

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MINUTES CENTRAL FLORIDA EXPRESSWAY AUTHORITY Right of Way Committee Meeting July 22, 2015

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### Committee Members Present:

Brett Blackadar, Seminole County Representative  
Laurie Botts, City of Orlando Representative  
Sandy Minkoff, Lake County Representative  
John Terwilliger, Orange County Representative

### Committee Member Not Present:

Vacant, Osceola 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 approximately 2:00 p.m. by Mr. Passiatore.

### Item 2: DESIGNATION OF ACTING CHAIRMAN

Mr. Passiatore informed the Committee that due to Mr. May's resignation, an acting Chairman needs to be designated for the July and August meetings. The Committee has the option of designating a Chairperson for this meeting and having the new Osceola County appointee, at their first meeting, serve as Chairperson for one meeting.

Osceola County is in the process of designating Celeste Adorno as Mr. May's replacement. Ms. Adorno is a contract attorney for the public works department in Osceola County and is considered by the county to be "extended staff." We are awaiting the Osceola County's administrator's letter officially appointing Ms. Adorno to the Right of Way Committee. Per the Committee Charter, the Chairman will serve on an annual, rotating basis. According to the order established in the Charter, the Lake County representative, Mr. Minkoff will serve as Chairman beginning in September.

A motion was made by Mr. Terwilliger and seconded by Mr. Blackadar to designate Mr. Minkoff as Chairman commencing today through the end of the next rotation, August 2016. The motion carried unanimously with four committee members present and voting AYE by voice vote. The Osceola County appointment was not present.

Mr. Minkoff alluded to the second page of the Right of Way Committee Charter that reads: "Committee members shall not vote on matters directly impacting their respective jurisdictions (i.e., engaging in any business with the Authority)." At the last meeting the Committee voted on items presented that involved City of Orlando and Orange County. Mr. Minkoff is of the opinion that this sentence is not necessary.

Ms. Kelley stated that this matter can be presented to the Board for consideration as to whether to strike the language or move forward with it as it is written.

**Item 3: PUBLIC COMMENT**

There were no Public Comments

**Item 4: APPROVAL OF MINUTES**

A motion was made by Mr. Terwilliger and seconded by Ms. Botts to recommend approval of the June 29, 2015 Right of Way Committee Meeting Minutes as presented. The motion carried unanimously with four committee members present and voting AYE by voice vote. The Osceola County representative was not present.

**Item 5: S.R. 429 (SCOFIELD) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCELS 249 & 256**

Mr. Cheek requested this item be pulled from the agenda.

No action was taken.

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

Mr. Passiatore presented the draft changes requested by the Right of Way Committee to the Fifth Amendment to the Contract of Sale to Purchase of Rail Line Easements. The master contract has been updated and it is now the Amended and Restated Contract because it restates the contract in its entirety.

Mr. Passiatore explained and reviewed the changes as follows:

ROW Committee's requested change #1 (contract):

1. Qualify the property description by adding "so long as any excess for slopes or grading doesn't prohibit commuter rail"
  - Contract, p. 4

- Section 2(a). Ranch Property
  - Includes a right to construct, install, replace, repair, maintain and access maintenance road, slopes, and ponds.
  - Buyer agrees not to unreasonably interfere with CFX's use of slopes.
- Section 2(b). Additional Property (Brunetti, Mattamy and B&M Parcels).

ROW Committee's requested change #1 (easement). All of these conveyances will be by license as opposed to easements:

1. Qualify the property description by adding "so long as any excess for slopes or grading doesn't prohibit commuter rail"
  - A-1 Ranch Easement p. 4. (the first easement in the agenda package provided to the Committee) License for Maintenance Access Road
    - p. 4-5. License for Slope Property
    - p. 5. License for Ponds
    - p. 10. AAF will not unreasonably interfere with CFX's ability to modify or alter Slopes
    - p. 11.(a) CFX's reservations over the Slopes

ROW Committee's requested changes #2 and #3:

2. Clarify that the closing date may be extended by mutual agreement of the parties
  - Contract, p. 5, Section 2(d). Purchase and Sale of Easement
    - added "as may be extended . . . ."
  - Contract, p. 12, Section 6. Closing.
    - added "as may be extended . . . ."
3. Trigger AAF's payment from the deposit, not the Order of Taking.
  - Contract, p. 5, Section 2(d)(i). Purchase and Sale of Easement.

ROW Committee's requested change #4:

4. Alleviate the need for additional amendments.
  - Contract, p. 7-8, Section 3. Purchase Price
    - 3(a). Enumerated Components of Purchase Price
    - 3(c). Included Price of Additional Property:
      - 40% of full compensation to owner plus
      - CFX's costs
    - 3(e). For voluntary acquisitions, if AAF agrees to the price, AAF pays 40% of the consideration within 30 days of consummation.
    - 3(f). AAF pays \$1,404,690.91 for the Mattamy Easement

ROW Committee's requested change #5:

5. Make the payment toward the Mattamy Easement nonrefundable.
  - Contract, p. 9, Section 4(c). Deposit.
    - The \$1.4M paid for Mattamy is excluded from the refund provisions.

- The Mattamy Easement will not be terminated.
- Conforming changes are also in:
  - Contract, p. 23, Section 11(c). Conditions Precedent to Closing.
  - Contract, p. 24, Section 13. Default.

ROW Committee's requested change #6:

6. Exclude Mattamy from the title and deposit provisions.

- Contract, p. 13, 8(a)(i). For the Ranch Property Easement, AAF has until Sept. 30, 2015 to give notice of objections to title.
- Contract, p. 14, 8(a)(ii). Seller has no obligation to cure.

Additional parcels are addressed in the following:

AAF's Proposal re: change #6:

- AAF's Proposal, Contract p. 14:
  - 8(a)(iii). If required in the reasonable determination of Seller and Buyer, Seller will condemn any rights of third parties.....

In the event there are title objections as to any of the properties that both parties agree constitute a barrier or impediment to construction of the intercity passenger rail project, the Authority would consider condemning those encumbrances or interest of record so as to eliminate any clouds on the title. CFX does not foresee this happening. Every effort will be made to eliminate any outstanding title interest at the time of closing. This is a remedy that was not in the original agreement, but is in this particular agreement.

ROW Committee's requested changes #7 and #8:

7. Clarify the definition of "Intercity Passenger Rail" by confirming that nothing prohibits CFX from running rail to Cocoa.

- A-1 Ranch Easement, p. 8, Definition of "Commuter Rail Service"
- A-2, Additional Property Easement, p. 8

8. Define "abandonment"

- A-1 Ranch Easement, p. 19
- A-2, Additional Property Easement, p. 18

Mr. Passiatore explained that the two easements are identical. The only change is that the first easement is for the Ranch Property and it contains a provision that incorporates the deed restrictions that the Authority, FRI and SLR have agreed upon. He noted that the same changes will be in both of the easement agreements.

The Committee asked questions regarding prohibiting AAF from running commuter rail which were answered by Ms. Kelley and Mr. Passiatore.

9. Conforming changes

- Contract, p. 6, Section 2(e).

- Reimbursement for 40% of Costs
- Contract, p. 25-26, Section 13(b).
  - Added a post-closing remedy for AAF's Failure to pay the post-closing amounts owed in a condemnation action.

Mr. Minkoff suggested this agreement be presented to the Board without tracking the changes so that it may be easier to read.

Ms. Botts called Staff's attention to Page 3 of the agreement and suggested that the word "agrees" be replaced with "agree."

Mr. Myles Tobin, All Aboard Florida, confirmed AAF is in agreement with the amendments.

Staff and management recommend approval of the agreement.

**A motion was made by Mr. Terwilliger and seconded by Ms. Botts to recommend to the Board approval of the proposed Amended and Restated Contract of Sale and Purchase of Rail Line Easements with Exhibits as presented. The motion carried unanimously with four committee members present and voting AYE by voice vote. The Osceola County representative was not present.**

**Item 7: S.R. 528 – BEACHLINE PROJECT (PROJECT 528-1240) / BAL BAY (PARCEL 102) AND CARLSBAD (PARCEL 105)**

Mr. Small with Mateer and Harbert briefed the Committee on the status of the negotiations with respect to Parcel 102 which is owned by BalBay Realty Inc. and Parcel 105 which is owned by Carlsbad Orlando, LLC. There were a number of meetings with senior staff and Rob Yeager, the corporate representative for both of the entities that own the property. We are close to negotiating a final agreement and have a draft contract which has been provided to staff.

Mr. Small described and explained the following Non-Monetary and Monetary points that are being negotiated:

**Non-Monetary Points**

1) **Plan Review.** Bal Bay Realty, Ltd., (parcel 102), and Carlsbad Orlando, LLC., (parcel 105), may review and comment on construction plans for rail improvements to be constructed within multimodal corridor.

2) **Right of Entry.** Bal Bay Realty, Ltd., (parcel 102), may apply for a right of entry to cross S.R. 528, subject to CFX policies and procedures for granting rights of entry, for the proposed extension of Econlockhatchee Trail as a 4-lane arterial from Dowden Road north across S.R. 528 across to the Vista Park development; provided, however, that CFX shall reserve the right to review and approve any proposed plans for crossing S.R. 528.

3) **Owners' Development Efforts.** CFX will agree not to directly or indirectly oppose, challenge, or otherwise obstruct or impede the efforts of Bal Bay Realty, Ltd., (parcel 102) and Carlsbad Orlando, LLC., (parcel 105) to develop their adjacent property; provided, however, the owners acknowledge that they may need to obtain land development permits from the Orange County Commission or other governmental entities and that a vote of approval by any member of the CFX Board shall not impede the exercise of discretion by any Member of the CFX Board in his or her role as a County Commissioner or as a member of any other governmental entity.

4) **Commuter Rail Service Station.** Carlsbad Orlando, LLC., (parcel 105), may comment on the design and desirability of a proposed commuter rail service station to be constructed on its property in the event that commuter rail is constructed within the multimodal corridor; provided, however, that nothing in the purchase agreement shall obligate CFX to construct any such commuter rail service station.

5) **Freight Rail Service.** CFX will represent in the contract that the multimodal corridor through Bal Bay Realty, Inc. (parcel 102) and Carlsbad Orlando (parcel 105), as reflected in the construction plans, does not accommodate freight rail service.

Discussion ensued regarding prohibiting freight rail service. Mr. Small explained that the contract does not discuss prohibiting freight forever. The contract merely recites what is in the construction plans. The current construction plans do not accommodate freight. It is not the intent to prohibit freight under any circumstances, just to reflect what is in the constructions plans.

## Monetary Terms

**Purchase Price.** Bal Bay Realty, Ltd., (parcel 102), and Carlsbad Orlando, LLC., (parcel 105), agree to accept as full compensation, for all land, improvements, and damages, including attorneys' fees and costs, \$23,756,650.00, for the purchase of parcels 102 and 105, the price to be allocated at \$4,500,000.00, for parcel 102, and \$19,256,650.00, for parcel 105.

Discussion ensued regarding the Committee recommending Board approval for a contract for purchase with the above discussed terms. Mr. Minkoff inquired as to whether there was any legal reasons that would prohibit the Committee from recommending approval today. Mr. Passiatore replied that there was nothing in the Sunshine Law or the public notice requirements that would preclude the Committee from such a recommendation. It will be a recommendation and will be presented to the Board for final action at which time the public would have the right to comment.

A motion was made by Ms. Botts and seconded by Mr. Blackadar to recommend to the Board approval of the proposed Real Estate Purchase Agreement with the above terms and the caveat that in the event the negotiations substantially change between what was represented to this Committee staff would be directed to bring the Agreement back to the Committee. The motion carried unanimously with four committee members present and voting AYE by voice vote. The Osceola County representative was not present.

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**Item 8: INTRODUCTION OF ELECTRONIC AGENDAS**

Mr. Passiatore and Ms. Kelley explained that CFX will use an electronic board books product, Diligent, to replace the agenda binders the Committee currently receives. Ms. Kelley requested that the Committee test Diligent next month.

She inquired as to which Committee members needed a CFX issued tablet. Mr. Terwilliger requested a tablet. Mr. Minkoff and Ms. Botts do not need a tablet.

**Item 9: OTHER BUSINESS**

No other business was discussed.

**Item 10: ADJOURNMENT**

Mr. Minkoff adjourned the meeting at 3:10 p.m.

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