

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MINUTES
CENTRAL FLORIDA EXPRESSWAY AUTHORITY
Right of Way Committee Meeting
October 26, 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
Frank Raymond, Osceola County Representative
Christopher Murvin, Citizen Representative
Neil Newton, Seminole County Representative

Committee Member Not Present:

Brendon Dedekind, 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 2:00 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 Mr. Murvin and seconded by Mr. Raymond to approve the September 28, 2016 Right of Way Committee meeting minutes as presented.

Vote: The motion carried unanimously with six (6) members present and voting AYE by voice vote. Mr. Dedekind was not present.

Item 4: S.R. 429 (KING) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCEL 238

Mr. Shontz is seeking the Committee's recommendation for Board approval of a proposed settlement with Michael J. and Pamela King (the "Owners"). Mr. Shontz provided the Committee with the description and the background on 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 \$74,100. The Owners were represented by D. Mark Natirboff. The Owners retained the appraisal services of Grant Austin of American Valuation. Mr. Austin opined the total value of taking is \$173,000.

After an entire day of mediation, the Mediated Settlement Agreement was reached which provides for a total of \$134,500 in full settlement of all claims for compensation by the Owners, plus \$19,932 statutory attorney's fees, a reduced sum of \$16,266 for the experts, for a total of \$170,698.

Action: A motion was made by Mr. Raymond and seconded by Mr. Murvin to recommend to the Board approval of the proposed Mediated Settlement Agreement in the amount of \$170,698, inclusive of attorney's fees and costs and expert fees and costs, to resolve the acquisition of Parcel 238.

Vote: The motion carried unanimously with six (6) members present and voting AYE by voice vote. Mr. Dedekind was not present.

Item 5: S.R. 429 (ALDERMAN) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCEL 241

Mr. Shontz is requesting the Committee's recommendation for Board approval to serve an Offer of Judgment to Daryl A. and Laura L. Alderman (the "Owners") for Parcel 241 in the amount of \$1,239,400. CFX retained the appraisal services of David Hall of Bullard, Hall and Adam. Mr. Hall estimated the total value of the taking at \$846,200.

Negotiations were attempted with Mr. Callan, but to no avail.

The Owners are eligible for and received a Replacement Housing Payment ("RHP") under the Uniform Relocation Act due to the taking of and displacement out of their home. Since the proposed Offer of Judgment is greater than CFX's appraised value, CFX is entitled to a RHP credit back from the Owners in the amount of \$94,000, which will offset the Offer of Judgment amount upon distribution, including a credit for CFX's good faith deposit. This case is currently set on the April 2017 trial docket.

Mr. Passiatore called Mr. Shontz's attention to a typo in the memo submitted to the Committee. The last paragraph of page 2 should refer to Parcel 241.

The Committee asked questions regarding statutory attorney's fees, the RHP and CFX's appraisal. These questions were answered by Mr. Shontz.

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 \$1,239,400, plus statutory attorney's fees for Parcel 241.

Vote: The motion carried unanimously with six (6) members present and voting AYE by voice vote. Mr. Dedekind was not present.

Item 6: S.R. 429 (BENNETT) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCEL 260

Mr. Shontz is requesting the Committee's recommendation for Board approval to serve an Offer of Judgment to William S. and Peggy H. Bennett (the "Owners") for Parcel 260 in the amount of \$484,740. CFX retained the appraisal services of Chad Durrance of Durrance & Associates. Mr. Durrance estimated the total value of the taking at \$325,000 (consisting of \$67,000 for the land and \$258,000 for improvements).

CFX attempted negotiations with Mr. Callan but to no avail.

The Owners are eligible for and received a Replacement Housing Payment ("RHP") under the Uniform Relocation Act due to the taking of and displacement out of their home. Accordingly, since the proposed Offer of Judgment is greater than CFX's appraised value, CFX is entitled to a RHP credit back from the Owners in the amount of \$62,716.55, which will offset the Offer of Judgment amount upon distribution, including a credit for the CFX's good faith deposit.

Mr. Minkoff opined that the amount of the Offer of Judgment is too low considering that this was the homestead of the Owners.

Discussion ensued regarding the RHP testimony at trial.

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 \$484,740, plus statutory attorney's fees for Parcel 260.

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

Item 7: S.R. 429 (DUKE ENERGY) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCELS 252, 253, 304 AND 305

Mr. Shontz is requesting the Committee's recommendation for Board approval of a proposed Subordination of Easements Agreement between CFX and Duke Energy Florida, LLC ("Duke") relating to Parcels 252, 253, 304, and 305. Duke will be able to re-establish the distribution transmission and distribution lines on these parcels to provide service to the remaining improvements. Accordingly, Duke has agreed to subordinate its easement interests in the above referenced parcels.

The Committee asked whether these lines will again require relocation. Staff advised that it is unlikely that future relocation of these lines due to future work on our system will be necessary.

Action: A motion was made by Mr. Minkoff and seconded by Mr. Murvin to recommend to the Board approval of the proposed Subordination of Easements Agreement as to Parcels 252, 253, 304, and 305.

Vote: The motion carried unanimously with six (6) members present and voting AYE by voice vote. Mr. Dedekind was not present.

Item 8: S.R. 429 (MCNEIL) WEKIVA PARKWAY PROJECT (PROJECT 429-206) PARCEL 315

Mr. Shontz is requesting the Committee's recommendation for Board approval of a negotiated settlement agreement with Curtis Wayne McNeil and Brucene Kay McNeil, Life Estate, and Daniel Leon McNeil, Jeffrie Wayne McNeil, Dawn McNeil, and Karin Renee McNeil, Remaindermen (the "Owners") as to Parcel 315. The subject parcel is the homestead of the Owners.

CFX retained the appraisal services of Richard K. MacMillan of The Appraisal Group of Central Florida. Mr. MacMillan estimated the total value of the taking and the interim use of the existing improvements at \$155,700. No appraisal has been completed by the Owners.

A negotiated settlement was reached in the amount of \$200,000 plus \$14,916 statutory attorney's fees for Parcel 315. There are no costs associated with this parcel.

Mr. Shontz confirmed for the Committee that this settlement encompasses all interests, that Mr. Bauerle has the authority to sign on behalf of the Life Estate and Remaindermen, and that the Owners do not qualify for RHP payments.

Action: A motion was made by Mr. Raymond and seconded by Mr. Murvin to recommend to the Board approval of the proposed settlement agreement in the amount of \$214,916 in full settlement of all claims for compensation including all statutory attorney's fees for Parcel 315.

Vote: The motion carried unanimously with six (6) members present and voting AYE by voice vote. Mr. Dedekind was not present.

Item 9: S.R. 429 (EVERLY) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCEL 242

Mr. Shontz reminded the Committee that at last month's Committee meeting the Committee approved the service of an Offer of Judgment in the amount of \$597,840 for Parcel 242 but some Committee members requested that Mr. Shontz reanalyze the Offer for a potential increase. He opined that the Offer of Judgment approved by the Committee was reasonable but, based on the Committee's direction and further analysis, recommended an increased Offer of Judgment in the amount of \$638,463 be served as a second Offer.

Discussion ensued as to the method for calculating the Offer of Judgment and the possibility and benefit of making more than one Offer.

Action: A motion was made by Mr. Raymond to recommend to the Board approval to serve a second Offer of Judgment, after the expiration of the 30 days required for the first offer, in the amount of \$638,463, plus statutory attorney's fees and experts' costs in full settlement of all claims for compensation in the acquisition of Parcel 242.

Discussion ensued about the concept of serving a second Offer of Judgment.

Vote: The motion died for lack of a second.

Action: A motion was made by Mr. Minkoff and seconded by Mr. Murvin not to take any further action at this time.

Vote: The motion carried unanimously with six (6) members present and voting AYE by voice vote. Mr. Dedekind was not present.

Mr. Passiatore informed the Committee that, per the Orange County Clerk of the Court Efiling system, a Notice of Service of Offer of Judgment was filed on October 25, 2016.

Item 10: S.R. 429 (KELLY) WEKIVA PARKWAY PROJECT (PROJECT 429-203) PARCELS 209 & 221

Mr. Sidney Calloway from Shutts & Bowen is requesting the Committee's recommendation for Board approval for costs incurred by William H. Kelly, Sr., Dorothy B. Kelly and William H. Kelly, Sr., as Trustee of the William H. Kelly, Sr., Revocable Trust (the "Owners") incurred in the defense of this eminent domain case. This was a whole take of Parcels 209 and 221. There was a seven-day trial in this matter with a final

judgment entered on December 2015. Subsequent to the entry of the Final Judgment, counsel for the Owners filed an Affidavit of Costs Incurred, which is due to be set for an evidentiary hearing if the parties cannot resolve the costs by agreement.

The invoices submitted by the Owners' Counsel have been reviewed by Mr. Calloway and CFX's experts. Mr. Calloway recommends payment of all the invoices with the exception of the invoice for appraisal services submitted by Tropical Realty Appraisal Services in the amount of \$173,063.16 and the Owners' legal team's hotel and parking expenses incurred during the seven-day trial in the total amount of \$6,881.08. He recommends that these invoice be contested and submitted to the Court for ultimate disposition.

Discussion ensued as to the costs CFX incurred for the same services versus the amount invoiced by the Owners' counsel and what the trial court may consider should there be a hearing.

Action: A motion was made by Mr. Minkoff and seconded by Mr. Raymond to recommend to the Board approval to contest the invoices for appraisal services submitted by Tropical Realty Appraisal Services in the amount of \$173,063.16 and the miscellaneous expenses described as Owners' legal team's hotel and parking in the amount of \$6,881.08 and approval for CFX to stipulate to the remaining fees and costs in the amount of \$77,292.33 for services rendered thru trial of Parcels 209 and 221.

Vote: The motion carried unanimously with six (6) members present and voting AYE by voice vote. Mr. Dedekind was not present.

Item 11: S.R. 429 (CHAPMAN) WEKIVA PARKWAY PROJECT (PROJECT 429-202) PARCEL 219

Mr. Sidney Calloway from Shutts & Bowen is requesting the Committee's recommendation for Board approval to serve an Offer of Judgment to Charles R. Chapman, Kim Chapman, Sr., Chapman Orchid's, Inc. (the "Owners") for Parcel 219 in the amount of \$1,375,000.

CFX retained the appraisal services of Michael McElveen of Urban Economic, Incorporated. Mr. McElveen estimated the total value of compensation for land and improvements at \$632,500. The Owners are represented by Andrew Brigham, Esquire. Discovery revealed that the Owners are asserting \$2.9 million as full compensation for the taking of Parcel 219.

The parties participated in mediation on August 14, 2015. Neither mediation nor informal settlement discussions were successful. This matter is scheduled for a jury trial on the April 10, 2017 docket.

Action: A motion was made by Mr. Minkoff and seconded by Mr. Murvin to recommend to the Board approval to serve an Offer of Judgment in the amount of \$1,375,000 for 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 for Parcel 219.

Vote: The motion carried unanimously with six (6) members present and voting AYE by voice vote. Mr. Dedekind was not present.

Item 12: S.R. 429 (SCOFIELD) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCELS 249/256

Mr. Cheek with Winderweedle Haines is requesting the Committee's recommendation for Board approval for a settlement with A. Tanner Scofield, III, and Cathleen P. Scofield (the "Owners").

CFX retained the appraisal services of David Hall of Bullard, Hall & Adams, Inc. Mr. Hall estimated the total value of compensation at \$304,700 (land at \$147,000 and improvements at \$157,300).

A settlement proposal was initially presented to this Committee in May 2015 which was not approved. Recent settlement negotiations have culminated in an "all-in" settlement proposal in the amount of \$522,114, including expert fees, and statutory attorney's fee based on betterment.

On behalf of the Owners, CFX paid \$25,302 to Sebastian Moving Company, \$1,378 for storage, and \$693.50 in incidental expenses. Mayflower Movers may have an additional claim for moving expenses up to \$600.00. No purchase additive was paid in this case.

The Committee asked questions, which were answered by Mr. Cheek.

Action: A motion was made by Mr. Murvin and seconded by Mr. Raymond to recommend to the Board approval of the proposed settlement in the amount of \$522,114 in full settlement of all claims for compensation for the acquisition of Parcels 249 and 256.

Vote: The motion carried unanimously with six (6) members present and voting AYE by voice vote. Mr. Dedekind was not present.

Item 13: S.R. 417/S.R. 408 (AGREEMENT 000805) VALENCIA COLLEGE LANE (PROJECT 253E)

Ms. Brehmer Lanosa is requesting the Committee's recommendation for Board approval of a Quit-Claim Deed transferring CFX's interest in Valencia College Lane to Orange County.

This requests relates to an agreement entered into in December 2010 with Orange County and CFX, by and through its predecessor, to improve Valencia College Lane ("VCL") near the S.R. 417 and S.R. 408 interchange. As part of this Agreement, CFX added two lanes to VCL. Recently, Orange County transmitted

its final acceptance letter. Since Orange County has accepted the work on this section of VCL, CFX is required to convey its interest in VCL to Orange County via Quit-Claim Deed.

Action: A motion was made by Mr. Minkoff and seconded by Mr. Raymond to recommend to the Board approval of the Quit-Claim Deed to Orange County transferring CFX's interest in Valencia College Lane to Orange County (designated as CFX Parcel Nos. 1137, 1138, 1139 and 1140).

Vote: The motion carried unanimously with six (6) members present and voting AYE by voice vote. Mr. Dedekind was not present.

Item 14: OTHER BUSINESS

Mr. Passiatore reiterated that there will not be a November Right of Way Committee meeting. The next Right of Way Committee meeting will be held December 1, 2016. This will be the last meeting of the year.

Item 15: ADJOURNMENT

Chairman Babcock adjourned the meeting at approximately 3:25 p.m.

Minutes approved on December 1, 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.