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MEMORANDUM

TO: Central Florida Expressway Authority Board Members

FROM: James Edward Cheek, III, Right of Way Counsel 
Winderweedle, Haines, Ward & Woodman, P.A.

DATE: April 25, 2016

RE: S.R. 429 Wekiva Parkway, Project 429-202; Parcel 140
Approval of Offer of Judgment

Winderweedle, Haines, Ward & Woodman, P.A., right of way counsel, seeks this Board's approval to serve an Offer of Judgment to GGH 10, LLC ("Landowner") for Parcel 140, which was acquired for construction of the S.R. 429 Wekiva Parkway, Project 429-202. The Court entered an Order of Taking for this parcel on May 15, 2014.

DESCRIPTION and BACKGROUND:

This case involves the partial taking of unimproved property owned by GGH 10, LLC, located at 3100 Bailey Hill Road, Apopka, Florida, approximately ¼ mile west of Plymouth Sorrento Road. The subject is a 10.633 acre, irregularly-shaped lot located in unincorporated Orange County, Florida. CFX is acquiring approximately half of the property.

The property is a vacant piece of land that had previously been excavated by the Acme Recycling Corporation and used for a clay pit, and then subsequently as a land clearing debris disposal facility. Soil borings from a level 2 contamination impact assessment indicate landfill debris (mostly wood, tree trunks, asphalt, tires and concrete) between two and eight feet deep covering most of the property, except for an area of approximately half an acre in the southeast corner of the parcel. It appears that there is no physical access to the property, as Bailey Hill Road ends approximately 600 feet east of the southeast corner of the property. The Landowner would therefore have to rely on obtaining either an implied easement or statutory easement of necessity across adjoining property. There are no utilities currently onsite.

CFX initially retained the services of Craig Ebaugh with Bledsoe & Ebaugh, LLC, to appraise the property. Mr. Ebaugh concluded that, due to the subject's marginal land characteristics and lack of physical access, development potential was questionable. He therefore utilized three comparable sales of similarly marginal land that had values between \$4,000 - \$6,000 per acre, and reconciled on a value of **\$5,000 per acre**. This resulted in a total compensation

estimate of \$30,400, which is the amount deposited into the court registry as CFX's good faith estimate of value.

CFX subsequently retained the appraisal services of Chad Durrance of Durrance & Associates to update the appraisal to the date of taking. Mr. Durrance considered additional cost information to remediate the site and to acquire and construct access to the site, including removal of a much greater amount of debris than was originally estimated. Mr. Durrance similarly concluded that the property had limited development potential, and identified comparable sales ranging in value from \$2,000 - \$5,000 per acre. Mr. Durrance determined that the property would be worth \$4,000 per acre if it had access. However, due to uncertainty of access and the costs associated with establishing and constructing access, he determined that the property was worth **\$500 per acre**, for a total parent tract value of \$5,000. Mr. Durrance's compensation estimate is summarized as follows:

Value of Part Taken (4.943 acres)	\$2,500.00
<u>Severance Damages to Remainder (5.6 acres)</u>	<u>\$1,500.00</u>
Total Compensation	\$4,000.00

The Landowner has retained the appraisal services of Rick Dreggors with Calhoun, Dreggors & Associates, Inc. Mr. Dreggors opined that the highest and best use of the subject is for a single residential homesite, to be constructed on the half-acre of allegedly developable property located in the southeast corner (where they opine that an implied easement exists). Mr. Dreggors considers five comparable sales that range in size from 3 acres to 11 acres, all of which had access and contained all useable uplands. The properties sold for between \$23,000-\$49,000 per acre. Mr. Dreggors reconciles on a value of **\$30,000 per acre**, for a total parent tract value of \$318,900.

In the after condition, the Landowner contends that the remainder will be left land-locked, as access to the purported implied easement over the adjoining property will be cut-off by the expressway. Furthermore, the entire half-acre of allegedly developable property is located within the taking, leaving only non-developable property in the remainder. Mr. Dreggors' compensation estimate is summarized as follows:

Value of Part Take	\$148,200
<u>Severance Damages to Remainder</u>	<u>\$167,500</u>
Total Compensation	\$313,900

OFFER OF JUDGMENT

Mediation was conducted on April 12, 2016 without a successful resolution. This case is scheduled to go to trial during the September 12, 2016 trial docket. The Right of Way Committee approved the service of an Offer of Judgment in this case on April 27, 2016. Offers of Judgment are authorized in eminent domain actions under §73.032, Florida Statutes, which provides that if a defendant rejects an Offer of Judgment and the verdict or judgment is less than the amount of that offer, the court shall not award any costs incurred by the defendant after the date the Offer was rejected.

The undersigned counsel seeks this Board's approval to serve an Offer of Judgment in the amount of **\$50,000**, exclusive of attorney's fees and costs, or such other amount as approved by the Right of Way Committee. CFX has already deposited \$30,400.00 as its good faith estimate of value. Therefore, if the offer of judgment is accepted, CFX will have to pay an additional \$19,600 to resolve GGH's interest in this case, in addition to attorneys fees and costs.

RECOMMENDATION:

The proposed Offer of Judgment was recommended for Board approval by the Right of Way Committee at the April 27, 2016 meeting. The undersigned counsel respectfully requests that this Board authorize service of an Offer of Judgment in the amount of \$50,000 to fully resolve GGH 10's interest in this case, exclusive of attorneys fees and costs, or such other amount as this Board deems appropriate.

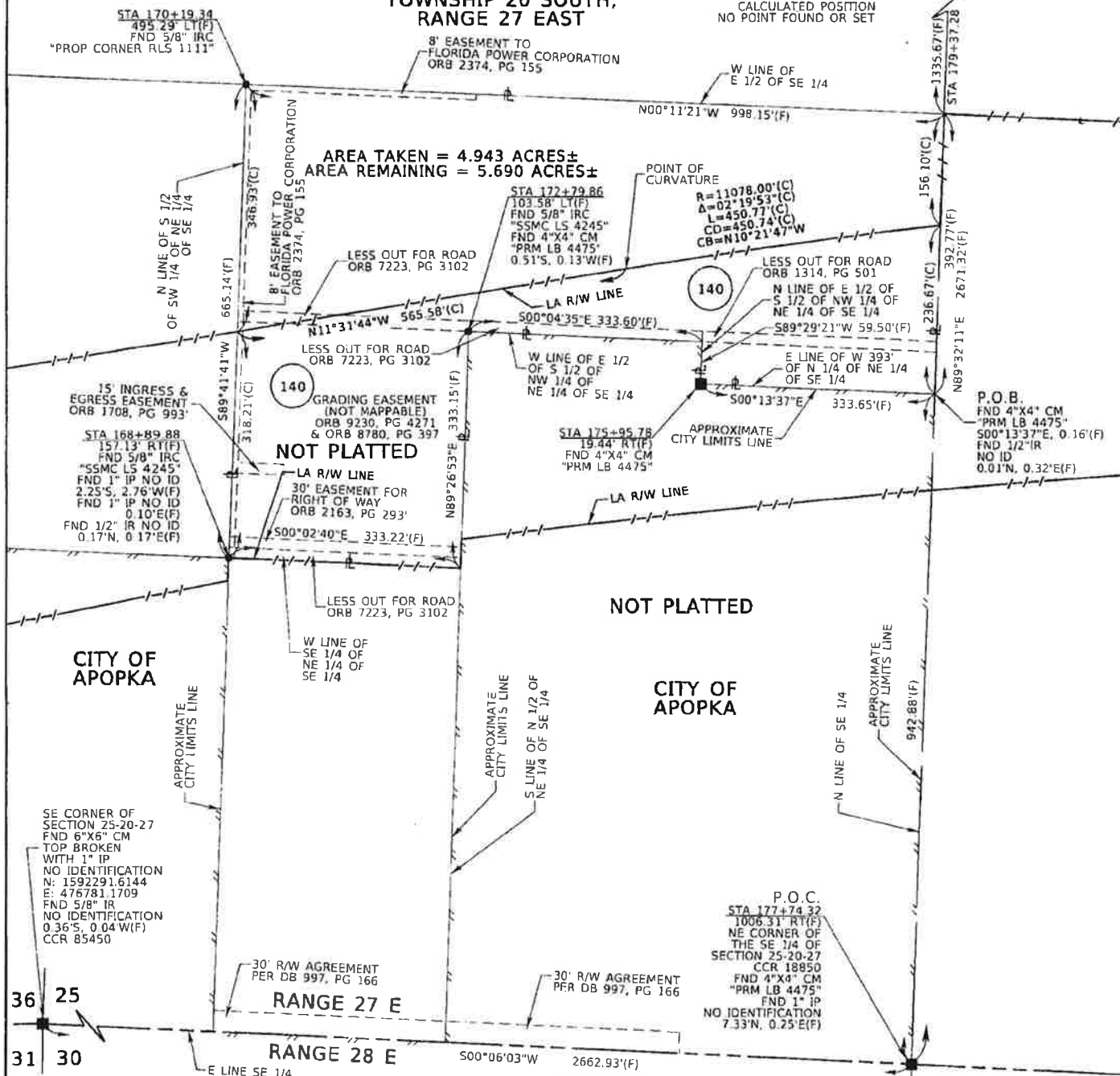
ATTACHMENTS:

Sketch of Property

Reviewed by: Joseph J. Lassiatore

SECTION 25,
TOWNSHIP 20 SOUTH,
RANGE 27 EAST


NW CORNER OF
THE SE 1/4 OF
SECTION 25-20-27
CALCULATED POSITION
NO POINT FOUND OR SET



SECTION 30,
TOWNSHIP 20 SOUTH,
RANGE 28 EAST

SHEET 2 OF 3

STATE ROAD 429
OOCEA PROJECT NO. 429-202
PARCEL NO. 140

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DRAWN: PMM CHECKED: JMS