

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MINUTES CENTRAL FLORIDA EXPRESSWAY AUTHORITY Right of Way Committee Meeting November 24, 2014

Committee Members Present:

David May, Osceola County Representative, Committee Chair
Brett Blackadar, Seminole County Representative
Laurie Botts, City of Orlando Representative
Sandy Minkoff, Lake County Representative
John Terwilliger, Orange County Representative

OOCEA Staff Present:

Joseph L. Passiatore, General Counsel
Mimi Lamaute, Paralegal/Recording Secretary
Michelle Maikisch, Director of Public Affairs and Communication
Laura Kelley, Deputy Executive Director of Finance & Administration
Glenn Pressimone, Director of Engineering
Darleen Mazzillo, Executive Assistant

Also Present:

Jere Daniels, Winderweede, Haines, Ward & Woodman, P.A.
Trippe Cheek, Winderweede, Haines, Ward & Woodman, P.A.
David Shontz, Shutts & Bowen
Deborah Keeter, Atkins
Deborah Poindexter, Atkins
Deborah Long, RTD Group
Brendan Lynch, Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
Jim Spoonhour, Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
Celeste Adorno, Adorno Law Firm

Item 1: CALL TO ORDER

The meeting was called to order at 2:00 p.m. by Chairman May.

Item 2: PUBLIC COMMENT

There was no public comment.

Item 3: APPROVAL OF MINUTES

The minutes of the October 22, 2014 Right of Way Committee meeting were presented for approval.

Discussion ensued as to a change suggested by Mr. Minkoff to delete the last sentence in Item 9 on Page 6, Other Business/ Incentive Offers, to more accurately describe the discussion on this item.

A motion was made by Mr. Minkoff and seconded by Mr. Terwilliger to approve the minutes of the October 22, 2014 Right of Way Committee with the deleted sentence as described above. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Item 4: S.R. 429 / PARCEL 197 - WEKIVA PARKWAY PROJECT (KAGER) PROJECT 429-203

Mr. Spoonhour provided the Committee with a description and background on Parcel 197. The Kagers held a lease on part of the land and therefore are parties in the condemnation action as to parcel 197. The Kagers ran a horse boarding business and raise hay on this leased property. The taking consists of approximately 43 or 44 acres.

The proposed settlement is for all claims including loss of hay crop, payment for loss of income from a commercial horse boarding facility, and payment for replacement of fencing related to the commercial horse boarding facility, along with the Kagers' ability to remove and re-use any fencing in the portion of the taking area which they had under lease.

Itemization of the settlement:

Proposed settlement is \$16,400 inclusive of all fees and cost (including attorney fees).

A motion was made by Mr. Minkoff and seconded by Ms. Botts to recommend to the Board approval of the proposed Settlement Agreement in the amount of \$16,400 inclusive of all fees and costs. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Mr. Blackadar requested that going forward a map depicting the location of the parcels under discussion be provided to the Committee.

Item 5: COMMITTEE PROCEDURES / ENHANCED FIRST WRITTEN OFFERS

As a follow up to last month's discussion, General Counsel Joe Passiatore requested Ms. Deborah Long address the Committee regarding the possible use of enhanced first written offers on the remainder of the Wekiva Parkway Project. Ms. Long is a Federal Relocation Act expert and has extensive experience and knowledge on the Relocation Act.

In their agenda packages the Committee received a section of a PowerPoint presentation from the Federal Highway Administration (FHWA) which promulgated the rules (Uniform Act) which are used on the Wekiva Project. International Right of Way Association (IRWA) is the international professional organization for Right of Way Professionals. They (IRWA) have educational and all types of seminars for Right of Way Professionals. This presentation was given in Atlanta in 2011 to assist states and other agencies that use Federal dollars in completing transportation facilities across the nation. She distributed only those slides that pertain to the question(s) at hand. She explained that in order to carry out the "Incentive Program", FHWA has very specific requirements. The use of enhanced first offers was not submitted and approved by FHWA prior to start of the Project, so it would be unlikely that FHWA would approve first written offers because the projects are already underway.

There was discussion regarding these incentives being more effective if Federal dollars are not used. It was also mentioned that this program has been beneficial with residential acquisitions.

David Shontz of Shutts & Bowen provided an update on projects 204, 205, and 206. The majority of the 44 remaining parcels are ready for first written offers. He explained that after the last meeting he did some research on incentive offers. He opined that in his experience this will be beneficial with unrepresented property owners on small parcels. It has been his experience that property owner attorneys look at the incentive offer as the new floor.

General discussion ensued as to the benefits and disadvantages of using of enhanced first written offers.

It is the general direction of the Committee that Mr. Shontz issue a legal opinion on the possibility of CFX utilizing enhanced first written offers and a detailed synopsis on the use of enhanced first written offers by FDOT.

This was an informational item. No action was taken.

Item 6: COMMITTEE PROCEDURES / UPDATE ON NEGOTIATING LUMP SUM INVOICING FOR APPRAISAL SERVICES

Mr. Shontz addressed the committee as a follow up to last month's Right of Way Committee meeting discussions on how CFX is paying for appraisals. He provided the Committee with an update on the status of the all pending parcels in projects 203, 204, 205 and 206.

Discussion ensued as to the various agreement addendums being requested, the amounts of expert fees and monthly invoices being reviewed by staff.

There was direction by the Committee that Right of Way Counsel provide, on a quarterly basis, an update as to expert costs incurred to date versus budgeted amount before it is provided to the Board.

This was a discussion item. No action was taken.

Item 7: PROPERTY ACQUISITION & DISPOSITION PROCEDURES MANUAL

Mr. Passiatore explained to the Committee that, based on Board direction, an update to the Property Acquisition and Disposition Procedures Manual has been requested to amend the conveyances of the surplus property to governmental entities and not-for-profit organizations, and to correctly reference CFX as the governing agency.

Mr. Passiatore presented proposed revisions to the manual. In addition, the following sections of the manual were discussed, clarified and/or changed by the Committee:

- There was discussion regarding how CFX notifies the City or County where the surplus parcel is located. The Committee requested the following change be made to Page 15, Section 5-6.04 Procedures for Disposition, First paragraph, first line: "After the Board has determined a parcel of property is Surplus Property and CFX staff has consulted with the local governmental jurisdiction in which the property is located, CFX may,....."
- Recommendation to reinsert the reference to "public or quasi public entity or a charitable or other non-profit organization...." language.
- Recommended change on page 16, Section 5-6.05 Appraisals, last paragraph 5th line up from the bottom "an" needs to be changed to "a."
- Discussion was had regarding page 17, under the Section 5-6.05 Appraisals, second paragraph; consideration of using the property appraisers' value. No change requested to the section.
- Discussion was had regarding page 17, under the Section 5-6.06(d), Public Sales; regarding Bid Procedure. Comments were made that Seminole County refers bids to the Board if they are less than the minimum of the appraised value. If it's not at the appraised value, it has to go back to the Board to make the decision. If a minimum is not established you run the risk of selling it under the appraised value. No changes were made to the section.
- Recommended change to page 2, Section 5-2.03 Right of Way Committee – The Committee directed this section be in conformance with the new Right of Way Committee charter and include that three Committee members constitute a quorum.
- Discussion ensued as to page 3, under Section 5-2.04 Executive Director and General Counsel, the Committee would like to have further discussions at a future meeting about ultimately rewriting the language to include the Executive Director have authority at negotiations.

A motion was made by Mr. Minkoff and seconded by Mr. Terwilliger to recommend to the Board approval of the revisions to the Property and Acquisition and Disposition Manual as described above. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

After the vote there was discussion as to FDOT's matrix for statewide performance measures for Right of Way. It was suggested that this issue should be brought back at a future meeting when the Property Acquisition and Disposition Procedures Manual is further revised.

Item 8: OTHER BUSINESS

DECEMBER RIGHT OF WAY COMMITTEE MEETING

The Committee decided not to hold a December Right of Way Committee meeting unless there was an item that arose that needed to be heard. The next regularly scheduled Right of Way Committee meeting is January 28, 2015 at 2:00 p.m.

Item 9: ADJOURNMENT

Chairman May adjourned the meeting at 3:26 p.m.

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