

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MINUTES
CENTRAL FLORIDA EXPRESSWAY AUTHORITY
Right of Way Committee Meeting
September 23, 2015
Location: CFX Boardroom

Committee Members Present:

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

CFX Staff Present at Dais:

Laura Kelley, Executive Director
Joseph L. Passiatore, General Counsel
Linda 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 Minkoff.

Item 2: PUBLIC COMMENT

There was no public comment.

Item 3: APPROVAL OF MINUTES

A motion was made by Ms. Botts and seconded by Mr. Terwilliger to approve the minutes of the August 26, 2015 Right of Way Committee meeting as presented. The motion carried unanimously with five members present and voting AYE by voice vote.

Item 4: S.R. 528 (NEO LAND, LLC) BEACHLINE PROJECT (PROJECT 528-1240) PARCELS 108/708

Mr. Small from Mateer Harbert, P.A. who serves as right of way counsel to CFX is requesting approval of a negotiated agreement with Neo Land, LLC, to purchase Parcels 108 Part A and B, and Parcel 708.

Parcels 108 Part A and B and Parcel 708 comprise a partial taking of 3.37 acres from an abbreviated parent tract containing approximately 20.02 acres. The property was appraised by Woodward S. Hanson of Hanson Real Estate Advisors, Inc., and land planning and engineering services were provided by Kelly, Collins & Gentry, Inc. The date of valuation is June 1, 2015. Mr. Hanson reached an opinion of value of the land taken and damages to the remainder in the amount of \$330,890.00, which provided the basis for the initial written offer.

The property was improved with an existing retention pond. The initial offer was based on acquiring Parcel 108, containing about 2.56 acres, in fee simple and Parcel 808 containing about .81 acres, as a permanent slope easement. Parcel 808 extended along the north side of the retention pond on the remainder of the property.

Neo Land, LLC, responded to the initial offer with a counter-offer of \$660,194.80, exclusive of attorneys' fees and costs. It contended that the property's parent tract was worth \$3,250,000.00, based on a recent sale of the property, versus the amount estimated by CFX's appraiser, \$2,032,500.00. CFX's appraisal of the parent tract was lower than the property assessed value of \$2,639,115.00.

The negotiated purchase agreement contemplates changes from the original proposed acquisition. While there are legitimate justifications for CFX's estimate of value of the parent tract, the owner contended that parcel 808 was tantamount to a fee taking because the owner would have no remaining rights to use the servient estate. During negotiations, the owner agreed to convert Parcel 808 to a fee simple acquisition. Former Parcel 808 is now identified in the agreement as Parcel 108 B.

During construction, there will likely be a need to drain the owner's existing retention pond. The negotiated purchase agreement also provides for the owner to convey a long term temporary construction easement, Parcel 708, over the entire pond so that it can be drained and so that the necessary machinery can be moved around the pond during construction. Parcel 708 has no legal description and is identified conceptually by a sketch.

Subject to Board approval and based on these changes to the anticipated acquisition, a proposed agreement has been negotiated with Lawrence Kosto, counsel for Neo Land, LLC, to purchase the needed property for \$530,000.00, inclusive of all attorney and expert fees and costs. The owner's counsel will obtain an attorney's fee of \$30,000.00, approximately \$25,800.00 lower than the statutory attorneys' fee allowable. This negotiated agreement will secure title to the one remaining parcel of property needed for the AAF project ahead of schedule.

Mr. Mateer informed the Committee that the agreement has been signed by the property owner.

A motion was made by Ms. Botts and seconded by Mr. Terwilliger to recommend to the CFX Board the approval of the proposed settlement agreement in the amount of \$530,000, inclusive of fees and costs for compensation for the acquisition of Parcel 108, Part A & B and Parcel 708. The motion carried unanimously with five members present and voting AYE by voice vote.

The Committee asked Mr. Small if this concluded Mateer & Harbert's assignments for CFX. Mr. Small responded that they have been assigned the conveyance of easements to All Aboard Florida for several parcels.

Item 5: S.R. 429 (HOLDER & STRITE CORPORATION) WEKIVA PARKWAY PROJECT (PROJECT 429-202) PARCELS 275 & 279

Mr. Cheek of Winderweede, Haines, Ward & Woodman, P.A., right of way counsel, seeks the Committee's recommendation for Board approval of a business damage counter-offer to be made to Holder & Strite Corporation. Holder & Strite is a company doing business on Parcels 275 and 279. Parcel 275 is owned by Thomas J. Holder, Sr. as Trustee of the Sally R. Holder Credit Shelter Trust and the Thomas J. Holder, Sr. Family Trust. Parcel 279 is owned by Adelpha Howell. Parcels 275 and 279 are adjoining properties and Holder & Strite conducts its farming activities over both properties, so these cases have been consolidated for trial.

This case involves the taking of approximately 28 acres of property used in the hay farming and cattle raising business conducted by Holder & Strite for more than five (5) years prior to the condemnation action. Specifically, CFX has acquired 17.888 acres through the middle of Parcel 275, which originally contained 52.737 acres, leaving a western remainder of 7.691 acres and eastern remainder of 27.230 acres.

Additionally, CFX acquired 10.311 acres from Parcel 279, which originally contained 14.14 acres, leaving a 3.829 acre remainder. T

Holder & Strite presented a claim for \$390,914.00 for Parcel 275 and \$162,881.00 for Parcel 279, for a total business damage claim of \$553,795.00. CFX retained the services of Les Eiserman, CPA from Cliften Larson Allen LLP, who estimated that business damages in this case were \$55,627.00 for Parcel 275 and \$23,178.00 for Parcel 279, supporting a total business damage counter-offer of \$78,805.00.

Should CFX approve a business damage counter-offer, there is a deadline by which to do so. Mr. Cheek's proposed counter-offer for the Committee's recommendation is the number that was reached by CFX's outside expert, \$78,805.00. Mr. Cheek described the reasons to make a counter-offer and provided an explanation to support CFX's expert's fee.

Mr. Cheek stated there was some skepticism about the business model given the amount of land it involved and the type of business. However, courts have recognized the asset-based approach (the value based on total assets net liabilities) to valuing a business. Mr. Cheek noted that the asset approach was most commonly used to value businesses that are not profitable.

The Committee discussed whether the offer should be greater than CFX's outside expert and the pros and cons of doing so.

A motion was made by Ms. Botts and seconded by Mr. Terwilliger to recommend to the CFX Board the approval of the proposed statutory business damage counter-offer to Holder & Strite in the amount of \$78,805.00 for Parcels 275 and 279. The motion carried unanimously with five members present and voting AYE by voice vote.

Mr. Raymond requested that should this matter go to trial, it be noted on the record that the business has lost money every year that they have been in existence.

Item 6: S.R. 528 - BEACHLINE PROJECT (PROJECT 528-1240)

Ms. Keeter of Atkins informed the Committee that CFX is being asked to convey easements to All Aboard Florida (AAF) over its existing S.R. 528 right of way. The referenced properties are not the properties CFX has been purchasing but properties that CFX currently owns. According to CFX's Property Acquisition & Disposition Procedures Manual, the property in the existing right of way must be declared as surplus before they are conveyed.

To declare property as surplus, it is necessary to obtain a determination that the property is not essential for present or future construction, operation or maintenance of an Expressway Facility or for CFX purposes. In addition, because the property is subject to the Lease Purchase Agreement with the Florida Department of Transportation (FDOT), CFX must file with the FDOT a certificate stating that CFX is not in default of any covenants or provisions of the Master Resolutions with the Junior and Senior Bond Holders, and in the opinion of the General Consulting Engineers, CFX is in compliance with the applicable Sections of the Master Resolutions with the Junior and Senior Bond holders. Moreover, CFX must adopt a Resolution declaring the property surplus.

Ms. Keeter demonstrated the approximate locations of the easements on the map, but explained that Atkins does not have the exact locations of the proposed AAF easement or the legal descriptions. However, by the time it is presented to the Committee in October, Atkins hopes to have these documents.

This matter will be brought to the Committee for consideration at the October meeting.

Mr. Passiatore pointed out that after a property has been declared surplus CFX consults the local government in which the property is located and if that local government is not interested in acquiring the surplus property then CFX normally puts the property out to bid. In this case, there is sufficient public purpose for the multi-modal project to waive those requirements and this will be indicated in the Resolution. Discussion ensued as to only the easement being declared surplus and not the entire fee simple interest in land.

(This item was presented for information only. No action was taken by the Committee.)

Item 7: S.R. 429 (DURRANCE & ASSOCIATES, P.A.) WEKIVA PARKWAY PROJECT (PROJECTS 429-202, 203, 204, 205 & 206)

Mr. Shontz explained that Items 7 and 8 are both requests for additional funds. Item 7 is for Mr. Durrance of Durrance and Associates. He is one of the expert real estate appraisers that was retained on behalf of the CFX for the appraisal of 15 parcels. To date, the appraiser has completed all appraisal reports for 13 parcels, consisting of 39 appraisal reports (first offer appraisal report, updated appraisal report for Order of Taking (OT) hearing, updated appraisal report for date of deposit/post-OT). Additionally, the appraiser has completed two of three appraisal reports for the remaining 2 parcels, or 4 appraisal reports, with 2 date-of-deposit reports to be completed post OT. The completion of the 2 date-of-deposit/updated reports that will conclude all appraisal work for order of taking purposes. The remaining work to be provided by the appraiser includes expert witness and litigation support services, such as rebuttal reports, deposition testimony, trial preparation and expert witness testimony at trial. Several of the parcels assigned to Durrance & Associates are set for trial over the coming 12 months. Accordingly, this request for a second agreement is to allow the appraiser to continue to support the CFX for trial preparation purposes. Mr. Shontz requested the Committee's recommendation for the approval of the Second Agreement with an upset amount of \$200,000 to allow the Appraiser to continue to provide consultation, appraisal and litigation services for completion of the Wekiva Parkway Project. All invoices submitted pursuant to the Second Agreement shall be reviewed for accuracy by Shutts & Bowen LLP.

A motion was made by Mr. Blackadar and seconded by Mr. Raymond to recommend to the Board approval of the proposed Second Amendment for Appraisal Services with Durrance & Associates, P.A., in the amount of \$200,000. The motion carried unanimously with five members present and voting AYE by voice vote.

Item 8: S.R. 429 (PINEL & CARPENTER, INC.) WEKIVA PARKWAY PROJECT (PROJECTS 429-202, 203, 204, 205 & 206)

This item involves Mr. Carpenter of Pinel & Carpenter, Inc. Mr. Carpenter was assigned 27 parcels, plus post-order of taking expert witness litigation services. The appraiser has completed all appraisal reports for 19 parcels or 57 appraisal reports (first offer appraisal report, updated appraisal report for Order of Taking hearing, updated appraisal report for date of deposit/post-OT). Additionally, the appraiser has completed two of the three appraisal reports for the remaining 9 parcels or 18 appraisal reports, with 9 date of deposit reports to be completed post OT. Furthermore, the appraiser was assigned 1 additional parcel since the initial budget project in October of 2014. The completion of the 9 date-of-deposit/updated reports for order of taking purposes will conclude all appraisal work. The remaining work to be provided by the appraiser includes expert witness and litigation support services, which includes rebuttal reports, depositions testimony, trial preparation and expert witness testimony at trial. Several of the parcels assigned to Pinel & Carpenter are set for trial in the next 90 days. Accordingly, this request for a second agreement is to allow the appraiser to continue to support the CFX for trial preparation and as an expert witness post order of

taking. Mr. Shontz requested the Committee recommend approval of the Second Agreement with an upset amount of \$200,000 to allow the Appraiser to continue to provide consultation, appraisal and litigation services for completion of the Wekiva Parkway Project. All invoices submitted pursuant to the Second Agreement shall be reviewed for accuracy by Shutts & Bowen LLP.

Discussion ensued as to the costs to CFX for out of town appraisers and the process for advertisements for appraisers.

A motion was made by Mr. Blackadar and seconded by Mr. Raymond to recommend to the Board approval of the proposed Second Amendment for Appraisal Services with Pinel & Carpenter, Inc., in the amount of \$200,000. The motion carried unanimously with five members present and voting AYE by voice vote.

Item 9: RIGHT OF WAY LEGAL COUNSEL – PROPOSED SUPPLEMENTAL AMENDMENT NO. 3 FOR SHUTTS & BOWEN, LLC CONTRACT NO. 000930

Mr. Shontz is requesting a renewal to the Shutts' contract. The contract is up for renewal in February 2016. Initially there was a contract in Feb. 2013 for \$2.5 million dollars for Section 203. Sections 204, 205, 206 and the All Aboard Florida matter were not included in that amount. In addition to that, Shutts & Bowen contracted directly with the experts.

There was a second amendment on November 2014 adding an additional \$2.5 million. At that point, Sections 203, 204, 205, 206 were added. The number of parcels assigned to Shutts & Bowen increased from approximately 30 to a total of 89 parcels.

Mr. Shontz is requesting Committee recommendation for Board approval for an additional \$6,000,000 inclusive of experts' fees and costs. Shutts & Bowen has estimated this amount by looking at historical costs of cases and they took into consideration the remaining 67 parcels that are to be litigated.

Mr. Shontz noted there are three orders of taking hearings scheduled in the next 45 days. At the conclusion of those three hearings, Shutts & Bowen would have acquired all of the Wekiva parcels.

There were 648 property interests involved in these 89 parcels. This project had about 99% of the property interest represented by counsel. Therefore, with the 648 property interests Mr. Shontz is dealing with many different lawyers and even though they may not be the fee owners, he is dealing with easement interests, mortgage companies, cross access easements and various easements. This causes significant additional time incurred as part of the process.

He explained the cases set for trial in 2016 and 2017 and the reason for setting the cases for trial.

Mr. Passiatore explained the process whereby the Legal Department reviews outside counsel invoices. To date, there are \$2.7 million in legal fees from Shutts for the 89 parcels or about \$30,000 per parcel. Based upon the contract expiring in February and the need for additional funding, the Executive Director and Mr. Passiatore recommend the renewal of the contract, extending the contract to February 27, 2016 and the addition of \$6,000,000.

Discussion ensued regarding the \$6,000,000 increase inclusive of fees and costs and the total of the contract now being \$11,035,000.

A motion was made by Mr. Terwilliger and seconded by Mr. Blackadar to recommend Board approval of the Contract Renewal with Shutts & Bowen, Contract No. 000930 for renewal to February 2016 and a not-to-exceed amount of \$6,000,000. The motion carried unanimously with five members present and voting AYE by voice vote.

Mr. Blackadar thought the split between \$2.7 million dollars in attorneys' fees and \$2.2 million dollars in expert fees, almost a little less than half on expert fees, was interesting. He commented that the hourly rates did go down from \$300 to \$250 an hour. This was competitively bid from the beginning of the contract. Attorneys' fees from the other side are normally much higher than these rates. He is comfortable moving forward with the amount not to exceed. Hopefully they will spend less than the \$6,000,000 but in case they spend this amount we will be covered.

Item 10: S.R. 429 (TYSZKO) WEKIVA PARKWAY PROJECT (PROJECT 429-203) PARCEL 228

Ms. Brehmer Lanosa presented information regarding Parcel 228 located on Wekiva Parkway along Kelley Park Road and Sorrento Road and requested authorization to serve an offer of judgment on this parcel to avoid additional liability for the owners' expert fees and costs. The case was mediated on September 16, 2015 but impassed. The case is set for trial on the November 23, 2015 docket.

Parcel 228 is a partial taking of 0.1546 acres of property zoned A-1 (Citrus Rural District) along the northeast corner of Plymouth Sorrento Road and West Kelly Park Road in Apopka. Mr. Carpenter appraised Parcel 228 with a highest and best use in the short-term for continued residential use, with a "reasonably probable use to hold until demand for future neighborhood commercial development permits." Applying the comparable sales approach, Mr. Carpenter estimated the land value to be \$3.50 sq. ft. or \$23,575, plus \$7,665 for trees and sods, totaling \$31,240.

The owner's real estate appraiser, Martin Engelmann, Jr., valued Parcel 228 at \$14.50/sq. ft., or \$97,700 for the land taken. In addition, Mr. Engelmann added \$108,000 in severance damages due to the reduction in size from 0.6806 acres to 0.526 acres, for a total estimated value of \$206,000.

A motion was made by Mr. Terwilliger and seconded by Ms. Botts to recommend Board approval to serve an offer of judgment as to Parcel 228 in the amount of \$81,240 excluding interest, attorney's fees, expert fees and costs. The motion carried unanimously with five members present and voting AYE by voice vote.

Item 11: OTHER BUSINESS

No other business was discussed.

Item 12: ADJOURNMENT

Chairman Minkoff adjourned the meeting at 2:52 p.m.

Minutes approved on October 28, 2015.

Pursuant to the Florida Public Records Law and CFX 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 publicrecords@CFXWay.com or 4974 ORL Tower Road, Orlando, FL 32807.