

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MINUTES CENTRAL FLORIDA EXPRESSWAY AUTHORITY Right of Way Committee Meeting April 22, 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 S. Brehmer Lanosa, Deputy General Counsel
Mimi Lamaute, Paralegal/Recording Secretary

Item 1: CALL TO ORDER

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

Item 2: PUBLIC COMMENT

Public comment for Item 7 will be made by Kurt Bauerle before the Committee addresses the item.

Item 3: APPROVAL OF MINUTES

The minutes are amended as follows:

- The statement "the designated substitute was not present" deleted from the section Committee Members Present on Page 1; and
- On Items 6, 7 and 8 listed on Pages 6, 7 and 8 the recommendation made by outside counsel has been included.

A motion was made by Mr. Minkoff and seconded by Mr. Terwilliger to approve the minutes of the March 25, 2015 Right of Way Committee meeting with the above amendments. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

**Item 4: S.R. 429 (MERCED) / WEKIVA PARKWAY PROJECT (PROJECT 429-204)
PARCEL 254**

Mr. Cheek provided the Committee with a brief description and background on the subject property. Parcel 254 is a total taking of a 0.76 acre piece of property located along Ondich Road. The property is improved with a 3,140 square foot residence that was constructed in 1985, along with a number of other improvements.

CFX's appraisal of the property was prepared by David Hall of Bullard, Hall & Adams, Inc. Mr. Hall's fourth and final report is dated February 12, 2015, with a date of value of January 22, 2015, and a final updated appraisal amount of \$336,200.00 (\$41,000.00 for land plus \$295,200.00 for improvements).

As this settlement is in advance of an Order of Taking, the property owners, Suzanne and Felix Merced, have not submitted a final appraisal report. However, the Merceds have retained the services of Rick Dreggors, whose primary valuation was substantially higher than CFX's offer. The Merceds have submitted a compensation claim of \$596,000.00 for this property, in addition to seeking federal relocation assistance.

Mr. Minkoff commented and Ms. Botts agreed that the settlement amount is 170% over the appraised amount and the property owner has not submitted a final appraisal report, therefore, they could not support this settlement.

A motion was made by Mr. Terwilliger and seconded by Mr. Minkoff to deny the recommended proposed settlement. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

**Item 5: S.R. 429 (DAVIS D/B/A BAY HILLS EQUESTRIAN CENTER) / WEKIVA PARKWAY PROJECT
(PROJECT 429-203) PARCEL 197**

Mr. Spoonhour explained that a business damage claim has been filed by Vickie Davis, who is a tenant of Parcel 197. Ms. Davis is doing business as Bay Hills Equestrian Center and leases 60 acres which is used for a horse boarding operation. Ms. Davis has relocated her business to a 160-acre farm (the Allen Farm) which has stables, riding oval and pasture near Tavares.

The business damage claim was submitted by Vickie Davis on December 18, 2014 in the amount of \$616,345.78, as follows: \$450,794.00 replacement cost new (RCN) of buildings; \$101,829.78 relocation claim (less \$30,000 for building replacement); \$93,722.00 for loss of goodwill and increased rent (one year's average income and two years increase in rents.). CFX's counter-offer is due by May 18, 2015.

Mr. Spoonhour explained each of the claims and his recommendation on each claim. His recommendations are as follows:

1. CFX should make a counter-offer to this business damage claim.

2. The amount of the counter-offer to be made is a strategic decision. It can range from a nominal amount because the claim is questionable to a more substantial amount given the cost to litigate this issue. Mr. Spoonhour recommends a counter-offer of \$30,000 exclusive of legal fees and expert fees. Because the first offer acts as the floor in calculating attorney's fees, it is easier to determine attorney's fees if the counteroffer excludes legal fees and expert fees.

Discussion ensued as to apportionment and the amount of the counter-offer.

Mr. Minkoff disclosed that Allen Farm property is a mile from his residence.

A motion was made by Mr. Minkoff and seconded by Mr. Terwilliger to recommend approval for CFX to make a business damages counter-offer in the amount of \$30,000.00. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Mr. Spoonhour explained that he is also seeking the Committee's approval for an Offer of Judgment. He is recommending CFX make an Offer of Judgment in the amount of \$30,000.00.

If CFX makes an Offer of Judgment, the business owner has 30 days to accept or reject the offer. No response is the same as a rejection.

- a. The significance of an Offer of Judgment is that, if the business owner does not recover more than the offer of judgment, the experts on the business owner's team are at risk of not having their fees covered (fees incurred later than 30 days after the Offer of Judgment).
- b. An Offer of Judgment can be withdrawn at any time.

Discussion ensued as to the amount of Offer of Judgment.

A motion was made by Mr. Minkoff and seconded by Mr. Terwilliger to recommend Board approval for an Offer of Judgment in the amount of \$30,000, the same as the counter-offer. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Item 6: S.R. 429 (VIP PROPERTIES, LLC) WEKIVA PARKWAY PROJECT (PROJECT 429-203) PARCEL 170

Ms. Brehmer Lanosa provided maps depicting the location of the subject property and described the location. Mr. Hall of David K. Hall, ASA has appraised the property at \$16,300. The taking involves 0.454 acres.

In a letter, Tom Callan, the owner's attorney, indicated that he had retained Richard Dreggors to appraise the property, but he has not provided the Authority with an appraisal report. In other appraisal reports, Mr. Dreggors

valued property in the area, including Parcels 177, 180, 186, 188, 189, and 190 at \$75,000 per acre, with comparable sales ranging from roughly \$66,000 to \$159,000 per acre.

Ms. Brehmer Lanosa is requesting the Committee's approval for an Offer of Judgment just over the appraised value in the amount of \$20,001.

A motion was made by Ms. Botts and seconded by Mr. Blackadar to recommend to the Board approval of an Offer of Judgment in the amount of \$20,001 for Parcel 170. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

At the request of Ms. Brehmer Lanosa, Item 7 was moved to be heard after Items 8 and 9.

Item 8: S.R. 429 (MEGA GNP, LLLP) WEKIVA PARKWAY PROJECT (PROJECT 429-203) PARCEL 232

Ms. Brehmer Lanosa depicted the location of Parcel 232 on a map. The parent tract is located on the northeast corner of Plymouth Sorrento Road and West Kelly Park Road, in unincorporated Orange County, Florida. The taking consists of 7,407± square foot located in the southwest corner and on the south border of the parent tract.

Walter N. Carpenter, Jr., MAI, CRE, appraised the property. He estimated the market value of Parcel 232 as of June 6, 2014 as follows: Land \$14,800, Improvements \$11,680, Cost to Cure \$5,490, Total \$31,970.

Ms. Brehmer Lanosa is requesting the Committee's recommendation for Board approval of an Offer of Judgment in the amount of \$40,001.

A motion was made by Mr. Terwilliger and seconded by Mr. Minkoff to recommend to the Board approval of an Offer of Judgment in the amount of \$40,001 for Parcel 232. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Item 9: S.R. 429 (HUANG AND WU) WEKIVA PARKWAY PROJECT (PROJECT 429-203) PARCEL 233

Ms. Brehmer Lanosa is requesting the Committee's recommendation for Board approval of an Offer of Judgment in the amount of \$29,001, or some other amount determined by the Committee to be in the best interest of the Authority. She provided a map depicting the location of Parcel 233.

The taking is 0.137 acres. The purpose of the taking is to add turn lanes on Plymouth Sorrento to S.R. 429. The parent tract was improved with two small manufactured buildings. The first building is a manufactured home containing 1,392± square feet built in 1973. The second building is a manufactured home containing 500± square feet built in 1973. The improvements were in very poor condition.

Walter N. Carpenter, Jr., MAI, CRE, appraised Parcel 233 as follows: Land \$17,890, Improvements \$2,030, Cost to Cure \$3,020, Total Value \$ 22,940. In response, the property owners have not disclosed what they seek in full compensation from CFX.

A motion was made by Mr. Terwilliger and seconded by Ms. Botts to recommend to the Board approval of an Offer of Judgment in the amount of \$29,001 for Parcel 233. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Item 7: S.R. 429 (GILLIS) WEKIVA PARKWAY PROJECT (PROJECT 429-203) PARCEL 229

Ms. Brehmer Lanosa informed the Committee that Kurt Bauerle who represents Gracie Gillis would like to address the Committee.

Ms. Brehmer Lanosa explained that this parcel was mediated but the mediation was not concluded. The Parcel is located next to the previous parcel just presented (Huang parcel). Ms. Brehmer Lanosa displayed for the Committee construction maps and pictures of Parcel 229.

CFX's appraiser Mr. Carpenter of Pinel & Carpenter, Inc. estimated the market value of Parcel 229 as of July 10, 2014 as follows; Land \$10,835; Improvements \$11,725; Cost to Cure \$4,435; for a total of \$26,995. Mr. Carpenter valued the parent tract at \$130,680 per acre or \$3.00 per square foot based upon comparable sales on Plymouth Sorrento Road with the City of Apopka.

Mr. Bauerle addressed the Committee. He explained Ms. Gillis is an elderly widow. He informed the Committee of the mediation, Ms. Gillis' position in the before and after of the project. He explained that hours before the Committee meeting, the settlement of \$71,900 was reached inclusive of all fees and costs. Mr. Bauerle is requesting, with Ms. Brehmer Lanosa's consensus, that the Committee recommend Board approval of the proposed \$71,900 in settlement of full compensation plus all fees and costs for Parcel 229.

Ms. Brehmer Lanosa provided addition information. Parcel 229 is improved with a manufactured home containing 872± square feet, built in 1970. The taking consists of a 36-foot wide strip along the 100-foot frontage on Plymouth Sorrento Road. The strip taken is to widen Plymouth Sorrento Road in front of the Subject Property to include a southbound left turn lane and a southbound right turn lane.

Ms. Brehmer Lanosa informed the Committee that the property owner is requesting \$45,000 in addition to the initial deposit for an all-in, all inclusive settlement.

Discussion ensued as to the breakdown of the proposed settlement and compensation to the property owner; CFX's options, which include approval of the proposed settlement, making an offer of judgment, or offering another amount as settlement. Mr. Bauerle said that Ms. Gillis would not accept anything less than a total settlement of \$71,995. Ms. Brehmer Lanosa recommended approval of the proposed settlement in the amount of \$71,995.

A motion was made by Mr. Terwilliger and seconded by Ms. Botts to recommend to the Board approval of the proposed settlement in the amount of \$71,995.00 00 in full settlement of all claims for compensation for the acquisition of Parcel 229. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

General Counsel Joseph Passiatore gave an overview of Agenda items 10, 11 & 12.

Mr. Passiatore explained that June 1 is the deadline for the first inspection date. Therefore, by June 1 CFX either needs to extend the inspection date or indicate to the sellers whether or not we are in agreement with the appraised value and selling price. In addition, the lawyers and appraisers need feedback from the Committee whether they are amenable to any portion of this corridor being restricted.

Item 10: **S.R. 528 – BEACHLINE PROJECT (PROJECT 528-1240) / CONTRACT OF SALE AND PURCHASE WITH SUBURBAN LAND RESERVE, INC. (SLR) AND FARMLAND RESERVE, INC. (FRI)**

Director of Engineering Glenn Pressimone explained the alignment of the multi-modal corridor and future interchange obligations. He reviewed the summary of right of way transactions, the typical sections, incremental cost table and right-of-way exhibits provided to the Committee in their agenda materials.

Item 11: **S.R. 528 – BEACHLINE PROJECT (PROJECT 528-1240) / CONTRACT OF SALE AND PURCHASE WITH SUBURBAN LAND RESERVE, INC. (SLR) AND FARMLAND RESERVE, INC. (FRI)**

Ms. Brehmer Lanosa reviewed the restrictive covenants that are contained in the current contracts with SLR and FRI.

(The committee took a short break at this time, 4:23 p.m.)

Item 12: **S.R. 528 – BEACHLINE PROJECT (PROJECT 528-1240) / CONTRACT OF SALE AND PURCHASE WITH SUBURBAN LAND RESERVE, INC. (SLR) AND FARMLAND RESERVE, INC. (FRI)**

Woody Hanson from Hanson Real Estate Advisors, Inc. reviewed his valuations on the SLR and FRI parcels.

The Committee members agreed that there are still several issues to resolve. The Committee considered whether to continue the discussion today or hold a special meeting in early May.

Discussion ensued as to Section 1 and 3.2 of the agreement. Mr. Matthews agreed to delete Section 1 and 3.2.

The Committee went through the Declaration of Covenants, Conditions, Easements and Restrictions and addressed the issues section by section:

Section 1 - (Use Restrictions) – Delete

Section 2 - (Approval of Certain Improvements) - Revise prohibition on above-ground utilities

Section 3 - (Rights Reserved by Declarant)

Section 3.1 - Keep noise restrictions in accordance with CFX policies; remove most of remaining language

Section 3.2 – Remove

Section 3.3 – Revise to require an Interchange Justification Report (IJR) for all new future Interchanges.

Section 3.5 - Utilities should not interfere with CFX uses.

Section 3.6 and 3.7 - Further review by CFX legal needed re: maintenance obligations if AAF goes bankrupt.

Section 4 - (Covenants Relating to ICP and Innovation Way East DRIs) – no changes.

Section 5 - (Misc.) – no changes.

In addition, conforming changes need to be made to the Contract for Sale and Purchase. Also, the indemnity clauses need to be revised to make clear that nothing waives sovereign immunity.

The Committee directed legal staff to draft the changes as discussed and provide a final review of all the documents at a Special Right of Way Committee Meeting.

The Committee members suggested that at the special meeting staff provide a summary of how much of the interchange would be done regardless of the AAF project. It was also suggested that staff provide a brief synopsis of the strong points in each agreement.

The Committee decided to hold a Special Right of Way Committee Meeting on May 4 at 10:30 a.m.
At this meeting the Committee will take action on recommendations for the May 14 Board meeting.

Item 13: OTHER BUSINESS

No other business was discussed.

Item 14: ADJOURNMENT

Chairman May adjourned the meeting at 5:10 p.m.

Pursuant to the Florida Public Records Law and OCEA 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.
