

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MINUTES
CENTRAL FLORIDA EXPRESSWAY AUTHORITY
Right of Way Committee Meeting
July 27, 2016
Location: CFX Boardroom

Committee Members Present:

Melanie Marsh Lake County Representative Alternate, Chairman
Neil Newton, Seminole County Representative Alternate
Laurie Botts, City of Orlando Representative
Brendon Dedekind, Citizen Representative
Ann Caswell, Orange County Representative

Committee Members Not Present:

Frank Raymond, Osceola County Representative
Christopher Murvin, Citizen Representative

CFX Staff Present at Dais:

Joseph L. Passiatore, General Counsel
Laura Kelley, Executive Director
Linda S. Brehmer Lanosa, Deputy General Counsel
Mimi Lamaute, Paralegal/Recording Secretary

Item 1: CALL TO ORDER

The meeting was called to order at 2:01 p.m. by Chairman Marsh.

Item 2: PUBLIC COMMENT

There was no public comment.

Chairman's Comments

Chairman Marsh announced that Mr. Raymond and Mr. Murvin would not be at today's meeting. Mr. Neil Newton will be attending in Mr. Jreij's absence. She thanked the Committee members for submitting the Financial Disclosure Form 1 and Potential Conflict Disclosure forms. Apopka Mayor, Joe Kilsheimer will be the presenter of Item 9.

Item 3: APPROVAL OF MINUTES

Action: A motion was made by Ms. Botts and seconded by Mr. Dedekind to approve the June 22, 2016 Right of Way Committee meeting minutes as presented.

Vote: The motion carried unanimously with four members present and voting AYE by voice vote, Mr. Murvin and Mr. Raymond were not present, Ms. Caswell had not arrived.

Committee Member Ann Caswell arrived at this time.

Item 4: S.R. 429 (KIZER) WEKIVA PARKWAY PROJECT (PROJECT 429-202) PARCEL 111

Mr. Cheek is seeking the Committee's recommendation for Board approval of a proposed settlement with Robert G. Kizer, Preston B. Kizer, Jr., and Martha W. Kizer (the "Owners"). Mr. Cheek provided the Committee with a description and the background of the parcel.

CFX retained the appraisal services of David Hall of Bullard, Hall & Adams, Inc. Mr. Hall opined the total value of the taking is \$101,900, with the Value of the Part Taken at \$15,500, Severance Damages at \$84,700, and Cost to Cure at \$1,700.

The Owners retained the appraisal services of Rick Dreggors with Calhoun, Dreggors & Associates, Inc. Mr. Dreggors preliminarily opined that the property was worth \$35,000 per acre but did not complete a final appraisal for this parcel.

After direct negotiations with the Owners, they have agreed to accept the following settlement proposal to compensate them for both the taking and any tree loss / trespass claims:

Eminent domain claim/trespass/loss of trees	\$195,000
Expert Fees	5,000
Attorney's fees (Kurt Bauerle)	<u>30,723</u>
Total Settlement Proposal	\$230,723

The Owners' expert, Richard Dreggors, incurred fees of \$6,500, but agreed to accept \$5,000. CFX incurred expert fees in the amount of \$10,260. The Owner's attorney, Kurt Bauerle, has agreed to accept statutory attorney's fees based on betterment in the amount of \$30,723.

Action: A motion was made by Ms. Botts and seconded by Ms. Caswell to recommend to the Board approval of the proposed settlement agreement in the amount of \$230,723, inclusive of attorney's fees and costs and expert fees and costs, to resolve the acquisition of Parcel 111.

Vote: The motion carried unanimously with five members present and voting AYE by voice vote, Mr. Murvin and Mr. Raymond were not present.

**Item 5: S.R. 429 (GGH 10, LLC) WEKIVA PARKWAY PROJECT (PROJECT 429-202)
PARCEL 140**

Mr. Cheek is requesting the Committee's recommendation for Board approval for a proposed settlement with GGH 10, LLC ("Owner"). This parcel is located just north from the previously presented parcel.

Mr. Cheek provided the Committee with the description and background of the parcel. This is an unimproved 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. The main dispute in this case is whether there was legal access to the property.

Mediation was conducted on April 12, 2016 without success. This case is scheduled for trial on the September 12, 2016 docket.

CFX retained the services of Chad Durrance of Durrance & Associates to update the appraisal to the date of taking. Due to the uncertainty of access and the costs associate with establishing and constructing access, he estimated the value of the 4.943 acres being taken at \$2,500, severance damages to remainder at \$1,500, for a total value of \$4,000. CFX's expert's submitted invoices in the amount of \$57,256.

The Owners retained the appraisal services of Rick Dreggors with Calhoun, Dreggors & Associates, Inc. Mr. Dreggors opined the total value of the land and improvements to be \$313,900. The Owners submitted expert invoices in the amount of \$103,290.

The Right of Way Committee previously approved an Offer of Judgment in the amount in \$50,000. The Owner filed a Reverse Offer of Judgment in the amount of \$99,999.99.

After negotiations the Owner has agreed to resolve this case for \$199,999 "all-in" including expert fees and attorney's fees, pending Committee's recommendation and Board approval.

Conversation ensued regarding the access to the property, cost to provide access to the property, cost to clear the property of debris and the cost to bring utilities into the property. The Committee asked several questions, which were answered by Mr. Cheek.

Action: A motion was made by Mr. Dedekind and seconded by Mr. Newton to recommend to the Board approval of the proposed settlement agreement in the amount of \$199,999, inclusive of attorney's fees and costs and expert fees and costs, to resolve the acquisition of Parcel 140.

Vote: The motion carried unanimously with five members present and voting AYE by voice vote, Mr. Murvin and Mr. Raymond were not present.

The following item was taken out of order.

Item 9: **S.R. 414 (CFX) MAITLAND BOULEVARD EXTENSION PROJECT / PHASE 2**
(PROJECT 429-200) PARCEL 229A - PART A

Apopka Mayor, Joe Kilsheimer is requesting the Committee's recommendation for Board approval for a dedication of right-of-way to the City of Apopka by CFX to construct a roundabout at the intersection off the S.R. 414 eastbound entrance ramp and Marden Road. He explained the future economic opportunities for the area.

Mr. Passiatore stated that CFX received the request for the dedication on July 18, 2016. Per CFX bond covenants and CFX policies and procedures, any time a request is received to convey a property either for sale to a private entity or for conveyance to a public agency a determination from CFX's General Engineering Consultant ("GEC") declaring the parcel surplus is required. In this instance, after a week of review, the GEC has formulated an opinion in the July 26, 2016 memo attached hereto as Exhibit "A." At this time, although the GEC is in favor of the concept, the GEC is not in a position to declare the parcel surplus and to recommend the conveyance. The reasons for the decision are stated in the memo attached hereto.

Staff recommends finalizing the terms of a jurisdictional transfer agreement with the following assurances: that the City of Apopka provide final design plans; the dedication from the developer to CFX is synchronized with the conveyance from CFX; and the contingency that if the project doesn't go forward that the 14,000 s.q. foot parcel revert back to CFX.

Mayor Kilsheimer stated they have reviewed the GEC memo and will make any stipulations that need to be made in order to address the concerns of CFX.

Mr. Wright, President of MMI Development, addressed the Committee and provided a short description of where they are in the process regarding the design plans. He agreed with the reverter clause. He discussed the start of the construction in 60 days, the funding, survey work and needed deeds.

A map attached hereto as Exhibit "B" was provided to the Committee depicting the parcel that would be dedicated to the City of Apopka, the portion needed for the ramp construction and the portion that CFX would still maintain and own.

Mr. de la Portilla, MMI Development's Government Liaison, addressed the Committee and explained the schedule and the need for Committee and Board approvals to avoid further delays.

Mr. Nathan Silva from Atkins (CFX's GEC) explained the requirements per CFX bond documents for reviewing plans for various matters such as drainage, signage, etc. and the process for review and approval of final construction plans. He indicated that their normal review would require two weeks.

Conversation ensued regarding requirements per CFX policies and procedures for transferring property, contemplation of conditional approval subject to the GEC declaring the parcel surplus and the required conditions of the transfer agreement, and options for contingencies for approval today by the Right of Way Committee. Ms. Botts pointed out that typically all relevant documents are provided to the Committee for review in advance of the meeting.

Mr. Dedekind suggested a condition be added that the cost of work to be completed in the area be placed in escrow. Mr. Wright agreed so long as if there is a failure of the reverter, then the money is returned.

Action: This Item failed for lack of a motion.

General Counsel stated that the item would be brought back for the August meeting.

Item 6: **S.R. 429 (BRIDLE PATH, LLC / CHAPTER 7 DEBTOR - AHIFO-18) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCEL 236**

Mr. Cheek is requesting the Committee's recommendation for Board approval of a settlement with AHIFO-18. At the time of the taking, the property was owned by Bridle Path, LLA. Bridle Path ultimately filed bankruptcy. AHIFO-18, Bridle Path's creditor, was the successful bidder at the foreclosure sale and currently owns the property.

CFX's appraisal of the property was prepared by Walter Carpenter of Pinel & Carpenter, Inc. Mr. Carpenter opined the total compensation is \$1,791,600, he estimated the Value of the Part Taken at \$685,900, Value of home taken at \$200,000, Severance Damages at \$900,200 and Cost to Cure at \$5,500.

The Owner retained the appraisal services of Richard Dreggors of Calhoun, Dreggors & Associates, Inc. Mr. Dreggors opined the total value for the land was \$3,943,100.

The Owner submitted expert invoices in the amount of \$48,067.50. The Owner's experts have agreed to accept a total of \$43,261 to resolve their fees and costs. CFX's expert fees in this case total \$40,938.75.

Mediation was conducted on July 30, 2014, which resulted in an impasse. Subsequent negotiations resulted in a tentative settlement of \$2,999,995 plus attorneys' fees and expert fees and costs, with the initial owner and then the new owner, subject to ratification by the bankruptcy or state court.

This parcel is subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("Relocation act"). Discussion ensued regarding the Relocation Act as it relates to this parcel, serving an Offer of Judgment and approving the settlement subject to additional Relocation Act payments. The Committee asked several questions, which were answered by Mr. Cheek.

The Committee discussed recommending approval of the settlement subject to the approved amount being an all-in settlement with no additional apportionment costs, no additional attorney's fees and costs and subject to any Relocation Act payments to be made to Owner or credits owed to CFX.

Action: A motion was made by Ms. Botts and seconded by Ms. Caswell to recommend to the Board approval of the proposed settlement in the amount of \$3,354,939, inclusive of attorney's fees and expert fees and costs; subject to no additional apportionment claims, no additional costs or additional attorney's fees and costs and subject to any Relocation Act payments owing to the Owner or credits due to CFX, to resolve the Owner's interest in Parcel 236.

Vote: The motion carried unanimously with five members present and voting AYE by voice vote, Mr. Murvin and Mr. Raymond were not present.

Item 7: S.R. 429 (DAVILA AND ROBLES) WEKIVA PARKWAY PROJECT (PROJECT 429-202) PARCEL 130, PARTS A & B

Mr. Cheek is seeking the Committee's recommendation for Board approval of a proposed settlement for Parcel 130.

CFX retained the appraisal services of Stephen J. Matonis with Integra Realty Resources. Mr. Matonis opined the total value of the taking is \$40,860, with the Value of the Part Taken at \$8,659, Damages to Remainder (10%) at \$27,301, and Cost to Cure at \$4,900.

The Owners, through their attorney Raymer Maguire, served a "Reverse" Offer of Judgment to settle this case in the amount of \$62,500, exclusive of attorney's fees and costs. The Owner submitted expert invoices in the amount of \$13,649.

CFX has incurred fees in the amount of \$6,500 for the real estate appraisal services of Integra Realty Resources.

Counsel is recommending settlement in the amount of \$81,92; consisting of compensation to the Owner at \$62,500, expert fees in the amount of \$12,284 and attorney's fees in the amount of \$7,141.

Action: A motion was made by Mr. Dedekind and seconded by Mr. Newton to recommend to the Board approval of the proposed settlement agreement in the amount of \$81,925 in full settlement of all claims for compensation, including statutory and supplemental attorney's fees and costs, and all experts' fees and costs for Parcels 130, Parts A & B.

Vote: The motion carried unanimously with five members present and voting AYE by voice vote, Mr. Murvin and Mr. Raymond were not present.

Item 8: **S.R. 429 (ORANGE COUNTY) DANIEL WEBSTER WESTERN BELTWAY (PART C – TURNPIKE TO SEIDEL ROAD)**

Ms. Brehmer Lanosa stated this agreement is for the transfer of right-of-way by CFX for County roads and a retention pond from CFX to Orange County, subject to easements for S.R. 429 crossings with reservations confirming that S.R. 429 is a limited access expressway. Similarly, the agreement addresses the transfer of title over or under County roads for CFX's bridges and crossings from Orange County to CFX.

Ms. Brehmer Lanosa clarified that this item is in the Daniel Webster Western Beltway project.

Ms. Caswell asked if she was permitted to vote on Orange County matters, due to the fact that she is an Orange County representative. Mr. Passiatore responded that she is obligation to vote as she is acting in her official capacity and not in a personal capacity.

Action: A motion was made by Ms. Caswell and seconded by Ms. Botts to recommend to the Board approval of the proposed Agreement for Right-of-Way Transfer and Continuing Maintenance between Orange County and the Central Florida Expressway Authority pertaining to State Road 429, Part C from the Turnpike to Seidel Road.

Vote: The motion carried unanimously with five members present and voting AYE by voice vote, Mr. Murvin and Mr. Raymond were not present.

Item 10: OTHER BUSINESS

No other business was discussed.

Item 11: ADJOURNMENT

Chairman Marsh adjourned the meeting at approximately 4:00 p.m.

Minutes approved on August 24, 2016.

Pursuant to the Florida Public Records Law and CFX Records Management Policy, audio tapes of all Board and applicable Committee meetings are maintained and available upon request to the Records Management Liaison Officer at publicrecords@CFXWay.com or 4974 ORL Tower Road, Orlando, FL 32807.