

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MINUTES CENTRAL FLORIDA EXPRESSWAY AUTHORITY Special Right of Way Committee Meeting May 4, 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 10:30 a.m. by Chairman May.

Item 2: PUBLIC COMMENT

There were no Public Comments.

Item 3: REVIEW OF CONTRACT OF SALE AND PURCHASE OF RAIL LINE EASEMENTS

At the April 2015 Right of Way Committee meeting the Committee requested an overview of the contract between All Aboard Florida and CFX as well as an overview of the Innovation Way Agreement. Ms. Brehmer Lanosa provided the Committee with a brief overview of the Contract of Sale and Purchase as well as the easement over the acquired property and the rail easement over the existing S.R. 528, see attached PowerPoint attached as Exhibit "A."

Mr. Blackadar expressed concerns with the mortgage clause. If All Aboard Florida has the right to assign that exposes CFX to additional risks. He also expressed concerns about the future interchange costs.

Mr. Terwilliger is also concerned about the mortgage clause and the potential for a third party involvement.

Ms. Botts called attention to the "Events of Default" clause. She is concerned that the 10 years is a long period of time and that failure to operate following commencement should not be on a consecutive basis.

Discussion ensued as to the \$12 million purchase price and closing dates with All Aboard Florida, SLR and FRI. The Committee provided Mr. Myles their comments for the All Aboard Florida contract as follows:

- Allocation of Payments – The \$68 million dollars for the increased incremental cost of construction of interchanges due to intercity passenger rail;
- Shared Use of Rail Improvements – remove the restriction;
- AAF's Right to Mortgage – narrow AAF's right to mortgage;
- Events of Default – failure to complete construction within 10 years. Ten years is a long period of time. and failure to operate following commencement for 3 consecutive years, there should be a limit as to the amount of time.

This was a discussion item no action was taken.

Item 4: **S.R. 528 – BEACHLINE PROJECT (PROJECT 528-1240) / CONTRACT OF SALE AND PURCHASE WITH SUBURBAN LAND RESERVE, INC. (SLR) AND FARMLAND RESERVE, INC. (FRI)**

Mr. Passiatore described for the Committee the documents in their agenda packages: The Fifth Amendment to Contract of Sale and Purchase including the prior amendments and original agreement, the Revised Declaration of Covenants, Conditions, Easements and Restrictions Agreement drafted by Shutts & Bowen and the letter from Hopping Green & Sams from Mr. Matthews dated April 30, 2015 urging approval of the agreement and declaration.

Mr. Passiatore provided the Committee with a redline version of the Declaration of Covenants, Conditions, Easements and Restrictions containing the changes CFX, SLR and FRI have agreed upon (attached as Exhibit "B"). The changes include those requested by the Right of Way Committee at the April Right of Way Committee meeting.

Mr. Passiatore reviewed the revisions to the agreement. The Committee asked questions and provided comments for the amendments.

Ms. Botts called attention to Section 2. Rights Reserved and inquired as to the reasoning for the restrictions stated in the agreement. She also alluded to the lack of a termination date.

The three open issues for discussions are: 1) the limitation for indemnification, 2) request by SLR and FRI to have the \$12 million dollar purchase price reaffirmed and 3) the allocation of funds for regional transportation purposes.

Mr. Matthews from Hopping Green & Sams addressed the above mentioned issues and informed the Committee that in his April 30th letter there were two omissions. The contribution to the Innovation Way Interchange which stated SLR's contribution to be \$17,750,000 should be \$18,250,000. He omitted the 6.5 million from Orange County. Also, he did not underscore the fact that AAF is providing under their contract \$4 million dollars towards the \$12 million dollar purchase.

The Agreement now includes a clause that requires AAF to close its agreement with CFX simultaneously with the FRI/SLR closing.

Mr. Minkoff expressed his concerns with the restrictions contained in the agreement. He is not able to approve the agreement with the restrictions.

Mr. Terwilliger expressed his concerns with Osceola County Expressway Authority being able to condemn in Orange County.

A motion was made by Mr. Minkoff and seconded by Ms. Botts to recommend to the Board approval of the proposed attached Revision 1 to Execution Version of the Declaration of Covenants, Conditions, Easements and Restrictions attached as Exhibit "B" with the following additional revisions made:

- Pages 2- 4: Removal of definitions to the extent that they are no longer necessary;
- Pages 5-13: Removal of all the sections on pages 5-12 which include Under Covenants and Restrictions- Remove Section Above-ground Utility Facilities, Sections 1.-4.0, Section 1., 1.1, 4.3, 1.2, Under Rights Reserved by Declarant, Section 2, 2.1.
- Pages 16-17: Removal of Section 2.5.

The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Fifth Amendment of Contract and Sale

The Committee discussed their requests for modifications to the Fifth Amendment to Contract of Sale and Purchase Agreement.

- On Page 4 of the Agreement, Paragraph 30 the last sentence that reads: ~~"In addition, the maximum limits of liability provided in Section 768.28, Florida Statutes (2014), shall equally apply to both and any contractual liability of Buyer under, and indemnifications granted by Buyer in, this Contract."~~ be deleted.
 - Adding the below Paragraph 31:
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31. ADDITIONAL REPRESENTATION AND WARRANTY OF SELLER. In addition to Seller's representations, warranties and additional covenants set forth in Paragraph 9(a) above, the Seller further represents and warrants that the Seller's net proceeds hereunder will be made available and used for development, design, engineering, financing, acquisition, permitting, construction and/or equipping of regional transportation improvements within _____(____) years following the date of Closing and Seller's representation and warranty hereunder shall survive Closing. For the purposes of the immediate preceding sentence the term "regional transportation improvements" shall include, but not be limited to, transportation improvements within the Northeast District (as defined in Paragraph 11(a)(iv)above). SLR'S obligations to fund, or actual funding of, a portion of the construction costs under the Innovation Way Interchange Agreement shall not count toward or be applied against Seller's representation and warranty to utilize Seller's net proceeds hereunder as required in this Paragraph 31.

After further discussion Paragraph 31 was amended:

Inserting a 10 year provision with a clause that allows for the extension beyond 10 years for extenuating circumstances.

Deleting the sentence the reads: "~~For the purposes of the immediate preceding sentence the term "regional transportation improvements" shall include, but not be limited to, transportation improvements within the Northeast District (as defined in Paragraph 11(a)(iv)above).~~"

Addition of the ratification of the \$12 million purchase price with the language:

"Buyer hereby specifically ratifies and confirms buyer's approval of the purchase price for the property as set forth in paragraph 3 of the Agreement as the same may be adjusted as provided therein."

- In Paragraph 6 the extended date of closing is blank in the Agreement provided to the Committee. The date will be filled in. The sentence will now read: The outside closing date (as defined in Paragraph 6 of the Agreement) is hereby extended until 12/31/2015.

A motion was made by Mr. Blackadar and seconded by Mr. Minkoff to recommend to the Board approval of the proposed Fifth Amendment with the revisions cited above. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Item 5: OTHER BUSINESS

No other business was discussed.

Item 6: ADJOURNMENT

Chairman May adjourned the meeting at 11:30 a.m.

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