

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MINUTES CENTRAL FLORIDA EXPRESSWAY AUTHORITY Right of Way Committee Meeting June 29, 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 Right of Way Committee Staff Present:

Joseph L. Passiatore, General Counsel
Linda Brehmer Lanosa, Deputy General Counsel
Laura Kelley, Executive Director
Mimi Lamaute, Paralegal/Recording Secretary

Item 1: CALL TO ORDER

The meeting was called to order at 9:00 a.m. by Chairman May.

Item 2: PUBLIC COMMENT

There were no Public Comments.

Item 3: APPROVAL OF MINUTES – May 27, 2015

A motion was made by Mr. Terwilliger and seconded by Ms. Botts to recommend approval of the May 27, 2015 Right of Way Committee Meeting Minutes as presented. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Item 4: S.R. 414 (JOHN LAND APOPKA EXPRESSWAY PROJECT) PROJECT 429-200, PARCEL 198, PART D

Ms. Keeter is seeking the Committee's recommendation for Board approval for the sale of Parcel 198 to the previous owner, at the price paid by CFX, pursuant to the Expressway Authority's Property Acquisition & Disposition Procedures Manual and Florida Statutes.

CFX has received a request from the former owner, Bert E. Roper and Barbara C. Roper Family Limited Partnership, for a return conveyance of a portion of the property acquired for the SR 414, John Land Apopka Expressway Project 429-200, Parcel 198, Part D. This Parcel was acquired through an eminent domain action in 2006 and declared surplus in 2015.

A motion was made by Ms. Botts and seconded by Mr. Blackadar to recommend to the Board approval of the sale of a portion of Parcel 198, Part D to the former owners, Mr. Bert E. Roper and Barbara C. Roper Family Limited Partnership, in the amount of \$115,792.63. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Item 5: S.R. 429 AND NEW INDEPENDENCE PARKWAY (HAMLIN GROVES TRAIL EXTENSION)

Ms. Lanosa is requesting the Committee's recommendation for Board approval of a proposed Interlocal Agreement between Orange County, the City of Orlando, and CFX for Property Exchange and Pond Reconfiguration involving the relocation of part of CFX's existing retention ponds on S.R. 429. Her PowerPoint Presentation is attached as Exhibit "A."

This agreement involves an even property swap with Orange County. Orange County would like to expand Hamlin Groves Trail to provide access to the new Sportsplex and connectivity to Tiny Road. Ms. Brehmer Lanosa provided the Committee with a map depicting the location of the parcels to be swapped and the location of the new Sportsplex. She explained that CFX owns retention ponds along S.R. 429 and because Orange County's preferred alignment for Hamlin Groves Trail Extension impacts CFX's retention pond, Orange County would be responsible for causing the reconstruction and relocation of CFX's existing ponds.

Orange County's appraiser C. Lee Lobban, MAI appraised both parcels involved in the property swap at \$169,000. This would be an even exchange of property. CFX would work together with Orange County during the permitting and construction. After the design, engineering, permitting, construction, and inspection of the reconfigured pond, a closing will be scheduled and the property exchanged.

A motion was made by Mr. Terwilliger and seconded by Ms. Botts to recommend to the Board approval of the proposed Interlocal Agreement for Property Exchange and Pond Reconfiguration regarding the S.R. 429 CFX Ponds. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Item 6: S.R. 528 – BEACHLINE PROJECT (PROJECT 528-1240) / CONTRACT OF SALE AND PURCHASE WITH ALL ABOARD FLORIDA

Mr. Passiatore explained that at its last meeting the Committee was presented with the Fourth Amendment to Contract of Sale and Purchase of Rail Line Easements for the conveyance of rail line easements. The Fourth Amendment addressed the potential need for condemnation and associated cost sharing of the additional properties to be acquired for the corridor. The Committee had some questions about the Fourth Amendment and rather than approving extensive changes, took action to extend the closing date to August 31, 2015 and requested that staff come back to it with a comprehensive presentation on the Contract as it exists presently. This item was intended to address the Committee's request.

Director of Engineering Glenn Pressimone explained the alignment of the multi-modal corridor and future interchange obligations.

Mr. Passiatore referred to the PowerPoint presentation (attached as Exhibit "B") which provides an overview of the Contract.

The following topics were reviewed:

- Contents of the December 20, 2013 Contract for Sale, including Exhibits A-1, A-2, A-3, D and F
- What is AAF purchasing
- AAF's Purchase price
- Allocation of Payments
- Closing Date
- Additional Conditions Precedent included in Exhibit F
- FRI/SLR Conditions Precedent to Ranch Property closing
- Default by AAF
- Easement over acquired property and existing SR 528
- Easement Term: AAF's Right to Mortgage
- Easement Term: Events of Default by AAF
- Easement Term: Remedies

Mr. Blackadar asked about the risk associated with the mortgage clause. Ms. Kelley replied it was not a huge risk. Discussion ensued about the difference between commuter rail and intercity rail, commitment for construction completion date, definition of abandonment, and reimbursement to CFX by AAF and refund requirements to AAF by CFX.

The Committee in their agenda packages were provided a "General Index to Rail Line Easement of Acquired Properties" prepared by Deputy General Counsel Brehmer Lanosa. Ms. Botts mentioned a scrivener's error on Page 3 of 9, Item Number xii. That line should be corrected to read "CFX shall not be required to prepare the Property, but CFX shall ensure access is granted to AAF as needed."

This was an informational item. No action was taken.

Item 7: S.R. 528 – BEACHLINE PROJECT (PROJECT 528-1240) / CONTRACT OF SALE AND PURCHASE WITH ALL ABOARD FLORIDA

Mr. Passiatore is requesting the Committee's direction and/or recommendation for Board approval on the proposed Fifth Amendment to AAF/CFX Rail Line Easement Purchase Agreement.

Mr. Passiatore reviewed the contents of the agreement as follows:

- Paragraph 2(a)(ii) – provision for the easement width for the Ranch Property portion of the corridor to be reduced from 100 feet to 50 feet depending on final plans.

Ms. Kelley remarked that CFX received a qualifier from AAF pertaining to slope. General Counsel for AAF, Mr. Myles Tobin addressed the Committee, he has proposed the insertion of the language "side slopes in addition to the maintenance access road" because in some instances the easement might extend beyond the 50 feet.

Mr. Minkoff inquired about CFX's ability to run commuter rail. He wants it stated that it does not impede CFX from commuter rail. Mr. Tobin stated that CFX will have the ability to run commuter rail.

Mr. Passiatore's review continued:

- Paragraph 2(b) – in order to streamline the process, acquisition of title now triggers the amendment and closing process for the Additional Properties.
- Paragraph 2(d) – This is an entirely new section which addresses AAF's obligations to reimburse CFX for the good faith deposits, full compensation set forth in final judgments, and the fees and costs incurred by CFX for experts and attorneys' fees and costs resulting from the condemnations.
- Paragraph 3(d) – AAF agrees to provide its share of the funding for those voluntary acquisitions acquired before the outside closing date, within 30 days of closing.
- Paragraph 3(e) – specifically addresses AAF's pro rata reimbursement for the Mattamy Homes parcel to occur within 30 days of approval of the Fifth Amendment.
- Paragraph 6 – extends the outside closing date conveying rail line easements to December 31, 2015.
- Paragraph 8 (a)(iii) – sets November 30, 2015 as the deadline for AAF to waive any title defects which Seller refuses to cure. It was also discussed that in order to avoid additional amendments for additional properties, it was proposed that we include specific language as to the formula of the contribution for the additional parcels.

- Paragraph 8(c) – replaces the former Declaration of Restrictions on the Ranch Property with those accepted by CFX on May 14, 2015.

Discussion ensued as to Mr. Blackadar's inquiry regarding future interchange costs.

The Committee directed legal staff to draft the following changes as discussed and provide a draft of the final document at the next Right of Way Committee meeting.

1. Paragraph 2(a) – Language should be included clarifying that any excess for slopes or grading does not interfere with or prohibit commuter rail.
2. Paragraph 2(d)(i) - Rather than requiring payment from the date of the Order of Taking, payment should be within 15 days from the date of the deposit to the courts with a simultaneous transfer of the easements.
3. Paragraph 4(c) – This clause addresses the deposit and title requirements. This clause stays in but it excludes the Mattamy property.
4. Paragraph 6 – This clause addresses the closing; the outer closing date should be changed to December 31, 2015 and add language that this closing date can be extended by mutual agreement of the parties.
5. In order to avoid the necessity of a Sixth and Seventh Amendment, it was proposed that we include specific language as to the formula of the contribution for the additional parcels.
6. Paragraph 13(b) – This clause addresses default and should exclude the return of the Mattamy funds, per Ms. Kelley's comments.
7. Clarify definition of "commuter rail" and "intercity passenger rail". Also, add language that CFX is not prohibited from running intercity passenger rail from Orlando to Cocoa.
8. Any conforming changes that legal staff deems necessary, including amended dates for final closing, revisiting the definition of abandonment, etc.
9. Paragraph 2(b): Change OOCEA to CFX.

A motion was made by Mr. Minkoff and seconded by Mr. Terwilliger directing staff to redraft the Fifth Amendment to Contract of Sale and Purchase of Rail Line Easements in accordance with the discussions at this meeting and provide a final draft at next month's Right of Way Committee meeting. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Mr. Blackadar requested that the agenda materials be provided to the Committee at least five days before the meeting, at the very least electronically with a hard copy to follow.

Item 8: OTHER BUSINESS

Mr. May advised that this would be his last CFX Right of Way Committee meeting. Mr. May will be leaving Osceola County. He has taken a position with the Tampa Hillsborough Expressway Authority.

Item 9: ADJOURNMENT

Chairman May adjourned the meeting at 10:36 a.m.

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