


WINDERWEEDLE, HAINES, WARD & WOODMAN, P.A.
329 Park Avenue North
Second Floor
Post Office Box 880
Winter Park, Florida 32790-0880
Telephone (407) 423-4246
Facsimile (407) 645-3728

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 141 
Recommendation for Board Approval of Settlement Proposal

Winderweedle, Haines, Ward & Woodman, P.A., right of way counsel, seeks this Board's approval of a settlement with Plymouth Harbor, LLC ("Landowner"), for the acquisition of Parcel 141 (the "Taking" or "Property") for the construction of the S.R. 429 Wekiva Parkway, Project 429-202. The Court entered an Order of Taking for this parcel on June 19, 2014.

DESCRIPTION and BACKGROUND:

The instant action involves the partial taking of property owned by Plymouth Harbor, LLC, and is located at 2404 Plymouth Sorrento Road in Apopka, Florida. The subject is a 24.406 acre rectangular lot improved with a single family residence and horse farm. The improvements are considered an interim use, as the property owner previously received governmental approvals for a 47-lot single-family subdivision. CFX is acquiring approximately 3.24 acres from the property, which effectively reduces the size of the parent tract by 13%.

The land is zoned R-1AA, Residential Single-Family District, by the City of Apopka. This allows development of up to 3.5 residential units per acre. The future land use plan designates the site as RLS, Low Density Suburban Residential. Both parties' appraisers agree that the highest and best use of the subject is for a residential subdivision. CFX's appraiser contends that the property could be developed with 47 lots, which is consistent with the previous site approval; the Landowner's appraiser contends that the site can be developed with 60 lots.

The Landowner claims that it received two prior offers for the property, and had a sales contract which allegedly fell through because of the planned Wekiva Parkway. Specifically, the Landowner has identified (1) a Contract for Sale and Purchase received from Ashland Park Homes, Inc., on July 10, 2006 to purchase the property for \$2,530,000 (\$103,663 per acre / \$53,830 per lot); (2) an offer from Armor Development, LLC on July 14, 2006 to purchase the property for \$2,760,000 (\$113,087 per acre, or \$58,723 per lot); and (3) a Sales Contract with Susan Chang of Evergreen Properties, USA, for \$2,380,000 (\$97,517 per acre, or \$50,630 per lot).

This third sales contract by Susan Chang was accepted by Plymouth Harbor, and the contract was signed by both parties on March 5, 2007. This signed sales contract had a 120 day feasibility study period, during which time the buyer allegedly became aware of the impending Wekiva Parkway project and cancelled the sale.

CFX retained the appraisal services of Chad Durrance of Durrance & Associates to appraise the property. Mr. Durrance determined that the highest and best use of the property was for development of a residential subdivision similar to that described in the sales contract with Susan Chang, which includes the development of 47 lots. Mr. Durrance considered 6 comparable sales that ranged in value from \$24,800 per acre to \$46,000 per acre, and reconciled on a value of **\$38,500 per acre** (\$20,000 per lot for 46 lots). This equates to a total value of \$955,700 for the parent tract, and **\$124,900 for the part taken**.

In his severance damage analysis, Mr. Durrance determined that the taking would result in the remainder being able to accommodate eight (8) fewer lots. The loss of 8 lots x \$20,000 per lot, results in total loss of \$160,000. Mr. Durrance also considers the loss in value of the improvements within the area of taking, increased wall cost, the cost to revise development plans, and the reduction in value due to proximity to the expressway. These additional losses and expenses resulted in a severance damages and cost to cure estimate of **\$214,400**. Mr. Durrance's valuation estimate is summarized as follows:

Value of the Part Taken - 3.24 acres	\$140,600
<u>Severance Damages to the 21-acre remainder</u>	<u>\$214,400</u>
CFX's Total Compensation Estimate	\$355,000

The Landowner retained the appraisal services of Grant Austin with American Valuation Inc. Mr. Austin opined that the property could be developed with 60 lots, rather than 47 lots as initially planned. He considered three comparable sales to determine the before value, ranging from \$50,356 per acre (\$28,000 per lot) to \$102,000 per acre (\$34,614 per lot), and reconciled on a value of **\$76,210 per acre** (\$31,000 per lot for 60 lots). This equates to a total value of \$1,860,000 for the parent tract land and **\$247,186 for the land taken**.

Mr. Austin utilized the discounted cash flow method to arrive at a severance damage claim of **\$1,258,535**. First, he determined that the remainder would be able to accommodate 52 lots, rather than 60 lots in the before. He then determined that the remainder would experience a holding period of 5 years before it would likely be sold for residential development. He concluded that, absent the taking, the remainder has a current land value of \$1,479,000. He then uses a discount rate of 26% per year to arrive at an after value for the property of \$606,755 (very similar to CFX's after-value of \$600,000). This results in an effective severance damage rate of about 60%. Mr. Austin's compensation estimate is summarized as follows:

Value of Part Take	\$ 274,000
<u>Severance Damages to Remainder</u>	<u>\$1, 258,535</u>
Landowner's Total Compensation Estimate	\$1,561,035

EXPERT AND ATTORNEY FEES:

The Landowner retained the services of Mark Natirboff, Esq., who has agreed to accept a statutory betterment attorney fee award. A settlement in the amount of \$700,000 to the Landowner would result in an attorney fee award of \$126,100, based on betterment.

The Landowner has also submitted expert invoices in the amount of \$123,423, as summarized below:

Grant Austin (Appraiser)	\$62,814
Reginal Messimer (Engineer)	24,061
Nexgen (Land Planners)	34,941
Marcus Allen (survey)	537
Patricia Doney (survey)	900
<u>Earthworks - Estimating Services</u>	<u>170</u>
Total	\$123,423

CFX's expert fees in this case totaled \$78,094.91, as summarized below:

Chad Durrance (Appraiser)	\$44,985
MacIntosh & Assoc (Engineer)	30,919
BDA (Environmental Consultants)	1,542
<u>John Speer (Cost to Cure)</u>	<u>650</u>
Total	\$78,095

After negotiations, the Landowner's experts agreed to accept **\$105,000** to resolve its expert fee claims. This represents a reduction of about 15% below invoice amounts. The undersigned counsel has reviewed the invoices submitted and believes that this negotiated fee resolution is reasonable and in the best interest of CFX.

SETTLEMENT PROPOSAL

Mediation was conducted on April 12, 2016 without a successful resolution. However, shortly after mediation the Landowner agreed to accept CFX's proposal to resolve this case for a total of \$931,100, which represents \$700,000 to the Landowner, \$105,000 for expert fees, and \$126,100 in statutory attorney's fees. A resolution of \$700,000 to the Landowner is less than half the amount of compensation estimated in Mr. Austin's appraisal report, and is significantly below the midpoint of the appraisals (\$958,017). The undersigned believes that this settlement proposal is reasonable, especially considering the executed purchase contract signed with Susan Chang in the amount of \$2,380,000, or \$97,517 per acre. The two other offers made on the property set the value even higher (between \$103,000 - \$113,000 per acre).

CFX previously deposited \$275,600 into the court registry as its good faith estimate of value. A settlement in the amount of \$931,100 would require CFX to deposit an additional sum of \$655,500. The terms of the settlement proposal are summarized as follows:

Compensation to Landowner	\$700,000
Attorney's fees	\$126,100
<u>Expert fees</u>	<u>\$105,000</u>
Total Settlement	\$931,100

Acceptance of the proposed settlement is recommended and is in CFX's best interest. Prolonged litigation will subject CFX to additional attorneys fees and costs as well as additional expert fees and costs, which CFX would ultimately be responsible for as part of the Landowner's compensation as provided by 73.091 and 73.092, Florida Statutes. Acceptance of the proposal will eliminate further risk and unnecessary expenses for CFX in this case.

RECOMMENDATION:

The proposed settlement 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 approve for settlement in the amount of \$931,100 to fully resolve Plymouth Harbor's interests in Parcel 141, inclusive of attorney's fees and costs.

ATTACHMENTS:

Sketch of Property

Reviewed by:

_____

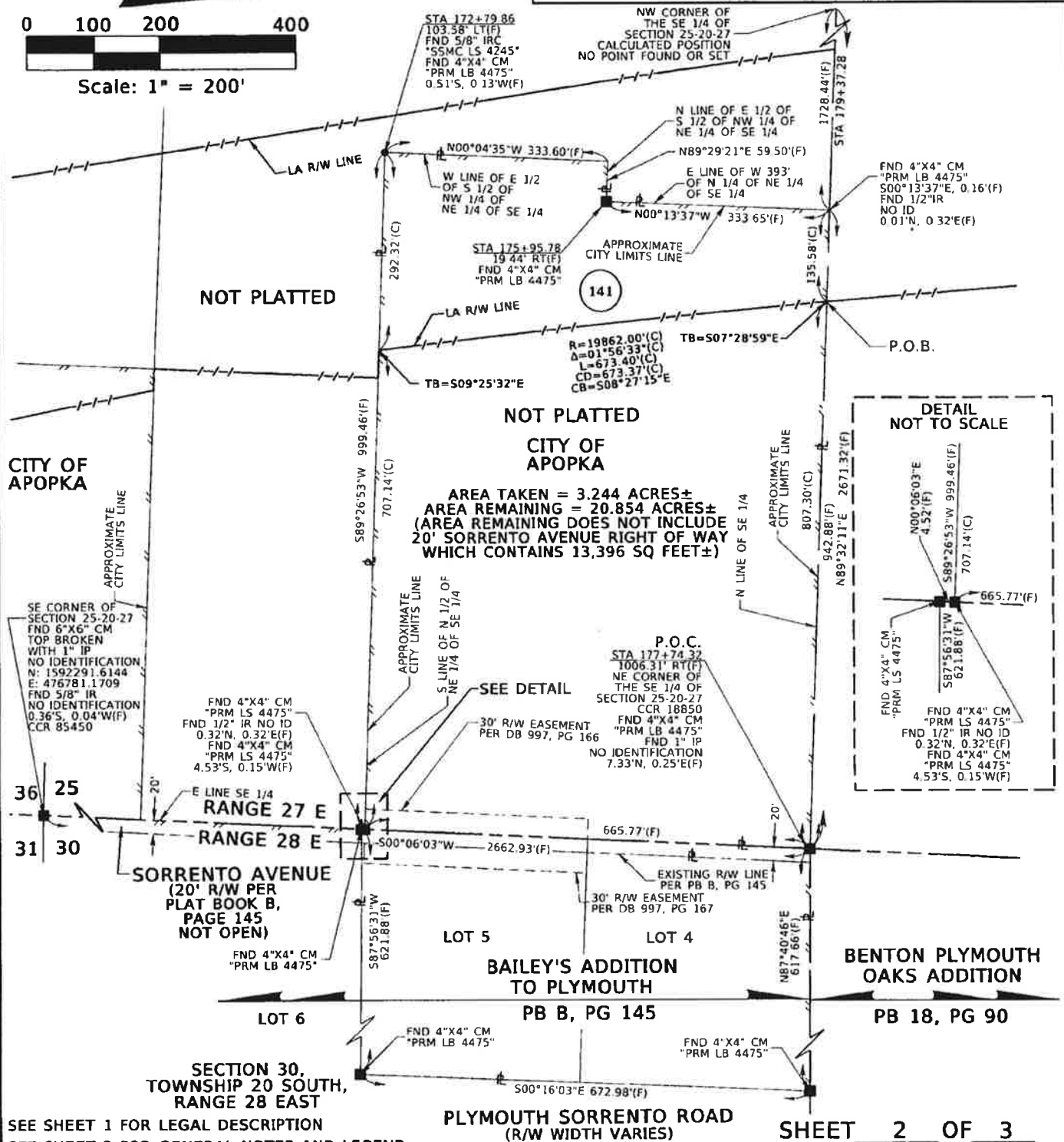
SKETCH OF DESCRIPTION

SECTION 25,
TOWNSHIP 20 SOUTH,
RANGE 27 EAST

0 100 200 400



Scale: 1" = 200'



SHEET 2 OF 3

FOR: ORLANDO-ORANGE COUNTY
EXPRESSWAY AUTHORITY

DATE: MARCH 14, 2013

PROJECT NO.: H20-01

DRAWN: PMM CHECKED: JMS

STATE ROAD 429
OOCEA PROJECT NO. 429-202
PARCEL NO. 141



GEODATA CONSULTANTS, INC.

SURVEYING & MAPPING

2700 WESTHALL LANE

SUITE 137

MAITLAND, FLORIDA 32751

VOICE: (407) 660-2322 FAX: 660-8223

LAND SURVEYOR BUSINESS LICENSE NO. 6556