


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 Check, III, Right of Way Counsel
Winderweedle, Haines, Ward & Woodman, P.A. 

DATE: January 26, 2016

RE: S.R. 429 Wekiva Parkway, Project 429-204: Parcels 275 & 279
Approval of Settlement with Holder & Strite

Winderweedle, Haines, Ward & Woodman, P.A., right of way counsel, seeks the Board's approval of a settlement with Holder & Strite Corporation regarding the claimed business damages related to the taking of Parcels 275 and 279 for the Wekiva Parkway Project 429-202.

DESCRIPTION and BACKGROUND:

This case involves the taking of approximately 28 acres of property used in the hay farming and cattle raising business conducted by Holder & Strite. Specifically, CFX has acquired 17.888 acres through the middle of Parcel 275, which originally contained 52.737 acres, leaving in a bisected northern remainder of 7.691 acres and southern remainder of 27.230 acres. This parcel is owned by Thomas J. Holder, Sr. as a trustee. Additionally, CFX acquired 10.311 acres from Parcel 279, which originally contained 14.14 acres, leaving a 3.829 acre remainder. This property is owned by Adelpha Howell. The real estate value for both Parcels have been appraised by CFX's appraiser at for \$1,508,100.00.

Holder & Strite is a tenant on both properties, and conducts its farming activities on both properties. This corporation retained the legal counsel of Maguire Lassman, P.A., who retained Thomas Durkee, CPA, from the firm of Averett Warmus Durkee, P.A., to analyze its business damage claims. Holder & Strite asserted business damage claims in the amount of **\$553,796.00** (apportioned as \$390,914.00 for Parcel 275 and \$162,881.00 for Parcel 279).

Mr. Durkee determined that the taking will negatively impact the business in several ways, including (1) the loss of the ability to move tractors, trailers, and other farm equipment from the storage area to the southern hay fields via internal roads; (2) the loss of the ability to move the hay bales and rolls from the fields to the covered hay storage barn using internal roads; (3) loss of the ability to move cattle to different grazing fields through internal roads; (4) increased time and costs to travel using public roads; (5) lost security; (6) loss of easy access and circulation for customers; (7) overall loss of efficiency and maneuverability caused by the bisection of the properties. Holder

& Strite further claimed a right to relocation expenses under the Uniform Relocation Act, and may have further claims as tenants to the real estate portion of this case.

CFX retained the services of Les Eiserman, CPA from Clifton 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**, which this Board previously approved.

On November 11, 2015, Holder & Strite served an Offer of Judgment to CFX in the amount of \$99,999.99 (the maximum allowed pursuant to Florida Statute §73.032(3)). This Offer was not all inclusive, and expressly excluded all moving and relocation related damages. While there is some question as to whether an offer containing such an exception complies with the Offer of Judgment statute, opposing counsel has filed a Notice of Withdrawal of the Offer of Judgment and has offered to resolve the total interests of Holder & Strite, including relocation claims, in the amount of **\$125,000.00**. If this settlement proposal is not approved, opposing counsel will refile its Offer of Judgment.

Considering the complexity of the claims presented and the high costs of expert fees to further litigate the claims involved, the undersigned counsel recommends approving settlement in this amount.

EXPERT and ATTORNEY FEES:

The owners have retained the legal services of Harold Lassman, Esquire, of the firm Maguire Lassman, P.A. Attorneys fees based on a betterment between CFX's business damage counter-offer and the proposed settlement offer would total **\$15,245.00** ($\$125,000.00 - \$78,805.00 = \$46,195.00 \times 33\% = \$15,245.00$).

The owners have also retained the services of Tom Durkee, CPA, from the accounting firm of Averett, Warmus and Durkee to prepare the business damage reports. Mr. Durkee submitted invoices in the amount of \$30,283.50, but is willing to accept **\$27,255.00** (for both 275 & 279).

The other expert fees incurred by the business owner in the instant case are intertwined with the real estate claims that remain pending. Cawthra Consulting & Appraisals, so far, has a total invoice amount of \$13,800.00 for 275 and 279. He has apportioned half of this invoice (\$6,900.00) to the business damage claims. After negotiations, he has agreed to accept **\$6,210.00** for his services in this part of the case. Ed Williams has apportioned \$2,800.00 of his time to the business damage portion of this case. After negotiations, he has agreed to accept **\$2,520.00**.

Summary of Settlement Proposal:

Holder and Strite	\$125,000.00
Maguire Lassman, P.A.	15,245.00
Averett, Warmus & Durkee	27,255.00
Cawthra Consulting & Appraisals	6,210.00
Ed Williams	2,520.00
Total	\$176,230.00

RECOMMENDATION:

The proposed settlement was recommended for Board approval by the Right of Way Committee at the January 27, 2016 meeting. We respectfully request the Board's approval of a settlement with Holder & Strite on Parcels 275 and 279 in the total amount of **\$176,230.00**.

ATTACHMENTS:

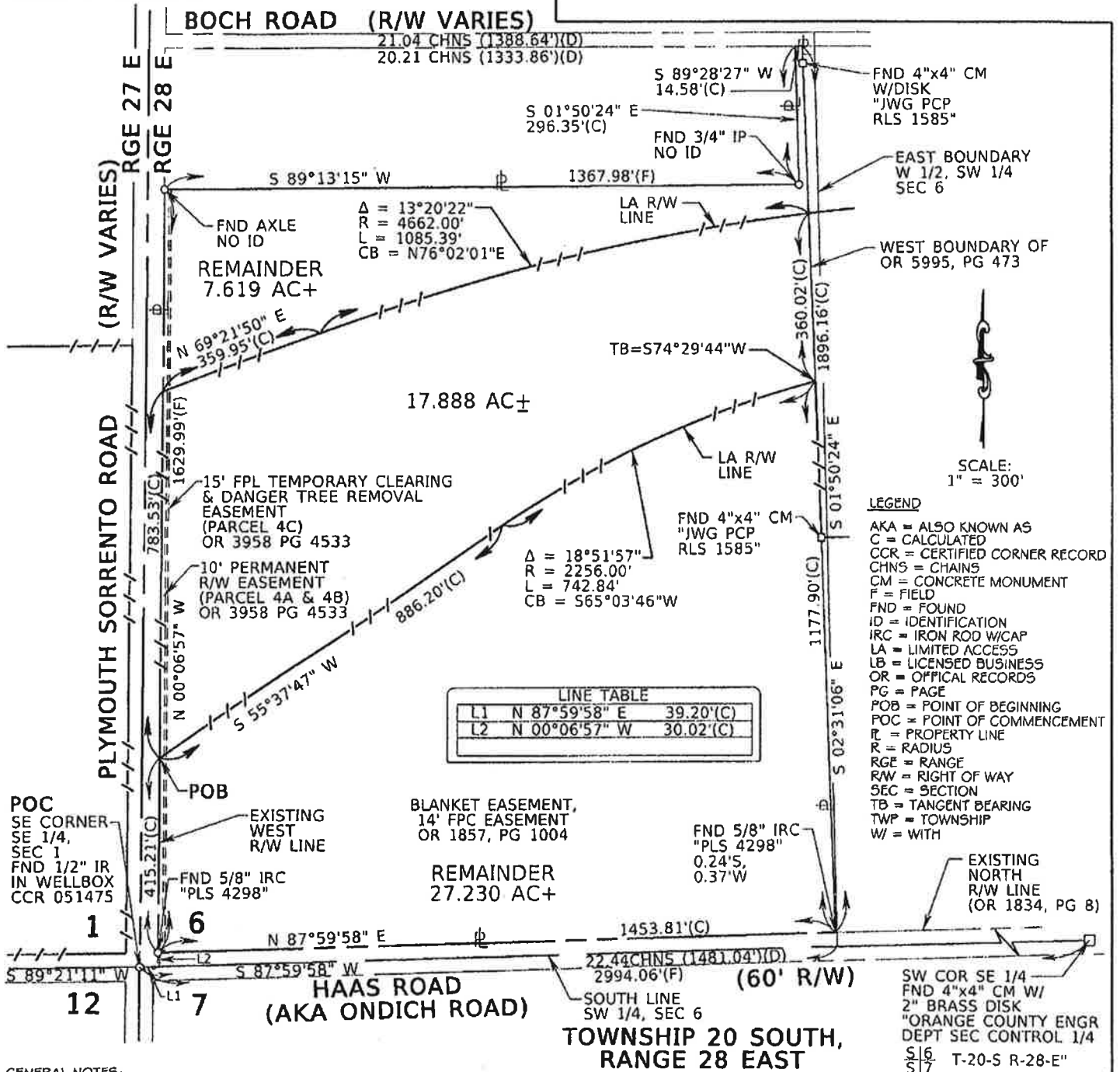
Sketch of Parcels 275 & 279

SKETCH OF DESCRIPTION

PARCEL: 275

PURPOSE: LIMITED ACCESS RIGHT OF WAY

ESTATE: FEE SIMPLE



GENERAL NOTES:

1. THE BEARINGS SHOWN HEREON ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, 1983 NORTH AMERICAN DATUM, 2007 ADJUSTMENT, WITH THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SECTION 1, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, HAVING A BEARING OF SOUTH 89°21'11" WEST.
2. THERE MAY BE OTHER RECORDED DOCUMENTS FOUND IN ORANGE COUNTY RECORDS AFFECTING THIS PROPERTY THAT ARE NOT SHOWN ON THIS SKETCH OF DESCRIPTION.
3. ATTENTION IS DIRECTED TO THE FACT THESE MAPS MAY HAVE BEEN ALTERED IN SIZE BY REPRODUCTION. THIS MUST BE CONSIDERED WHEN OBTAINING SCALE DATA.
4. A CERTIFICATE OF TITLE INFORMATION PREPARED BY "FIRST AMERICAN TITLE INSURANCE COMPANY" DATED NOVEMBER 29, 2012, FILE NO. 2037-2864232 WAS REVIEWED BY THE SURVEYOR AND EXCEPTIONS (IF ANY) NOTED ON SAID CERTIFICATE ARE SHOWN HEREON.

FOR: ORLANDO ORANGE COUNTY EXPRESSWAY AUTHORITY

STATE ROAD 429

DESIGNED BY: RJM

DATE: 3/18/14

DRAWN BY: DJK

JOB NO:

APPROVED BY: RJM

OOCEA PROJECT NO: 429-204

URS

URS CORPORATION
315 E. ROBINSON STREET
SUITE 245
ORLANDO, FL 32801-1949
PH (407) 422-0353
LICENSED BUSINESS NO. 6639

REVISIONS:

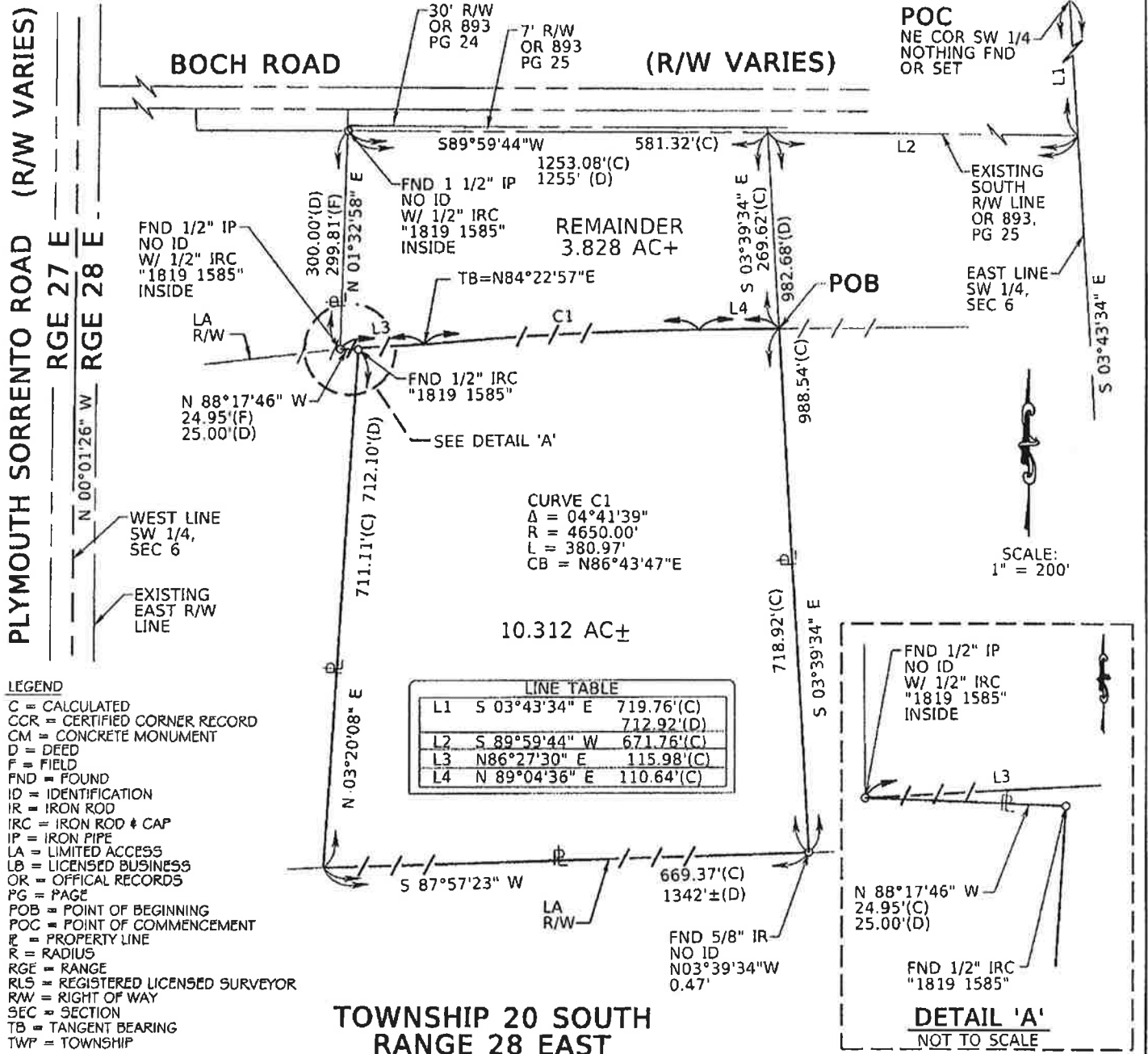
SHEET: 2 OF 2

SKETCH OF DESCRIPTION

PARCEL 279

PURPOSE: LIMITED ACCESS RIGHT OF WAY

ESTATE: FEE SIMPLE



GENERAL NOTES:

- THE BEARINGS SHOWN HEREON ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, 1983 NORTH AMERICAN DATUM, 2007 ADJUSTMENT, WITH THE WEST LINE OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, HAVING A BEARING OF NORTH 00°01'26" WEST.
- THERE MAY BE OTHER RECORDED DOCUMENTS FOUND IN ORANGE COUNTY RECORDS AFFECTING THIS PROPERTY THAT ARE NOT SHOWN ON THIS SKETCH OF DESCRIPTION.
- ATTENTION IS DIRECTED TO THE FACT THESE MAPS MAY HAVE BEEN ALTERED IN SIZE BY REPRODUCTION. THIS MUST BE CONSIDERED WHEN OBTAINING SCALE DATA.
- A CERTIFICATE OF TITLE INFORMATION PREPARED BY "FIRST AMERICAN TITLE INSURANCE COMPANY" DATED OCTOBER 18, 2012, FILE NO. 2037-2840301 WAS REVIEWED BY THE SURVEYOR AND EXCEPTIONS (IF ANY) NOTED ON SAID CERTIFICATE ARE SHOWN HEREON.

FOR: ORLANDO ORANGE COUNTY EXPRESSWAY AUTHORITY

STATE ROAD 429

DESIGNED BY: RJM

DATE: 3/18/14

DRAWN BY: DJK

JOB NO:

APPROVED BY: RJM

OOCEA PROJECT NO: 429-204

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SHEET: 2 OF 2