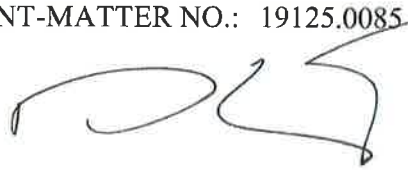




## MEMORANDUM

TO: Central Florida Expressway Authority      CLIENT-MATTER NO.: 19125.0085  
Board Members

FROM: David A. Shontz, Esq., Right-of-Way Counsel 

DATE: October 3, 2016

RE: State Road 429 Wekiva Parkway, Project 429-203; Parcel 168  
Proposed Offer of Judgment

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Shutts & Bowen LLP, Right-of-Way Counsel, seeks the approval of the CFX Board for an Offer of Judgment in full settlement of Parcel 168 owned by Phillip M. Simmons for State Road 429 Wekiva Parkway, Project 429-203.

### DESCRIPTION AND BACKGROUND

Parcel 168 is a fee simple partial taking consisting of .228 acres. The parent tract was 9.737 acres in size and the remainder property is 9.509 acres. The property is located at 3145 Phils Lane in Apopka, Orange County, Florida. The subject property is improved with two (2) manufactured homes. The first is 1,728 s.f. containing 3 bedrooms and 2 bathrooms constructed in 1993. The second 672 s.f. manufactured home containing 2 bedrooms and 1 bathroom was constructed in 1968. Other improvements include a detached aluminum 2 car carport, two (2) metal sheds, a wood frame shop building and a wood shed. The property is zoned A-1, citrus rural district by Orange County.

The CFX's appraisal of the property was prepared by David Hall of Bullard, Hall and Adams. Mr. Hall opined the highest and best use of the property is for continued single family use. Mr. Hall used five (5) comparable land sales with prices ranging from \$22,874 per acre to \$30,021 per acre to arrive at an estimate of the land value of the Subject Property of \$30,000 per acre and a value of \$6,900 for the land taken.

Mr. Hall used three (3) improved sales to determine the value of the first manufactured home which is larger and of newer construction with prices ranging from \$57.66 to \$67.95 s.f. In the after condition, the residence is within 470 feet of the new right-of-way line for the SR 429 roadway which has significantly changed the character of the neighborhood in the after condition. Mr. Hall concluded severance damages in the amount of 30% to this manufactured

home as a result of the proximity of the roadway and the change in character of the neighborhood.

Mr. Hall used three (3) improved sales to determine the value of the smaller and older manufactured home with prices ranging from \$35.96 to \$40.15 s.f. In the after condition, the manufactured home is within 55 feet of the new right-of-way line for the SR 429 roadway which has significantly changed the character of the neighborhood in the after condition. Mr. Hall concluded severance damages in the amount of 50% to this manufactured home. Furthermore, Mr. Hall concluded severance damages of 50% to the remaining land as a result of the proximity of the roadway and the change in character of the neighborhood. Accordingly, Mr. Hall's total valuation for Parcel 168 is \$197,800 (\$6,900 land; \$34,800 damages to manufactured home #1; \$13,500 damages to manufactured home #2 and \$142,600 damages to the land).

Phillip M. Simmons is represented by Tom Callan, Esq. We have attempted to engage in settlement negotiations with Mr. Callan in an effort to settle this parcel. Unfortunately, Mr. Callan has some health issues that require a surgery in December 2016, which is likely the cause for a delay in settlement negotiations. While this case is currently set on the Court's July 2017 trial docket, due to Mr. Callan's health issues, it may ultimately be removed as Mr. Callan has already requested that the pretrial deadlines be extended. Accordingly, in an effort to move this case forward and to provide the property owner a settlement offer and potentially cap the costs to be incurred by the property owner (which are recoverable against the CFX), we are proposing an Offer of Judgment. If the Offer of Judgment is accepted by the property owners, the case would be concluded. If the Offer of Judgment is not accepted within 30 days, then it expires. If a jury subsequently renders a verdict equal to or less than the Offer of Judgment, the property owner shall not recover any costs (including expert fees) incurred from the expiration of the Offer of Judgment through trial.

Based upon our extensive knowledge and review of numerous parcels on the project, positions taken by opposing counsel and experts, prior settlements and prior jury verdicts, I would propose an Offer of Judgment for Parcel 168 in the amount of \$330,000, plus statutory attorney's fees and experts costs. The Offer of Judgment reflects an increase in the land value and severance damages allocated to the manufactured homes and remaining land value.

For the above-cited reasons, Right-of-Way counsel requests the approval of the CFX Board for an Offer of Judgment in the amount of \$330,000, plus statutory attorney's fees and experts costs, which is in the CFX's best interest.

### **RECOMMENDATION**

We respectfully request that CFX Board approve the Offer of Judgment in the amount of \$330,000, plus statutory attorney's fees and experts costs in full settlement of all claims for compensation in the acquisition of Parcel 168.

This matter was recommended for approval by the Right-of-Way Committee at its meeting on September 28, 2016.

**ATTACHMENTS**

Exhibit "A" – Sketch of the Subject Property

Exhibit "B" – Photographs of the Subject Property and Area

Reviewed by:

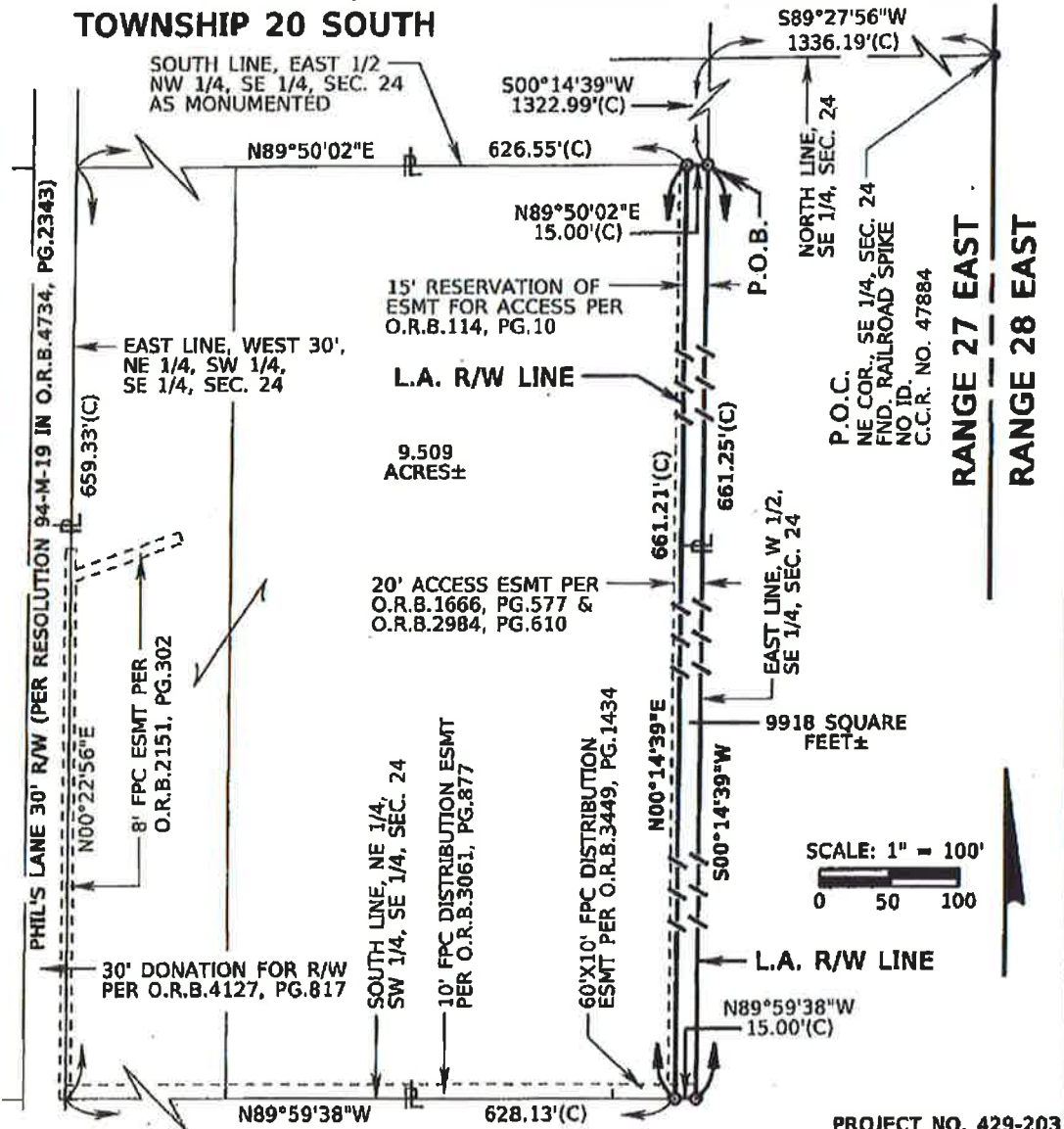
*Joseph S. Passiatore*

ORLDOCS 14968720 1

# EXHIBIT “A”

BEARING STRUCTURE BASED ON THE NORTH LINE OF THE SOUTHEAST 1/4 OF SEC. 24-20-27, BEING S89°27'56"W, FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, 1983/2007 ADJUSTMENT.

**SECTION 24,  
TOWNSHIP 20 SOUTH**



PROJECT NO. 429-203

I HEREBY CERTIFY THAT THIS SKETCH OF DESCRIPTION IS IN ACCORDANCE WITH THE "HIGHEST TECHNICAL STANDARDS" AS PROVIDED BY CHAPTER 51-17 FLORIDA ADMINISTRATIVE CODE FOR LAND TO SECTION 472.922, FLORIDA STATUTES.  
 WILLIAM E. BYRNE, S.M.  
 LICENSE NUMBER 3442  
 DATE 12/20/13  
 NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

CERTIFICATION OF AUTHORIZATION (A-18-1721)  
  
 520 SOUTH MAGNOLIA AVENUE  
 ORLANDO, FLORIDA 32801  
 (407) 843-9120  
 FAX 407-849-8554

SKETCH OF DESCRIPTION.  
 THIS IS NOT A BOUNDARY SURVEY.  
 S.R. 429 (WEKIVA PARKWAY)  
 ORLANDO-ORANGE COUNTY  
 EXPRESSWAY AUTHORITY  
 ORANGE COUNTY, FLORIDA

PARCEL  
 168  
 SCALE: 1"=100'  
 SHEET 2 OF 2

**SKETCH OF DESCRIPTION  
PARCEL 168**

# EXHIBIT “B”

**PHOTOGRAPHS OF SUBJECT  
PARCEL 168**



1. LOOKING NORTH AT THE FRONTAGE ALONG PHILS LANE



2. LOOKING EAST AT HOUSE 1

Photographs Taken By:  
David K. Hall  
August 14, 2014



**PHOTOGRAPHS OF SUBJECT  
PARCEL 168**



3. LOOKING EAST AT HOUSE 2



4. LOOKING NORTHEAST AT THE BARN/SHED AND THE VINYL SIDING SHED

Photographs Taken By:  
David K. Hall  
August 14, 2014



**PHOTOGRAPHS OF SUBJECT  
PARCEL 168**



**5. LOOKING EAST AT THE DETACHED CARPORT**



**6. LOOKING SOUTHEAST AT THE METAL SHED AND DOG PENS**

Photographs Taken By:  
David K. Hall  
August 14, 2014

