compensation	\$37,600.00	\$58,100.00	\$95,700.00

¹The severance damage allocation between Parcels 107 and 807 is approximate, since the landowner's appraisal report did not separately allocate the amount of damages between Parcels 107 and 807 in the same manner as CFX's appraisal report. The "total" severance damage amount is correct and straight from the landowner's report.

EXPERT AND ATTORNEY FEES:

Mr. Revell retained the appraisal services of Gary Pendergast, of Florida Real Estate Analysts, Inc. Mr. Pendergast submitted an invoice for 65.25 hours at \$180.00 per hour, for a total fee request of \$11,745.00. During negotiations, Mr. Pendergast agreed to accept \$9,980.00 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 107 only. Before the completion of the appraisal for Parcel 107, an easement (Parcel 807) was added to the Taking primarily for the purpose of relocating the utility poles. With the addition of Parcel 807, 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 107 and 807.

Mr. Revell also retained the land planning services of Ed Williams, of Williams Development Services Inc. Mr. Williams submitted an invoice for 15 hours at \$250.00 per hour, for a total fee request of \$3,750.00. During negotiations, Mr. Williams agreed to accept \$3,200.00 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 150 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 \$26,490.00.

Additionally, CFX retained the services of John Speer from Speer Construction, LLC to provide cost estimates for the items within the taking as well as a cost to cure the improvements on the remainder. CFX compensated Speer Construction, LLC an hourly rate of \$100.00 per hour for a total amount of \$1,600.00 for its services. The landowner did not have a corresponding expert invoice for this service.

Lastly, the landowner retained the legal services of Joe Hanratty, of the law firm of Forman Hanratty & Montgomery. Mr. Hanratty would be entitled to recover \$4,389.00 based on the standard "betterment" payment described 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 ($\$89,600.00 - \$76,300.00 = \$13,300.00 \times .33 = \$4,389.00$). However, Mr. Hanratty agreed to accept \$3,236.00 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 107/807 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 107/807	
Glen M. Revell (landowner):	\$ 89,600.00
Gary Pendergast (appraiser):	9,980.00
Ed Williams (land planner):	3,200.00
<u>Joe Hanratty (attorneys fees):</u>	<u>3,236.00</u>
Total	\$106,016.00

In sum, CFX would pay compensation to the Owner, Glen M. Revell, \$89,600.00, less its good faith deposit of \$76,300.00, leaving a remaining balance of \$13,300.00 to be paid at this time. CFX would also pay statutory attorneys fees and expert fees in the total amount of \$16,416.00 in accordance with §73.092(1)(a) and §73.091(1), *Florida Statutes*.

In addition to the above settlement amount, the Owner is entitled to relocation benefits. The Owner has submitted a claim for \$1,800.00 in relocation benefits for the expense of having to relocate personal property out of the area of acquisition. This payment is in addition to any payment received as it relates to the acquisition.

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 27, 2015 meeting. We respectfully request the Board's approval of the proposed settlement in the amount of \$106,016.00 in full settlement of all claims for compensation for the acquisition of Parcels 107/807.

ATTACHMENTS:

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

Parcel: 107/807
Project: Wekiva Parkway
County: Orange

Sketch of parent tract and area of taking (1 of 2)

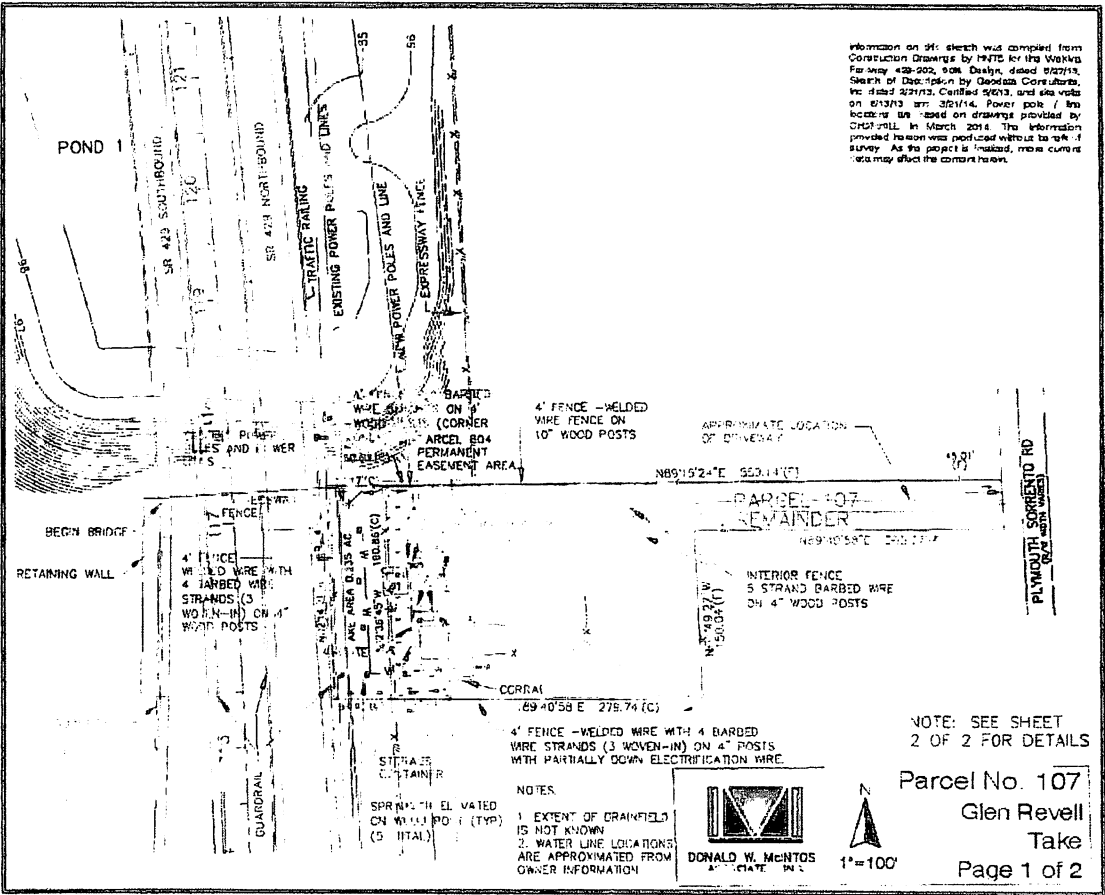


EXHIBIT "A"

Parcel: 107/807
Project: Wekiva Parkway
County: Orange

Sketch of parent tract and area of taking (2 of 2)

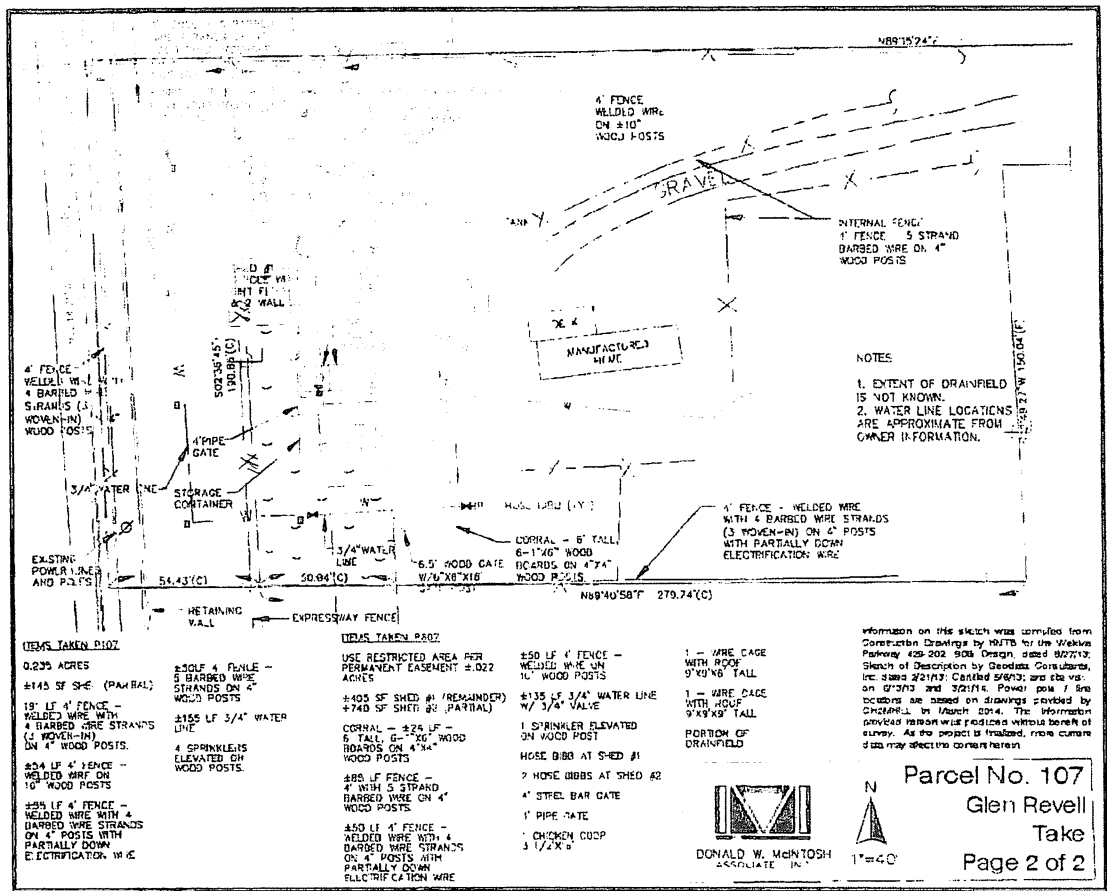


EXHIBIT "A"

Subject Location Map

