

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MINUTES
CENTRAL FLORIDA EXPRESSWAY AUTHORITY
Right of Way Committee Meeting
May 25, 2016
Location: CFX Boardroom

Committee Members Present:

Sandy Minkoff, Lake County Representative, Chairman
Frank Raymond, Osceola County Representative
Ann Caswell, Orange County Representative
Laurie Botts, City of Orlando Representative
Christopher Murvin, Citizen Representative
Brendon Dedekind, Citizen Representative

Committee Member Not Present:

Jean Jreij, Seminole County Representative

CFX Staff Present at Dais:

Joseph A. Berenis, Chief of Infrastructure
Joseph L. Passiatore, General Counsel
Linda S. Brehmer Lanosa, Deputy General Counsel
Darleen Mazzillo, Executive Assistant/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

Action: A motion was made by Mr. Murvin and seconded by Ms. Botts to approve the April 27, 2016 Right of Way Committee meeting minutes as presented.

Vote: The motion carried unanimously with six members present and voting AYE by voice vote, Mr. Jreij was not present.

Chairman's Comments

Chairman Minkoff announced that Item 8 will be pulled from the Agenda. Item 14 will be heard before Item 6 as it may contain additional information when considering Item 6.

Item 4: S.R. 429 (ALI AND ROBERTS) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCEL 262

Mr. Shontz provided the Committee with the description and background of the parcel.

CFX retained the services of Chad Durrance of Durrance & Associates, who estimated value of the 4.786 acres-parcel being taken at \$131,500, he estimated the value of the improvements taken at \$43,500, for a total value of \$175,000.

The Owners retained the appraisal services of Bradley J. Pierson of Pierson Appraisal Group. Mr. Pierson estimated the total value of the land and improvements to be \$599,285.

During mediation, the parties were able to reach a settlement in the amount of \$249,000 as full settlement of all claims for compensation by the property owner, plus statutory attorney's fees totaling \$21,925.20, plus reduced expert fees and costs totaling \$30,000.

David A. Holloway, counsel for the Owners, advised Right of Way Counsel that the apportionment issues related to the easement on Parcel 262 had been resolved. Mr. Holloway agreed to a reduced fee of \$3,500 for supplemental attorney's fees and costs related to the resolution of the apportionment issue.

Mr. Shontz explained the apportionment claim regarding the cross access easement between this Parcel and Parcel 266, the next item on this agenda. The settlement at mediation was contingent upon resolving this apportionment claim.

The Committee asked several questions and extensive discussion ensued regarding attorney's fees for apportionment claims and whether this approval would be in full settlement of all claims on Parcels 262, 266 and 866. In response to the Committee's questions, Mr. Shontz explained the method for determining attorney's fees on apportionment claims.

Haylee O'Dowd of Winderwee, Haines, Ward and Woodman, P.A., explained she is requesting the Committee's recommendation for approval for the upcoming item (Item 5). The request is for payment of attorney's fees to Kurt Bauerle in the amount of \$9,750 for the representation of the tenant, Mr. Ackley, in Parcel 266/866. This would resolve any claims for apportionment fees in Parcels 262, 266/866.

Mr. Minkoff requested that in the future counsel advise the Committee whether or not the settlement includes all claims and completely settle the matter.

The Committee by consensus agreed to vote on Items 4 and 5 together under this item.

Action for Items 4 & 5: A motion was made by Ms. Botts and seconded by Mr. Raymond to recommend to the Board approval of:

Item 4: The proposed mediated settlement agreement in the amount of \$304,425.20 in full settlement of all claims for compensation and apportionment, including statutory and supplemental attorney's fees and costs, and all experts' fees and costs for Parcel 262; and

Item 5: The proposed attorney fee payment in the amount of \$9,750 to Kurt Bauerle to compensate him for his services in representing the tenant, Ryan Ackley, in Parcels 266 and 866, and for the Ackleys' easement interest in Parcel 262.

Vote: The motion carried unanimously with six members present and voting AYE by voice vote, Mr. Jreij was not present.

Item 5: S.R. 429 (ACKLEY) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCELS 262, 266 AND 866

Please see Item 4 for the vote.

Item 14 was heard out of order.

Item 14: S.R. 429 (HATCHER) WEKIVA PARKWAY PROJECT (PROJECT 429-202) PARCELS 113 (PARTS A & B) / 713

Mr. Cheek provided the Committee with highlights from the trial on Parcel 113 Parts A & B. He described the Parcel and location. The Committee approved previously \$200,000 as an Offer of Judgment. CFX's appraised value for compensation was \$81,500. The Owner's appraised value was \$783,100. After a six day jury trial, the Jury returned a verdict of \$260,000. Prejudgment interest adds approximately \$20,000 to the judgment. The judgment will be subject to apportionment from other parties, including a potential mortgage holder. Attorneys' fees to the Callan Law Firm will be approximately \$60,961 based on the statutory betterment formula.

The Committee asked questions which were answered by Mr. Cheek regarding the amount offered at mediation, the appraisals and the comparables used by the appraisers.

This item was for informational purposes. No action was taken by the Committee.

Item 6: S.R. 429 (GRESS) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCEL 304 PART A & B

Mr. Shontz seeks the recommendation of the Right of Way Committee for Board approval of the proposed negotiated settlement with Jacqueline Gress and Roy Gress (the "Owners"). He provided the Committee with a description and the background of the parcel.

CFX retained the appraisal services of Walter N. Carpenter, Jr., of Pinel & Carpenter, Inc. Mr. Carpenter opined the total value of the taking is \$92,540 (\$33,600 land, \$58,680 damages, and \$260 cost to cure).

The Owners are represented by Rachael Crews of Gray Robinson. Ms. Crews retained the appraisal services of Rick Dreggors. No appraisal report has been finalized. Based upon experts' opinions, counsel for the property owners argued the comparable sales indicated land values up to \$51,400 per acre, additional severance damages to the remainder, greater value to the improvements and a cost to cure due to the access road to the property in the after condition.

The parties were able to reach a negotiated settlement in the amount of \$230,000 in full settlement of all claims for compensation by the property owners, plus reduced expert fees of \$15,350, plus statutory attorney's fees of \$45,361.80.

The Committee asked questions which were answered by Mr. Shontz. The Committee also commented on the access to this parcel being changed dramatically and the subject property being the Owners' homestead.

Action: A motion was made by Ms. Caswell and seconded by Ms. Botts to recommend to the Board approval of the proposed settlement agreement in the amount of \$290,711.80 in full settlement of all claims for compensation in the acquisition of Parcel 304, Part A & B, including statutory attorney's fees and costs, and experts' fees and costs.

Ms. Botts expressed concern regarding property owners not providing an appraisal or substantiating documentation validating their claim of value.

Vote: The motion carried unanimously with six members present and voting AYE by voice vote, Mr. Jreij was not present.

Item 7: S.R. 429 (LEWIS) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCEL 305

Mr. Shontz is seeking the Committee's recommendation for Board approval of the proposed negotiated settlement agreement with Thomas Lewis (the "Owner"). Mr. Shontz provided the Committee with the description and location of Parcel 305, Parts A & B.

CFX's appraisal of the property was prepared by Chad Durrance of Durrance & Associates. Mr. Durrance opined the total value of the parent tract at \$125,000 land value and \$134,500 improvements for a total of \$260,000. Mr. Durrance opined the value of the part taken at \$6,200, and the improvements at \$1,500, for a total of land and improvements taken of \$7,700.

The home in the remainder will be 310 feet from the Wekiva Parkway right-of-way, and adjacent to the Wekiva Parkway bridge. Due to the proximity of the expressway, Mr. Durrance opined the remainder will be damaged by 28.6%. Thus, Mr. Durrance opined the market value of the subject taking to be \$82,700, consisting of \$6,200 for land, \$1,500 for improvements, and \$75,000 for damages to the remainder.

The Owner is represented by Rachael Crews, of Gray Robinson. Mrs. Crews retained the appraisal services of Rick Dreggors. Although an appraisal report has not been completed, Mrs. Crews argued other comparable sales indicate land values of up to \$50,000 per acre, additional severance damages to the remainder, greater value to the improvements and a cost to cure due to the access road to the property in the after condition.

The parties were able to reach a negotiated settlement in the amount of \$135,000 in full settlement of all claims for compensation by the property owners, plus reduced expert fees of \$12,600, plus statutory attorney's fees of \$17,259.

Action: A motion was made by Mr. Raymond and seconded by Mr. Murvin to recommend to the Board approval of the proposed settlement agreement in the amount of \$164,859 in full settlement of all claims for compensation in the acquisition of Parcel 305, including all statutory attorney's fees and costs and all experts' fees and costs.

Vote: The motion carried unanimously with six members present and voting AYE by voice vote, Mr. Jreij was not present.

Item 8: S.R. 453 (CSX TRANSPORTATION, INC.) WEKIVA PARKWAY PROJECT (PROJECT 429-206) PARCEL 827/727

This item was pulled from the Agenda.

Item 9: S.R. 408 / EAST-WEST EXPRESSWAY PROJECT (PROJECT 101) SURPLUS PARCEL 1-141

Ms. Brehmer Lanosa is requesting the Committee's recommendation for Board approval for the request by Chickasaw Property, LLC (the "Owner") of the release of phosphate, minerals, metals and petroleum rights ("Mineral Rights"). Ms. Brehmer Lanosa provided the committee with the background of the Parcel and the request of the Owner. In essence, the Owner believes that the parties never intended the Mineral Rights to be excluded from the conveyance which causes a cloud over its title.

The Committee asked questions which were answered by Ms. Brehmer Lanosa.

Action: A motion was made by Ms. Caswell seconded by Mr. Raymond to recommend to the Board approval of the release of phosphate, minerals, metals and petroleum rights in, on and under the property located at the northeast corner of S.R.408 and Chickasaw Trail conveyed in or around June 1997 via Special Warranty Deed recorded at O.R. Book 5275, page264, contingent upon the execution of a Release from Chickasaw Property, LLC, of any claims connected with or arising from the sale of the surplus property.

Vote: The motion carried unanimously with six members present and voting AYE by voice vote, Mr. Jreij was not present.

Item 10: S.R. 429 / WEKIVA PARKWAY PROJECT (PROJECT 429-202, 203, 204, 205 AND 206)

Ms. O'Dowd is requesting the Committee's recommendation for Board approval of this item (Item 10) and the following two items (Items 11 and 12). Item 10 is for an Addendum to Amended Agreement for appraisal services for Bullard Hall & Adams, Inc. for an additional upset limit of \$100,000. Item 11 is for an Addendum to Amended Agreement for appraisal Services with Durrance & Associates, P.A. for an additional upset limit of \$150,000. Lastly, Item 12 is for an Addendum to Agreement for Engineering Expert Witness Services with Donald W. McIntosh Associates, Inc. to perform engineering expert witness services for an additional upset limit of \$150,000.

The Committee asked questions which were answered by Ms. O'Dowd. These agreements are not for new assignments; they are to continue and update their current services.

By consensus the Committee agreed to vote on Item 10, 11 and 12 together under this tab.

Action: A motion was made by Ms. Botts and seconded by Mr. Raymond to recommend to the Board approval of:

- Item 10:** The proposed Addendum to Amended Agreement for Appraisal Services with Bullard Hall & Adams, Inc. for an additional upset limit of \$150,000;
- Item 11:** Addendum to Amended Agreement for appraisal Services with Durrance & Associates, P.A. for an additional upset limit of \$150,000; and
- Item 12:** The proposed Addendum to Agreement for Engineering Expert Witness Services with Donald W. McIntosh Associates, Inc. for an additional upset limit of \$200,000.

Vote: The motion carried unanimously with six members present and voting AYE by voice vote, Mr. Jreij was not present.

Item 11: S.R. 429 (DURRANCE & ASSOCIATES, P.A.) WEKIVA PARKWAY PROJECT (PROJECT 429-202, 203, 204, 205 AND 206)

See Item 10 for vote.

Item 12: S.R. 429 (DONALD W. MCINTOSH ASSOCIATES, INC.) WEKIVA PARKWAY PROJECT (PROJECT 429-202, 203, 204, 205 AND 206) & S.R. 408 WIDENING, 4078/417 INTERCHANGE PROJECT 408-253F

See Item 10 for vote

Item 13: REAL ESTATE AUDIT

Mr. Passiatore provided the Committee with Protiviti's Real Estate Internal Audit, attached as **Exhibit A**. The Audit findings were presented to the Audit Committee and the CFX Board. Mr. Passiatore explained the findings and described the parcels that were audited. He mentioned that the Board requested more information on the right of way acquisition process. Legal will provide the Board with a workshop in July.

The Committee provided their comments on the audit.

This item was presented for informational purposes. No action was taken by the Committee.

Item 15: OTHER BUSINESS

FORM 1 FINANCIAL DISCLOSURE BY CFX COMMITTEE MEMBERS

Mr. Passiatore informed the Committee that the Commission on Ethics mistakenly categorized CFX Committee members as Board members and sent them Form 6 instead of Form 1. Darleen Mazzillo sent out an email advising CFX Committee members not to fill out Form 6. Instead, Committee members will need to complete Form 1 and return it to the Supervisor of Elections in the county where the respective Committee member resides. Ms. Brehmer Lanosa informed the Committee that there is a new section in the Potential Conflict Disclosure form, for certification of training, which needs to be acknowledged by each Committee member.

Item 16: ADJOURNMENT

Mr. Minkoff adjourned the meeting at approximately 3:08 p.m.

Minutes approved on June 22, 2016.

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