

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MINUTES CENTRAL FLORIDA EXPRESSWAY AUTHORITY Right of Way Committee Meeting February 25, 2015

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

Committee Members Not Present:

John Terwilliger, Orange County Representative (the designated substitute was not present)

OOCEA Staff Present:

Joseph L. Passiatore, General Counsel
Linda S. Brehmer-Lanosa, Deputy General Counsel
Laura Kelley, Deputy Executive Director of Finance and Administration
Joseph A. Berenis, Deputy Executive Director of Engineering, Operations
Construction and Maintenance
Glenn Pressimone, Director of Engineering
Mimi Lamaute, Paralegal/Recording Secretary
Michelle Maikisch, Director of Public Affairs and Communication

Also Present:

Trippe Cheek, Winderweedle, Haines, Ward & Woodman, P.A.
David Shontz, Shutts & Bowen
Deborah Keeter, Atkins
Nathan Silva, Atkins
Deborah Poindexter, Atkins
Frank Matthews, Hopping Green & Sams
Adrian B. Share, All Aboard Florida
Rusty Roberts, All Aboard Florida
Don Whyte, Deseret Ranches
Jim Pratt, Burr Forman

Item 1: CALL TO ORDER

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

Item 2: PUBLIC COMMENT

There were no Public Comments for Items 3-7. Public Comments for Item 8 were heard later in the meeting before the Committee addressed the item.

Item 3: APPROVAL OF MINUTES

Mr. Minkoff found a scrivener's error in the Minutes on the Motion portion on Page 3, Item 5. The Motion reads "The motion carried by a vote of 4 to 5 with AYE by voice vote." It should read "The motion carried by a vote of 4 to 1 with AYE by voice vote."

A motion was made by Mr. Minkoff and seconded by Mr. Blackadar to approve the minutes of the January 28, 2015 meeting with the correction to the Motion made to read "4 to 1" as stated above. The motion carried unanimously with four committee members present and voting AYE by voice vote. Mr. Terwilliger was not present.

Item 4: S.R. 429 (MILLER) WEKIVA PARKWAY PROJECT (PROJECT 429-202) PARCEL 154

Mr. Cheek is seeking the Committee's recommendation for Board approval of the proposed settlement for acquisition of Parcel 154. The settlement agreement is reflective of land value, business damages, attorneys' fees, and expert fees and costs.

Parcel 154 is a partial acquisition. The Property is currently improved with three manufactured homes, a pole barn/workshop and other related agricultural/rural residential type improvements. In addition, there are two businesses that operate on the property.

The estimated value of taking by CFX's appraiser, Chad G. Durrance of Durrance & Associates, Inc., as of February 10, 2014 is \$155,500 consisting of \$75,700 for the land taken, \$47,800 for improvements, \$32,000 for damages and net cost to cure.

The Property Owner's appraisal of the subject property was prepared by Rick Dreggors of Calhoun, Dreggors & Associates, Inc. who appraised the property at \$313,700 consisting of \$110,000 for the value of land, \$103,000 value of the improvements, \$48,900 in severance damages, plus an additional \$51,800 for the cost to cure.

CFX is also required to pay damage claims to two (2) businesses that operate on the property: Miller's Truck Repair and John F. Miller Jr. Trucking, Inc. Both companies have operated at the subject location for more than five (5) years. The business owners retained the firm of McGladrey, LLP to determine the value of the business. The business damage claims submitted by the business owners are summarized as follows: Miller's Repair \$46,000 and Miller Jr. Trucking \$102,000 for a total of \$148,000. The owner has submitted expert invoices in the

amount of \$30,000. The affected parties would also be eligible to receive relocation benefits estimated to be \$50,000. Attorney's fees in this case, if settled for the stated amount, would be approximately \$60,000.

In addition to the above settlement amounts, the Owner is entitled to business relocation benefits for both businesses. Miller Trucking has submitted a claim for \$27,990 and Miller Truck Repair submitted a claim for \$10,999.

Mr. Cheek informed the Committee that the Total Settlement Proposal of \$45,000 reflected on page 4 of the memo provided to the Committee is actually lower. The correct Total Settlement Proposal is \$438,989.

Mr. Minkoff requested that the names of the Property Owner's attorneys and experts be provided in future memos. The attorney representing the Miller's was Kent Hipp and McGladrey, LLP was the expert on business damages.

Itemization of the settlement:

Proposed settlement is \$438,989.00 consisting of: \$315,000 land value and business damages, \$60,000 statutory attorneys' fees, \$25,000 expert fees and costs, \$27,990 business relocation benefits for Miller Trucking, and \$10,999 business relocation benefits for Miller Truck Repair.

A motion was made by Mr. Blackadar and seconded by Ms. Botts to recommend to the Board approval of the proposed settlement agreement with the revised amount of \$438,989 all-inclusive for the acquisition of Parcel 154. The motion carried unanimously with four committee members present and voting AYE by voice vote. Mr. Terwilliger was not present.

Item 5: S.R. 429 / WEKIVA PARKWAY PROJECT (PROJECT 429-201 AND 429-202) UTILITY RELOCATION AGREEMENT WITH DUKE ENERGY

Mr. Cheek is requesting the Committee recommend Board approval of the Utility Relocation Agreement between Duke Energy Florida, Inc. and the CFX.

The design and construction of Project 429-201 and 429-202 require the relocation of a portion of Duke Energy's transmission and distribution facilities located within or near the Authority's limited access right-of-way line. Mr. Cheek provided the Committee with a map depicting the location.

The purpose of the Utility Relocation Agreement is to facilitate the relocation, identify the reimbursable expenses of Duke Energy, and coordinate the construction responsibilities of Duke Energy as it relates to the Authority's construction schedule for the Project. The Board has already approved the expenditure of the relocation costs.

Duke Energy asserts prescriptive rights for such facilities, the Authority argues that payment for the acquisition of replacement easement rights in areas where Duke Energy does not hold identifiable easement should be limited

to compensation for the value of the prescriptive right. Duke Energy has therefore agreed to pay for 35% of the acquisition costs associated with replacement easements for its transmission facilities. This percentage is based on the area where Duke Energy owns identifiable easement rights versus where it claims prescriptive rights. An analysis and Proration of the Easement Costs was provided to the Committee in their Agenda packages and is attached to as Exhibit A.

Duke Energy has estimated the actual cost to the Authority for relocation of Duke's facilities as not to exceed \$2,572,054.68. This estimate represents \$1,647,156.00 for relocation of Duke Energy's transmission facilities and \$924,898.68 for relocation of Duke Energy's distribution facilities. Should the actual costs exceed the above estimates by more than 10%, the Utility Relocation Agreement requires Duke Energy to submit a request for prior approval in writing, setting forth the amount of such additional costs and the changed conditions requiring the additional costs, and obtain the prior written agreement of the CFX before performing work, in order for CFX to become responsible for any additional reimbursement to Duke Energy for the additional amounts.

Duke agreed to pay for 35% of the acquisition costs associated with replacement easements for its transmission facilities. Discussion ensued regarding the calculations.

A motion was made by Ms. Botts and seconded by Mr. Minkoff to recommend Board approval of the proposed Utility Relocation Agreement between Duke Energy and CFX in the amount not to exceed \$2,572,054.68. The motion carried unanimously with four committee members present and voting AYE by voice vote. Mr. Terwilliger was not present.

Item 6: S.R. 429 (KORUS ORCHID CORPORATION) / WEKIVA PARKWAY PROJECT / PROJECT 429-202 (PARCEL 120, PARTS A & B)

Mr. Cheek is seeking the Committee's direction regarding the business damage claim made by the owner of Parcel 120, Korus Orchid Corporation. A resolution of the business damages claim has been negotiated through the process required by Section 73.015, Florida Statutes. Korus has agreed to accept the business damages evaluation prepared by CFX's business damages expert.

Mr. Cheek provided overhead pictures of the subject parcel. CFX has title to the property. Korus conducted a large and successful orchid nursery business on a 14.836-acre lot located in Apopka.

In accordance with the statute, Korus submitted a business damages claim to the Authority. Korus obtained two separate business damages experts: by J. Duke Parrish or Parrish & Parrish, CPA's, P.A., and Lloyd J. Morganstern of Morganstern Phifer & Messina. The owner's experts evaluated the business damages caused by the taking of the property to be as high as \$5,850,000.00.

CFX's expert, Les W. Eiserman of Clifton Larson Allen, LLP, reviewed the business damages claim. Mr. Eiserman agreed that Korus would in fact suffer significant business damages related to the taking. His evaluation was in the amount of \$3,611,000.

Korus agreed to accept CFX's business damages amount. Korus is entitled to its expert costs and attorney's fees in connection with the business damages claim and is seeking \$87,975.50 in expert costs.

Mr. May requested that Counsel provide the Committee with itemizations on all future requests for costs.

The Property Owner's attorney is Tom Callan. Discussion ensued as to estimated attorney's fees and amount of experts' fees and costs.

Itemization of the Business Damages claim settlement:

Business damages claim settlement amount is \$3,698,975.50 consisting of \$3,611,000.00 in damages and \$87,975.50 in experts' costs.

A motion was made by Mr. Blackadar and seconded by Mr. Minkoff to recommend to the Board approval to direct counsel and staff to proceed with payment of the business damages claim in the amount of \$3,698,975.50 inclusive of expert costs, excluding attorney's fees. The motion carried unanimously with four committee members present and voting AYE by voice vote. Mr. Terwilliger was not present.

Item 7: S.R. 429 (WEKIVA PARKWAY PROJECT) / PROJECT 429-203, 429-204, 429-205 and 429-206

Mr. Shontz is seeking the recommendation of the Right of Way Committee for Board approval of the proposed Second Addendum to Agreement for Engineering Expert Witness Consulting Services with Donald W. McIntosh Associates, Inc.

On October 10, 2013, the Engineering Expert Witness Consultant entered into an agreement to provide pre-litigation and litigation engineering consultation services. The contract price was limited to \$150,000.00. On September 11, 2014, an Addendum to the Agreement was approved for an additional increase of \$100,000.

The Engineering Expert Witness has eleven (11) assigned parcels in section 429-203. Mr. Shontz anticipates an additional \$15,000 per parcel for expert trial witness testimony and support for a total additional increase of \$165,000. Additionally, the engineering expert witness has eight (8) assigned parcels in sections 429-204, 205 and 206. Mr. Shontz's estimates a budget of \$35,000 to complete those remaining eight engineering reports and a budget of an additional \$15,000 per parcel for expert trial witness testimony and support for a total estimate of \$120,000.

This would bring the total remaining additional budget necessary to complete all the parcels assigned to this Engineering Expert Witness to \$320,000. All invoices submitted pursuant to the agreement shall be reviewed for accuracy by Shutts & Bowen LLP.

A motion was made by Ms. Botts and seconded by Mr. Blackadar to recommend to the Board approval of the proposed Second Addendum to Agreement for Engineering Expert Witness Consulting Services, with Donald W. McIntosh Associates, Inc. in the amount of \$200,000.00. The motion carried unanimously with four committee members present and voting AYE by voice vote. Mr. Terwilliger was not present.

Public Comment was now heard for the following item #8:

Mr. Frank Matthews with the law firm of Hopping Green & Sams in Tallahassee, representing Farmland Reserve, Inc. and speaking for Suburban Land Reserve, Inc., addressed the Committee. He introduced Don Whyte representing Farmland Reserve, Inc. and Jim Pratt, representing Suburban Land Reserve, Inc. who were in the audience. They are here for informational purposes and are recommending to the Committee that the Purchase and Sale Agreement inspection period be extended. He provided a summation of the contract negotiations to date and explained the projects associated with this acquisition. He explained that it has been a cooperative effort for regional transportation purposes for both support of an interregional passenger rail and also regional improvements of the CFX system and the Osceola Parkway Extension. He suggested the respective appraisers meet to work out the differences in the appraisals and come back to the Committee with a more concise presentation.

Item 8: S.R. 528 – BEACHLINE PROJEXT (PROJECT 528-1240) – SUBURBAN LAND RESERVE, INC. (“SLR”) & FARMLAND RESERVE, INC. (“FLR”)

Mr. Passiatore explained the details and perspectives involved in this complicated transaction for the purchase of property south of SR 528 from Suburban Land Reserve and Farmland Reserve. He also described the appraisals by Hanson Real Estate Advisors, Inc. (appraiser for CFX) and the appraisals by Cantrell Real Estate, Inc. (appraisers for Farmland Reserve and Suburban Land Reserve). Price is just one the aspects of this matter. There are a lot of conditions precedent in the purchase agreement which will either have to be renegotiated or come to pass.

Mr. Passiatore explained that CFX policy requires that appraisal reports prepared on behalf of CFX be reviewed by a qualified Review Appraiser for conformance with the Uniform Standard of Profession Appraisal Practice. CFX has retained the services of William K. Hurt, Jr. of GAI Consultants as review appraiser to certify the Hanson appraisal. Mr. Hurt is in the process of reviewing the appraisal.

Mr. Passiatore explained that new legislation allows for condemnation by CFX for fixed guideways. Although condemnation is now permissible, there are certain aspects to consider before deciding to condemn. Condemnation is expensive but it's a decision that the Committee and the Board will have to ultimately decide.

The request before the Committee is whether to extend the inspection period until June 1 and give staff direction to bring back the purchase price to the ROW Committee when the certification of appraisals has been completed.

This will be the fourth time CFX has extended the inspection period and each time All Aboard Florida has waived the additional deposit required under the contract.

Committee member comments:

- Mr. Blackadar is requesting an executive summary with key points of this acquisition. Mr. Passiatore directed his attention to the cliff notes in the provided materials and will resend these notes to the entire Committee.
- Mr. May is requesting staff provide the Committee with a list on the overall concept and benefits of this contract, and the details of all the affected parties and/or projects (i.e. All Aboard Florida, expansion of S.R. 528, etc.).
- Ms. Botts is requesting clarification as to the 30% premium for "plottage increase for bilateral monopoly" referenced in Cantrell Real Estate, Inc.'s appraisal report. She also requested justification as to the items listed as compensable items on the letter dated November 3, 2014 from Hopping Green & Sams.
- Mr. Minkoff is requesting clarification on the remaining ownership rights of SLR and FLR on the existing SR 528 right-of-way. He also requested an explanation regarding the appraiser's assumption of fee simple ownership for this property. The appraisers need to review the rights the seller is retaining in their evaluation.

A motion was made by Ms. Minkoff and seconded by Mr. Blackadar to recommend to the Board approval of the proposed Fourth Amendment to Contract of Sale and Purchase with Suburban Land Reserve, Inc. and Farmland Reserve, Inc. extending the inspection period to June 1, 2015 with no additional compensation. The motion carried unanimously with four committee members present and voting AYE by voice vote. Mr. Terwilliger was not present.

Item 9: OTHER BUSINESS

No other business was discussed.

Item 10: ADJOURNMENT

Chairman May adjourned the meeting at 3:06 p.m.

Pursuant to the Florida Public Records Law and OOCEA Records Management Policy, audio tapes of all Board and applicable Committee meetings are maintained and available upon request to the Records Management Liaison Officer at or 4974 ORL Tower Road, Orlando, FL 32807.