

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MINUTES CENTRAL FLORIDA EXPRESSWAY AUTHORITY Right of Way Committee Meeting March 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
John Terwilliger, Orange County Representative

CFX Staff Present:

Joseph L. Passiatore, General Counsel
Linda S. Brehmer Lanosa, Deputy General Counsel
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, Winderweeple, Haines, Ward & Woodman, P.A.
Deborah Keeter, Atkins
Nathan Silva, Atkins
Deborah Poindexter, Atkins
Frank Matthews, Hopping Green & Sams
Jim Pratt, Burr Forman
David Wright, Farmland Reserve, Inc.
William Hurt, GAI Consultants
Jay Small, Mateer Harbert, P.A.
Matt Ray, Cantrell Real Estate, Inc.
Jeff Newton, Engineer
Patti Harker, Lake County
Micky Grindstaff, Shutts & Bowen
Hal Morlan, Shutts & Bowen

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.

Item 3: APPROVAL OF MINUTES

A motion was made by Mr. Terwilliger and seconded by Ms. Botts to approve the minutes of the February 25, 2015 Right of Way Committee meeting as presented. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

The following items were taken out of order due to the absence of David Shontz from Shutts & Bowen. At this time Staff and the Committee were advised that Mr. Shontz was out of the country.

Item 9: S.R. 429 (REINCO, INC.) / WEKIVA PARKWAY PROJECT (PROJECT 429-202) PARCEL 144 (HIATUS PARCEL)

Mr. Cheek is seeking the Committee's recommendation for Board approval of the proposed settlement for acquisition of Parcel 144. Parcel 144 is a total taking consisting of 0.069 acres. The subject property is owned by Reinc0, Inc., a Florida corporation that was voluntarily dissolved as of June 25, 1982.

CFX's appraisal of the property was prepared by Stephen J. Matonis of Integra Realty Resources-Orlando. Mr. Matonis concluded that the amount of compensation owed for the subject property was \$100, calculated as follows: .069 acres x \$30,000 per acre x 5% = \$103 (\$100 rounded).

Given the dissolution of the corporation and that a representative could not be located, the Court, pursuant to Florida Statutes, appointed Pineet Sharma as the attorney ad litem to represent the landowner's interest in this matter. Mr. Sharma is entitled to recover attorney's fees and has agreed to be paid a negotiated fee of \$2,000.

The parties have reached a proposed settlement in the amount of \$3,000, inclusive of attorney's fees and costs, for the acquisition of Parcel 144.

Itemization of the settlement:

Proposed settlement is \$3,000 consisting of: \$1,000 Landowners and \$2,000 Attorneys' fees.

A motion was made by Ms. Botts and seconded by Mr. Blackadar to recommend to the Board approval of the proposed settlement agreement in the amount of \$3,000 all-inclusive for the acquisition of Parcel 144. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Item 10: S.R. 429 (REVELL) / WEKIVA PARKWAY PROJECT (PROJECT 429-202) PARCELS 106/806

Mr. Cheek is seeking the Committee's recommendation for Board approval of the proposed settlement for acquisition of Parcels 106/806.

CFX's appraisal of the property was prepared by Richard K. MacMillan of the Appraisal Group of Central Florida, Inc. Mr. MacMillan estimated that the amount of compensation owed to the landowner was \$89,600.00.

The Owners, Mr. and Mrs. Revell, retained the services of appraiser Gary Pendergast from Florida Real Estate Analysts, Inc. Mr. Pendergast concluded a total value for the part taken and damages of \$166,700.

Itemization of the settlement:

Proposed settlement is \$160,312 consisting of: \$132,700 landowners, \$11,300 appraiser, \$3,350 land planner, and \$12,962 attorneys' fees.

A motion was made by Ms. Botts and seconded by Mr. Blackadar to recommend to the Board approval of the proposed Settlement Agreement in the amount of \$160,312 in full settlement of all claims for the acquisition of Parcels 106/806. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Item 11: S.R. 429 (REVELL) / WEKIVA PARKWAY PROJECT (PROJECT 429-202) PARCELS 107/807

Mr. Cheek provided the Committee with description and background information regarding the request for recommendation for Board approval of the proposed settlement for acquisition of Parcels 107/807.

Parcels 107/807 involve a partial taking from a 1.747 acre tract of land. CFX's appraisal of the property was prepared by Richard K. MacMillan of the Appraisal Group of Central Florida, Inc. Mr. MacMillan estimated that the amount of compensation owed to the landowner was \$76,300.00. The most significant issue in the case is the degree to which the remainder property will be affected by the taking.

The Owner, Mr. Glen Revell, retained the services of appraiser Gary Pendergast from Florida Real Estate Analysts, Inc. Mr. Pendergast concluded a total value for the part taken and damages of \$95,700.00.

Itemization of the settlement:

Proposed settlement is \$106,016.00 consisting of: \$86,600.00 landowner, \$9,980.00 appraiser, \$3,200.00 land planner, and \$3,236.00 attorneys' fees.

A motion was made by Ms. Botts and seconded by Mr. Blackadar to recommend to the Board approval of the proposed settlement agreement in the amount of \$106,016.00 in full settlement of all claims for compensation for the acquisition of Parcels 107/807. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Item 12: 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 Addendum No. 1 to Utility Relocation Agreement between Duke Energy Florida, Inc. and the CFX.

As presented to this Committee in February 2015, 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. The Committee last month approved the Utility Relocation Agreement with Duke Energy. 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.

After the Utility Relocation Agreement was submitted for approval, Duke Energy determined that an additional transmission pole needed to be relocated. After verification by the Authority's consultants, the Addendum was drafted to address the additional pole relocation. The addendum also revises the Utility Relocation Agreement to clarify the elements of engineering analysis to be done for transmission relocation and further states the actual (as opposed to estimated) date that relocation activities began. The start date of March 24, 2015 will be inserted on page 2 of the Addendum No. 1 to Utility Relocation Agreement.

A motion was made by Mr. Terwilliger and seconded by Mr. Blackadar to recommend to the Board approval of the proposed Addendum No. 1 to Utility Relocation Agreement between CFX and Duke Energy Facilities. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Mr. Passiatore informed the Committee that Ms. Brehmer Lanosa would assist in presenting the items submitted by Shutts & Bowen in their absence.

**Item 4: S.R. 429 (VILLAGOMEZ-ARRIAGA) WEKIVA PARKWAY PROJECT (PROJECT 429-203)
PARCEL 177**

Ms. Brehmer Lanosa explained Parcel 177 is a partial taking totaling .691 acres with a remainder of 2.313 acres. The parent tract is improved with a 936 s.f. two bedroom/one bath manufactured home built in 1966.

The CFX's appraisal of the property was prepared by David Hall of Bullard, Hall and Adams, Inc. Mr. Hall's total value conclusion is \$41,600 (\$20,000 land and \$20,800 damages).

The Landowner's appraisal was prepared by Rick Dreggors of Calhoun, Dreggors & Associates, Inc. Mr. Dreggors' total value conclusion for Parcel 177 is \$160,300 (\$51,800 land and \$108,500 damages). At mediation the Parties entered into a Mediated Settlement Agreement, subject to Board approval. Under the Mediated Settlement CFX would pay \$61,200.00, plus attorney's fees and experts costs.

There was inquiry as to the breakdown of expert costs on this matter. Ms. Brehmer Lanosa informed the Committee that with the requirement for backup information it was not available to us. Discussion ensued as to the difference in the value per acre by CFX's appraiser for parcels that were in close proximity.

Shutts & Bowen is requesting approval of the proposed Mediated Settlement Agreement.

Mr. Minkoff prefers the expert costs be negotiated at mediation.

Itemization of the settlement:

Proposed settlement is \$61,200.00 plus statutory attorneys' fees.

A motion was made by Mr. Minkoff and seconded by Ms. Botts to recommend to the Board approval of the proposed Mediated Settlement Agreement in the amount of \$61,200 in full settlement of all claims for compensation for the acquisition of Parcel 177 plus statutory attorneys' fees. The motion carried 4 to 1 with Mr. May, Mr. Minkoff, Ms. Botts and Mr. Blackadar voting AYE by voice vote and Mr. Terwilliger voting NO by voice vote.

Mr. Terwilliger does not like to settle these matters without knowing the additional costs.

Item 5: S.R. 429 (CRAVEY) / WEKIVA PARKWAY PROJECT (PROJECT 429-203) PARCEL 180

Ms. Brehmer Lanosa explained that Parcel 180 is owned by James V. Cravey. Parcel 180 is a partial taking totaling 1.633 acres with a remainder of 3.27 acres. The parent tract is improved with a 1,739 s.f. three bedroom/two bath manufactured home built in 1998. Mr. Cravey operates a Florida business entity on the subject property known as Jimmy's Custom Cabinetry LLC. There was a business damages claim but that claim was subsequently dropped by Mr. Cravey.

The CFX's appraisal of the property was prepared by Chad Durrance of Durrance & Associates. Mr. Durrance's total value conclusion is \$109,400 (\$36,700 land, \$5,700 improvements and \$67,000 damages and cost to cure).

Mr. Cravey's appraisal of the subject property was prepared by Rick Dreggors of Calhoun, Dreggors & Associates, Inc. Mr. Dreggors' total value conclusion for Parcel 180 is \$343,300 (\$122,500 land, \$5,700 improvements, \$214,900 damages and cost to cure).

The Committee Members expressed their opinions on the amount of the settlement and the taking of these items to trial.

Shutts & Bowen is requesting approval of the proposed Mediated Settlement Agreement.

Itemization of the settlement:

Proposed settlement is \$170,000 consisting of: \$149,804 landowner, \$20,156 statutory attorney fee.

A motion was made by Ms. Botts and seconded by Mr. Blackadar to recommend to the Board approval of the proposed Mediated Settlement Agreement in the amount of \$170,000 in full settlement of all claims for compensation for the acquisition of Parcel 180 including statutory attorneys' fees. The motion carried 3 to 2 with Mr. May, Ms. Botts and Mr. Blackadar voting AYE by voice vote and Mr. Terwilliger and Mr. Minkoff voting NO by voice vote.

Mr. Passiatore announced that Mr. Hal Morlan of Shutts & Bowen has arrived and will present the following items.

Item 6: S.R. 429 (CRAVEY) / WEKIVA PARKWAY PROJECT (PROJECT 429-203) PARCEL 189

Shutts & Bowen is requesting approval of the proposed Mediated Settlement Agreement. Mr. Morlan provided the Committee with the description of the parcel. Parcel 189 is a partial taking totaling 5.16 acres with a remainder of 15.067 acres. The property is improved with a 3,083 s.f. four bedroom/three bath single family residence built in 1967 and additional construction in 1990 including a fireplace and attached two-car garage. Additional improvements located in the southwest portion of the remainder property include a 1,728 s.f. three bedroom/two bath double-wide manufactured home built in 1998. This property is the homestead of Mr. and Mrs. Cravey.

The CFX's appraisal of the property was prepared by Chad Durrance of Durrance & Associates. Mr. Durrance's total value conclusion is \$436,100 (\$116,100 land, \$185,000 improvements and \$135,000 damages and cost to cure).

Mr. and Mrs. Cravey's appraisal of the subject property was prepared by Rick Dreggors of Calhoun, Dreggors & Associates. Mr. Dreggors' total value conclusion for Parcel 189 is \$1,226,200 (\$387,000 land, \$35,400 improvements, \$803,800 damages and cost to cure).

Mr. Terwilliger does not oppose the amount of the settlement but will vote against the item because the costs were not provided.

A motion was made by Mr. Minkoff and seconded by Mr. Blackadar to recommend to the Board approval of the proposed Mediated Settlement Agreement in the amount of \$570,100 in full settlement of all claims for compensation for the acquisition of Parcel 189. The motion carried 4 to 1 with Mr. May, Mr. Minkoff, Ms. Botts and Mr. Blackadar voting AYE by voice vote and Mr. Terwilliger voting NO by voice vote.

Item 7: S.R. 429 (CRAVEY) / WEKIVA PARKWAY PROJECT (PROJECT 429-203) PARCEL 190

Mr. Morlan is seeking the Committee's recommendation for Board approval of the Mediation Settlement Agreement. Parcel 190 is a partial taking totaling 7.138 acres with a remainder of 2.991 acres.

CFX's appraisal of the property was prepared by Chad Durrance of Durrance & Associates. Mr. Durrance's total value conclusion is \$227,000 (\$160,600 land and \$66,400 damages).

The Cravey's appraisal of the subject property was prepared by Rick Dreggors of Calhoun, Dreggors & Associates, Inc. Mr. Dreggors' total value conclusion for Parcel 190 is \$768,100 (\$535,400 land, \$13,300 improvements, \$219,400 damages).

Discussion ensued concerning Parcel 190 being a partial taking but CFX paying for the entire parcel.

A motion was made by Mr. Minkoff and seconded by Mr. Terwilliger to reject the proposed Mediated Settlement Agreement. The motion failed 2 to 3 with Mr. Minkoff and Mr. Terwilliger voting AYE by voice voter and Ms. Botts, Mr. Blackadar and Mr. May voting NAY by voice vote.

A motion was made by Mr. Blackadar and seconded by Ms. Botts to recommend to the Board approval of the proposed Mediated Settlement Agreement in the amount of \$345,000 in full settlement of all claims for compensation for the acquisition of Parcel 190. The motion carried 3 to 2 with Mr. May, Ms. Botts and Mr. Blackadar voting AYE by voice vote and Mr. Terwilliger and Mr. Minkoff voting NO by voice vote.

Item 8: S.R. 429 (DUBEL) / WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCEL 237

Shutts & Bowen is requesting approval of the proposed Mediated Settlement Agreement. Mr. Morlan addressed the Committee. Parcel 237 is a partial acquisition consisting of 2.345 acres with a remainder of .534 acres. The improvements located within the taking include a 2,024 s.f. three bedroom/two bath single family residence built in 1979 with additional site improvements.

CFX's appraisal of the property was prepared by David Hall of Bullard, Hall and Adams, Inc. Mr. Hall estimated the value of taking to be \$309,000 (land \$70,400, improvements \$210,200 and damages \$28,400).

Mr. and Mrs. Dubel are represented by Mark Natirboff and he argued that the land should be valued at \$60,000 per acre, the improvements at \$130 s.f. and the landscaping installed by the Dubel's should also be paid by CFX as part of the improvements.

Itemization of the settlement:

Proposed settlement is \$454,846.75 consisting of: \$417,000.00 landowner, \$988.00 appraiser, \$375.00 land planner, and \$35,640.00 attorneys' fees, and \$843.75 engineer.

A motion was made by Mr. Minkoff and seconded by Mr. Blackadar to recommend to the Board approval of the proposed Mediated Settlement Agreement in the amount of \$454,846.75 inclusive of all fees and costs in full settlement of all claims for compensation for the acquisition of Parcel 237. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Items 13, 14 and 15 are related to each other therefore, Ms. Brehmer Lanosa requested to address them together.

Item 13: S.R. 528 – BEACHLINE PROJECT (PROJECT 528-1240) / (CONTRACT NUMBER 001099);
Item 14: S.R. 528 – BEACHLINE PROJECT (PROJECT 528-1240) / (CONTRACT NUMBER 001092);and
Item 15: S.R. 528 – BEACHLINE PROJECT (PROJECT 528-1240) / (CONTRACT NUMBER 001111).

Ms. Brehmer Lanosa addressed the Committee. At the Board's direction, Staff is working towards acquiring parcels for, in part, intercity passenger rail for All Aboard Florida. Four parcels are needed including parcels owned by Bal Bay Realty Ltd., Carlsbad Orlando, LLC, Mattamy Partnership, and B and M Investment LLC.

In order to follow the Board's direction, Task No. 1 needs to be issued for work order under the existing contract (Contract number 001099) with Kelly, Collins & Gentry, for land planning, engineering support services and wetland support services involving these four parcels. The proposed Scope of Services would be in the not-to-exceed amount of \$39,726 plus wetland delineation services in the amount of \$25,000.00.

Staff is seeking Committee recommendation for Board approval for an amendment to the existing contract (Contract number 001092) with Hanson Real Estate Advisors, Inc. for additional funds to prepare condemnation appraisal reports for the properties owned by Bal Bay Realty, Ltd, Carlsbad Orlando LLC, Mattamy Partnership and B and M Investment LLC. The proposed Scope of Services would be for the additional services in the not-to-exceed amount of \$125,000.00.

Conversation was had regarding the amount charged by Mr. Hanson for these appraisal reports and whether quotes from other appraisers were sought.

Ms. Brehmer Lanosa explained that Mateer & Harbert was not a party on the initial agreement but the same competitive terms and rates already negotiated by the School Board are available to CFX.

In order to meet the acquisition deadlines, Ms. Brehmer Lanosa recommended approval to execute an agreement with Mateer & Harbert in the not-to-exceed amount of \$975,000 for an initial three-year term to provide right-of-way counsel services for the S.R. 528 Beachline Project, assuming this would be contested all the way through trial. The proposed scope of services is for the acquisition of four parcels owned by BalBay Realty Ltd., Carlsbad Orlando LLC, Mattamy (Jacksonville) Partnership and B and M Investment LLC.

The Committee Members asked questions regarding the piggyback/procurement process that is being proposed. Mr. Minkoff expressed concern about the process due to the fact that other firms were not given an opportunity to submit a proposal. Mr. Passiatore explained that we are under a deadline to acquire the property for the All Aboard Florida project by December 2015. In an effort to move the project along and meet the deadline, we asked Mateer & Harbert to give us a proposal under the piggyback agreement with Orange County School Board. The School Board competitively bid the contract. The agreement with the School Board has very favorable rates.

Mr. Terwilliger asked whether the School Board process was competitively bid and Mr. Passiatore answer that it was.

Mr. Blackadar commented that normally you would want to go through a competitive process, however in this case the exceptions are timing and favorable rates.

Mr. May commented that we should go through a competitive process, however in this case it has been done previously by the School Board and we can rely upon that.

A motion was made by Mr. Terwilliger and seconded by Ms. Botts to recommend to the Board that Mateer & Harbert be retained under the same terms as the Orange County School Board, to increase the scope of services for Hanson Real Estate Advisors to complete the appraisal services in the amount of \$125,000 and to Authorize Task Order No. 1 with Kelly, Collins & Gentry in the amount of \$64,726. The motion carried 4 to 1 with Mr. May, Mr. Terwilliger, Ms. Botts and Mr. Blackadar voting AYE by voice vote and Mr. Minkoff voting NO by voice vote.

Item 16: RIGHT OF WAY COMMITTEE BRIEFING

Mr. Frank Mathews of Hopping, Green & Sams, representing Farmland Reserve, Inc. (FRI), gave an overview of the Contract for Sale and Purchase dated November 11, 2013 between SLR, FRI and CFX, as successor to the Orlando-Orange County Expressway Authority.

Mr. Mathews explained the critical contextual points in the Contract and the primary contingencies prescribed by the Contract. (See attached Memorandum dated March 18, 2015.)

Mr. Jim Pratt of Burr Forman, representing SLR, talked about the significance of the S.R. 528/Innovation Way Interchange in the corridor acquisition.

Discussion took place regarding restrictions on freight and commuter rail within the corridor. Mr. May expressed concern regarding what is going to be conveyed to AAF. He doesn't want to preclude freight or commuter rail in the corridor as a result of the conveyance to SLR and FLR. Mr. Pratt offered to discuss this with his client to come to a possible solution regarding that issue.

Ms. Botts expressed concern about approving a transaction that appears to be appraised at fee simple interest without the reservations. Mr. Pratt explained some of the factors that went into the negotiated valuation. He explained that the agreement does obligate them to convey fee simple title to CFX, subject to some restrictions.

With respect to Ms. Botts' comments last month regarding the plottage increase for bilateral monopoly, Mr. Pratt's firm is researching the issue and will provide case law and scholarly articles to CFX counsel.

Mr. Blackadar asked for feedback from CFX staff regarding how the restrictions effect the future corridor and Master Plan. Mr. Passiatore will prepare a list and have that ready for next month's discussion.

Item 17: OTHER BUSINESS

No other business was discussed.

Item 18: ADJOURNMENT

Chairman May adjourned the meeting at 3:57 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.