

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MINUTES
CENTRAL FLORIDA EXPRESSWAY AUTHORITY
Right of Way Committee Meeting
September 28, 2016
Location: CFX Boardroom

Committee Members Present:

Bob Babcock, Orange County Representative Alternate, Committee Chairman
Sandy Minkoff, Lake County Representative
Laurie Botts, City of Orlando Representative
Brendon Dedekind, Citizen Representative
Frank Raymond, Osceola County Representative
Christopher Murvin, Citizen Representative

Committee Members Not Present:

Jean Jreij, Seminole County Representative

CFX Staff Present at Dais:

Joseph L. Passiatore, General Counsel
Joseph A. Berenis, Chief of Infrastructure
Linda S. Brehmer Lanosa, Deputy General Counsel
Mimi Lamaute, Paralegal/Recording Secretary

Item 1: CALL TO ORDER

The meeting was called to order at 2:00 p.m. by Chairman Babcock.

Item 2: PUBLIC COMMENT

There was no public comment.

Item 3: APPROVAL OF MINUTES

Action: A motion was made by Ms. Botts and seconded by Mr. Raymond to approve the August 24, 2016 Right of Way Committee meeting minutes as presented.

Vote: The motion carried unanimously with six members present and voting AYE by voice vote. Mr. Jreij was not present.

Item 4: S.R. 429 (AMERICAN FINANCE, LLC) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCEL 251

Mr. Shontz said that Items 4 through 10 are all requests to serve Offers of Judgment. He explained the purpose and benefits of serving Offers of Judgment. He also explained briefly the analysis he used to calculate each of the amounts requested for approval.

The Committee by consensus agreed that the Offer of Judgment amounts were too low, with the exception of the offer in Parcel 242 (Item 10). The Committee had lengthy discussion on serving higher Offers of Judgment based on an increase strictly on the appraisal amount, increase of offers with consideration of risks and other factors, and the best method for calculating increases to the Offers of Judgment.

Action: A motion was made by Mr. Minkoff to recommend to the Board approval to serve Offers of Judgment in Items 4-10 in an amount equal to 160% over the CFX original appraisal amount.

Concern was raised about calculating the offer amounts strictly based off of the appraisal values as opposed to considering the risk and other factors associated with each parcel and the risk of calculating these amounts with a set calculation.

The motion died for lack of a second.

Discussion ensued regarding the benefit of strategical higher offers and the method for calculating each of the higher Offers of Judgment.

The Committee addressed each of the items individually.

Action: A motion was made by Ms. Botts and seconded by Mr. Minkoff to recommend to the Board approval of the Offer of Judgment in the amount of \$205,200, plus statutory attorney's fees and experts costs in full settlement of all claims for compensation in the acquisition of Parcel 251.

Vote: The motion carried unanimously with six members present and voting AYE by voice vote. Mr. Jreij was not present.

Item 5: S.R. 429 (BROWN) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCEL 258

Mr. Shontz requested approval to serve an Offer of Judgment for Parcel 258 in the increased amount of \$386,400, as suggested by the Committee.

Action: A motion was made by Mr. Minkoff and seconded by Ms. Botts to recommend to the Board approval of the Offer of Judgment in the amount of \$386,400, plus statutory attorney's fees and experts costs in full settlement of all claims for compensation in the acquisition of Parcel 258.

Vote: The motion carried unanimously with six members present and voting AYE by voice vote. Mr. Jreij was not present.

Item 6: S.R. 429 (BRIDGES) WEKIVA PARKWAY PROJECT (PROJECT 429-206) PARCEL 318

Mr. Shontz requested approval to serve an Offer of Judgment for Parcel 318 in the increased amount of \$148,800, as suggested by the Committee.

Action: A motion was made by Ms. Botts and seconded by Mr. Murvin to recommend to the Board approval of the Offer of Judgment in the amount of \$148,800, plus statutory attorney's fees and experts costs in full settlement of all claims for compensation in the acquisition of Parcel 318.

Vote: The motion carried unanimously with six members present and voting AYE by voice vote. Mr. Jreij was not present.

Item 7: S.R. 429 (YEOMANS) WEKIVA PARKWAY PROJECT (PROJECT 429-206) PARCEL 319

Mr. Shontz requested approval to serve an Offer of Judgment for Parcel 319 in the increased amount of \$207,600, as suggested by the Committee.

Action: A motion was made by Ms. Botts and seconded by Mr. Murvin to recommend to the Board approval of the Offer of Judgment in the amount of \$207,600, plus statutory attorney's fees and experts costs in full settlement of all claims for compensation in the acquisition of Parcel 319.

Vote: The motion carried unanimously with six members present and voting AYE by voice vote. Mr. Jreij was not present.

Item 8: S.R. 429 (SIMMONS) WEKIVA PARKWAY PROJECT (PROJECT 429-203) PARCEL 168

Mr. Shontz requested approval to serve an Offer of Judgment for Parcel 168 in the increased amount of \$330,000, as suggested by the Committee.

Action: A motion was made by Ms. Botts and seconded by Mr. Murvin to recommend to the Board approval of 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.

Vote: The motion carried unanimously with six members present and voting AYE by voice vote. Mr. Jreij was not present.

Item 9: S.R. 429 (WATSON) WEKIVA PARKWAY PROJECT (PROJECT 429-203) PARCEL 179

Mr. Shontz requested approval to serve an Offer of Judgment for Parcel 179 in the increased amount of \$302,400, as suggested by the Committee.

Action: A motion was made by Ms. Botts and seconded by Mr. Murvin to recommend to the Board approval of the Offer of Judgment in the amount of \$302,400, plus statutory attorney's fees and experts costs in full settlement of all claims for compensation in the acquisition of Parcel 179.

Vote: The motion carried 5 to 1 with Ms. Botts, Mr. Minkoff, Mr. Murvin, Mr. Dedekind and Mr. Babcock voting AYE by voice vote and Mr. Raymond voting NAY. Mr. Jreij was not present.

Item 10: S.R. 429 (EVERLY) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCEL 242

Mr. Shontz requested approval to serve an Offer of Judgment with the increase previously suggested by the Committee.

Discussion ensued regarding the original appraisal amount, the amount to be offered, the possibility of making multiple Offers of Judgment on a parcel, and whether Mr. Shontz should return next month after additional analysis.

The Committee requested that Mr. Shontz bring this item back at next month's meeting after considering the input from the Committee.

Action: A motion was made by Mr. Raymond and seconded by Mr. Murvin to recommend to the Board approval of the Offer of Judgment in the amount of \$597,840, plus statutory attorney's fees and experts costs in full settlement of all claims for compensation in the acquisition of Parcel 242, and to request Mr. Shontz to reanalyze the amount of the Offer of Judgment and bring the item back to the Right of Way Committee.

Vote: The motion carried unanimously with six members present and voting AYE by voice vote. Mr. Jreij was not present.

Item 11: S.R. 429 (GRIMM) WEKIVA PARKWAY PROJECT (PROJECT 429-203) PARCEL 173

Ms. Brehmer Lanosa is requesting the Committee's recommendation for Board approval of a proposed mediated settlement agreement.

CFX retained the appraisal services of Walter Carpenter, Jr., MAI, CRE. Mr. Carpenter estimated the total value of compensation at \$165,000. The Owners retained the appraisal services of Richard Parham. Mr. Parham estimated the total value of compensation at \$551,900.

Counsel for the owners submitted invoices from six experts totaling \$70,151.60. CFX's experts' invoices totaled \$51,659.05.

The parties mediated on August 26, 2016. To resolve this case, the parties reached a proposed compromise consisting of an all-inclusive settlement of \$429,400. The settlement amount consists of \$325,000 for the owners, \$51,600 for expert fees, and \$52,800 for statutory attorney's fees.

Discussion ensued as to the camellias on the property and the value of the camellias to the Owners. The Committee asked questions which were answered by Ms. Brehmer Lanosa.

Action: A motion was made by Mr. Murvin and seconded by Ms. Botts to recommend to the Board approval of the Mediated Settlement Agreement in the amount of \$429,400 including severance damages, business damages, tort damages, interest, attorney's fees, attorney's costs, expert fees, expert costs, and any other claim, subject to apportionment, if any.

Vote: The motion carried unanimously with six members present and voting AYE by voice vote. Mr. Jreij was not present.

Item 12: S.R. 429 (HMF, LLC) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCEL 301

Ms. Brehmer Lanosa is requesting the Committee's recommendation for Board approval to serve an Offer of Judgment to HMF, LLC ("Owners") for Parcel 301 in the amount of \$1,200,000.

Ms. Brehmer Lanosa provided the Committee with photographs, aerials and background information on the parcel.

CFX retained the appraisal services of Chad G. Durrance, MAI. Mr. Durrance estimated the total value of compensation at \$728,700. The Owner's retained the appraisal services of Charles W. Haynes, Jr., GAA, and Richard C. Dreggors, GAA. Mr. Haynes estimated the total value of compensation at \$3,921,500 and Mr. Dreggors estimated the total value of compensation at \$4,819,900. The report provided by Mr. Dreggors contained a watermark indicating it is a work in progress.

The Committee asked questions, which were answered by Ms. Brehmer Lanosa.

Action: A motion was made by Mr. Minkoff and seconded by Ms. Botts to recommend to the Board approval to serve an Offer of Judgment in the amount of \$1,200,000 for all pending claims with Respondent, HMF, LLC, including full compensation for the property, severance damages, business damages, and interest, if any, with the exception of attorney's fees and costs, and expert fees and costs, subject to apportionment.

Vote: The motion carried unanimously with six members present and voting AYE by voice vote. Mr. Jreij was not present.

Item 13: S.R. 429 (BENTON) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCELS 320/820

Ms. Brehmer Lanosa is requesting the Committee's recommendation for Board approval of the proposed Settlement Agreement with Howard and Judith Benton (the "Owners") in the amount of \$478,000 for Parcels 320/820. Ms. Brehmer Lanosa provided the Committee with a description and location of Parcels 320/820. She explained the Bentons have built and worked on their home and have lived in the homestead for many years and are extremely disturbed that they will be living next to the expressway.

CFX retained the appraisal services of Christopher D. Starkey, MAI. Mr. Starkey estimated the full compensation at \$295,000 (Land Taken at \$105,000, Improvements Taken at \$92,000, Severance Damages at \$77,000 and Cost to Cure at \$4,100). The Owners retained the appraisal services of Richard C. Dreggors, GAA. Mr. Dreggors estimated the total value of compensation at \$505,000 (Land Taken at \$147,600, Improvements Taken at \$222,400, and Severance Damages at \$129,500). Counsel for the owners submitted invoices from two experts in the amount of \$28,093.50.

Mr. Brehmer Lanosa explained the Replacement Housing Payments ("RHP") paid to the Owners. She explained CFX is entitled to an additional credit of \$45,674.40 per the RHP formula.

Action: A motion was made by Mr. Murvin and seconded by Mr. Raymond to recommend to the Board approval of the proposed Settlement Agreement in the amount of \$478,000, resolving all claims for compensation for the taking of Parcels 320/820, including severance damages, tort damages, business damages, interest, attorney's fees, attorney's costs, expert fees, expert costs, and any other claim, subject to apportionment, if any, minus the Credit due to CFX per the RHP formula.

Vote: The motion carried unanimously with six members present and voting AYE by voice vote. Mr. Jreij was not present.

Item 14: S.R. 429 (BENTON) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCELS 322/822

Ms. Brehmer Lanosa is requesting the Committee's recommendation for Board approval of the proposed Settlement Agreement with Howard and Judith Benton (the "Owners") in the amount of \$279,000 for Parcels 322/822. Ms. Brehmer Lanosa provided the Committee with a description and location of Parcels 322/822. She explained the Bentons have built and worked on their home and have lived in the homestead for many years and are extremely disturbed that they will be living next to the expressway.

CFX retained the appraisal services of Christopher D. Starkey, MAI. Mr. Starkey estimated the full compensation at \$200,000 (Land Taken at \$41,000, Improvements Taken at \$8,350, Severance Damages at \$60,650 and Cost to Cure at \$13,000). The Owner's retained the appraisal services of Richard C. Dreggors, GAA. Mr. Dreggors estimated the total value of compensation at \$292,500 (Land Taken at \$59,400, Improvements Taken at \$8,400, Severance Damages at \$213,600 and Cost to Cure at \$11,100). Counsel for the Owners submitted invoices from two experts in the amount of \$35,093.00.

The parties mediated on September 12, 2016, and reached a proposed compromise consisting of an all-inclusive settlement of \$279,000.

Action: A motion was made by Mr. Murvin and seconded by Ms. Botts to recommend to the Board approval of the proposed Settlement Agreement in the amount of \$279,000, resolving all claims for compensation for the taking of Parcels 322 and 822, including severance damages, tort damages, business damages, interest, attorney's fees, attorney's costs, expert fees, expert costs, and any other claim, subject to apportionment, if any.

Vote: The motion carried unanimously with six members present and voting AYE by voice vote, Mr. Jreij was not present.

Item 15: S.R. 453 (LAKE COUNTY FRUIT CORPORATION) WEKIVA PARKWAY PROJECT / PROJECT 429-206 PARCEL 331 PARTS A & B AND PARCEL 332

Ms. Brehmer Lanosa is requesting the Committee's recommendation for Board approval of the proposed Settlement Agreement. Lake County Fruit Corporation, a dissolved Florida Corporation is the owner of the parcels. The son and former law partner of the last surviving director of the Lake County Fruit Corporation C. Michael Duncan, Esq. has been appointed by the Court as the Administrator Ad Litem for Lake County Fruit Corporation.

CFX retained the appraisal services of Pinel & Carpenter, Inc. Mr. Carpenter estimated the value for Parcel 331 and Parcel 332 is the sum of \$24,270 and \$38,360, which is \$62,630.

After informal communications and discussions, the parties reached a proposed Joint Motion for Stipulated Final Judgment in the amount of \$64,000.

Action: A motion was made by Mr. Murvin and seconded by Mr. Raymond to recommend to the Board approval of the proposed Settlement Agreement in the amount of \$64,000, resolving all claims for compensation from Petitioner resulting from the taking of Parcels 331/332, including severance damages, business damages, tort damages, interest, attorney's fees, expert fees, costs, and any other claim.

Vote: The motion carried unanimously with six members present and voting AYE by voice vote. Mr. Jreij was not present.

Item 16: S.R. 429 (WEKIVA PARKWAY PROJECT) PROJECTS 429-203 & 429-204 PARCELS 197/897, 230, 257 & 267

Mr. Passiatore explained that Contract 000929 for right of way counsel services with Lowndes, Drosdick, Doster, Kantor & Reed, P.A. ("LDDKR") for condemnation representation of Parcels 197/897, 230, 257 and 267 is due to expire on December 31, 2016. These are the largest parcels in the Wekiva Parkway Project. Mr. Passiatore explained the history of the parcels.

LDDKR has submitted a cost proposal for continuation of legal counsel services with a not-to-exceed budget of \$890,000 for the trial and appeals of parcels 197/897.

In order to provide a basis of comparison, the Legal Department solicited a proposal from Mateer Harbert, P.A. for a cost estimate for trial and appeal for these parcels. Mateer Harbert is currently under contract with CFX for legal work on the super corridor and such other assignments as authorized. Mateer Harbert submitted a litigation cost estimate for parcel 197/897 in the amount of \$325,750.00.

Mr. Passiatore explained the anticipation of future litigation on these parcels.

The Committee asked questions, which were answered by Mr. Passiatore. Mr. Passiatore was asked and replied that the firms currently under contract with CFX have conflicts and are not able to represent CFX on these parcels. Discussion ensued regarding the Committee's concerns that the estimated amounts provided by Counsel could change and Mr. Small's comments that he has reviewed the appraisals for 197/897 but has not reviewed the appraisal reports or files for Parcels 230, 257 and 267.

Mr. Minkoff expressed his concern that the switching of firms could cost CFX more because of the way the estimates are structured. Mr. Small confirmed that he is confident his firm can do the remainder of the parcels in Project Orlando for the balance of Mateer Harbert's current contract which is approximately \$730,000. He stated Parcels 197/897 are scheduled for trial next year. The Committee suggested that a

not-to-exceed cap be set. He is confident that these parcels can be litigated, through appeal, for the amount stated in his cost estimate of \$325,750 with a not-to-exceed cap amount of \$500,000.

Ms. Botts reiterated that no additional monies would have to be added to the Mateer Harbert contract, just a task order for the reassignment of the Project Orlando parcels.

Action: A motion was made by Ms. Botts and seconded by Mr. Raymond to recommend to the Board approval of reassignment of Parcels 197/897, 230, 257 and 267 to Mateer Harbert, P.A. and issuance of a task authorization for \$325,000 with a not-to-exceed cap of \$500,000 for Parcels 197/897 and for approval of a Supplemental Agreement to Contact No. 000929 in the amount of \$50,000 for Lowndes, Drosdick, Doster, Kantor & Reed, P.A. to provide transition legal services through the end of the 2016 calendar year.

Vote: The motion carried unanimously with six members present and voting AYE by voice vote. Mr. Jreij was not present.

Item 17: OTHER BUSINESS

No other business was discussed.

Item 18: ADJOURNMENT

Chairman Babcock adjourned the meeting at approximately 3:45 p.m.

Minutes approved on October 26, 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.