

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

DATE: June 28, 2016

RE: S.R. 429 Wekiva Parkway, Project 429-202; Parcel 104/804
Approval of Settlement Proposal

Winderweedle, Haines, Ward & Woodman, P.A., right of way counsel, seeks Board approval of a settlement for Parcel 104/804 (the "Taking" or "Property"), which was acquired by condemnation for the construction of the S.R. 429 Wekiva Parkway, Project 429-202. The Court entered a Stipulated Order of Taking for this parcel on September 18, 2014.

DESCRIPTION and BACKGROUND:

The instant action involves the partial taking of property designated as Parcel 104 and 804, which was owned by Robert M. Grossenbacher, Scott Grossenbacher and Todd Grossenbacher, individually and as co-personal representatives of the Estate of John C. Grossenbacher, Carolyn Ditch, Mary K. Frisbie, and Elizabeth G. Townsend (hereinafter referred to as "Landowners"). Parcel 104 is located at 1132 Plymouth Sorrento Road and 3037 Southfork Drive in unincorporated Orange County. The parent tract consists of just over 14 acres. CFX is acquiring about 5.809 acres in fee for construction of the Wekiva Parkway (Parcel 104), and 0.813 acres which will ultimately be conveyed to Duke Energy for a permanent transmission line easement (Parcel 804). The remainder property will contain 8.4 acres.

The property once operated as an orange grove and contains various agricultural-related improvements, including a 1,450 square foot warehouse/barn, irrigation, wells, water tanks, fencing, gates, and maintenance equipment. Most of these improvements are located within the area of taking. The property is zoned A-1 (citrus Rural District) by Orange County, and has a future land use of "Rural/Agricultural." This designation allows development of up to one unit per ten acres. However, this parcel is located within the Joint Planning Agreement (JPA) of Orange County and the City of Apopka. If the property is annexed into the City of Apopka, it would likely have a future land use designation of Residential Low Suburban (RLS), which permits development of up to 3.5 units per acre.

CFX retained the services of Richard MacMillan from the Appraisal Group of Central

Florida, Inc., to appraise the property. While he considered the possibility of the property being rezoned for a residential subdivision, he ultimately determined that extraordinary development costs would prevent such a development from being economically feasible. This is because the property is located a considerable distance from city sewer and water lines. In addition, approximately half of the property lies within a 40-foot depression area with steep slopes and a 0.7 acre wetland lying at the bottom of the depression. Mr. MacMillan determined that approximately 7.3 acres of the subject was developable.

After considering the value of subdivision property in the area (which he estimated to be between \$22,000-\$45,000 per acre) and the extraordinary development costs (estimated to be between \$26,000-\$48,000 per unit), Mr. MacMillan determined that the property had a highest and best use for rural residential development. Mr. MacMillan considered three rural residential sales that had a similar percentage of developable uplands. These sales indicated a value of between \$12,000-16,000 per acre (upland and wetland values were blended). Two of the three sales were purchased as a single-family homesite, and the third was purchased for recreational use. Mr. MacMillan reconciled on a value of **\$15,000.00 per acre** in the “before” condition, for a total parent tract value of \$347,300, and a value of **\$98,800.00** for the part taken. He determined that the improvements were consistent with the highest and best use, and that the value of improvements within the area of taking were **\$104,200.00**.

After the taking, the property will contain 8.4 acres, most of which is located within the depression area. The expressway within the area of take will contain four lanes with an elevated northbound on-ramp adjacent to the subject. The average elevation will be 25.5 feet above the remainder, and will include lighting and signage. Mr. MacMillan considered three new comparable sales in analyze the value of the property in the after condition. These sales contained a smaller percentage of uplands than his “before value” sales to more closely resemble the condition of the subject property after the taking. These sales indicated a value between \$5,000-8,000 per acre. Mr. MacMillan then determined that the subject would experience a reduction in value of about 35% due to proximity to the expressway. He therefore reconciled on an after value of \$4,875.00 per acre, which results in a severance damage claim of **\$67,000.00**. He also added a **\$27,900.00** cost-to-cure estimate to reestablish the fencing and gate that would be acquired in the taking. Mr. MacMillan’s valuation conclusions are summarized as follows:

Value of the Part Taken – 6.622 acres	\$243,100
Severance Damages	67,000
<u>Cost to Cure</u>	<u>27,900</u>
Total Compensation Estimate	\$338,000

The Landowners retained the appraisal services of Gary Pendergast, who determined that the subject property had a highest and best use as a residential subdivision. Relying on supporting analysis by Ed Williams and MEI Civil, Mr. Pendergast concluded that 10.1 acres of the parent tract was developable. Furthermore, he did not believe that there would be significant extraordinary development costs for this property. He therefore considered six comparable sales that had a mixture of uplands and wetlands similar to the subject property. Rather than using the “blended” approach of Mr. MacMillan, Mr. Pendergast came up with a value “per developable acre.” He reconciled on a value of **\$78,000.00 per developable acre**, with the subject property having 10.1 developable acres. This results in a total parent tract value of \$803,800, and a value

of the part taken of \$492,400. Mr. Pendergast considered the improvements to have only a minimal value of \$8,000, since most of the improvements were not consistent with his highest and best use conclusion.

Mr. Pendergast considered four new comparable sales to determine the value of the remainder after the taking. These sales had a mixture of uplands and wetlands that were considered similar to the subject remainder. All of these “after” comparables abutted a limited access roadway. The sale prices ranged from \$14,000-\$38,000 per acre, and the appraiser reconciled on an “after” value of **\$25,000.00 per acre**, for a remainder with 3.761 useable acres. This results in a remainder value of \$71,700, and a total severance damage claim of **\$232,300**. Mr. Pendergast’s cost-to-cure estimate to reestablish the fencing was **\$31,600** (fairly similar to CFX’s cure estimate). The Landowners’ valuation estimate is summarized as follows:

Value of the Part Taken – 6.622 acres	\$500,400
Severance Damages	200,700
<u>Cost to Cure</u>	<u>31,600</u>
Total Compensation Estimate	\$732,700

EXPERT AND ATTORNEY FEES / SETTLEMENT PROPOSAL:

The Landowners have also submitted expert invoices in the amount of \$46,523 as summarized below:

Gary Pendergast (Appraiser)	\$18,495
MEI Civil (Engineer)	18,165
Williams Development (Land Planner)	7,125
<u>Ovation Construction, Inc. (Contractor)</u>	<u>2,738</u>
Total	\$46,523

CFX’s expert fees in this case totaled \$78,095, as summarized below:

Richard MacMillan (Appraiser)	\$20,250
McIntosh and Assoc. (Engineer/Land Planning)	58,000
John Speer (Cost to Cure)	1,750
BDA (Environmental Consultants)	3,122
<u>Fred LaDue (FF&E)</u>	<u>3,761</u>
Total	\$78,095

Mediation was conducted on June 3, 2016, which resulted in a mediation settlement agreement whereby the Landowners agreed to accept \$616,500 “all-in” to resolve this case. The parties executed a Settlement Agreement (attached to this memo) which does not apportion the proposed settlement amount among the experts, attorney and landowner. However, an estimated break-down of this amount is provided for informational purposes:

Compensation to Landowners	\$517,323
Attorney's fees (Joseph Hanratty)	59,177
<u>Expert fees</u>	<u>40,000</u>
Total Settlement	\$616,500

CFX previously deposited \$338,000 into the court registry as its good faith estimate of value. A settlement in the amount of \$616,500 would require CFX to deposit an additional sum of \$278,500. Acceptance of the proposed settlement is recommended and is in CFX's best interest. Prolonged litigation will subject CFX to additional attorneys fees and costs as well as additional expert fees and costs, which CFX would ultimately be responsible for as part of the Landowners' compensation as provided by §73.091 and §73.092, Florida Statutes. Acceptance of the proposal will eliminate further risk and unnecessary expenses for CFX in this case.

RECOMMENDATION:

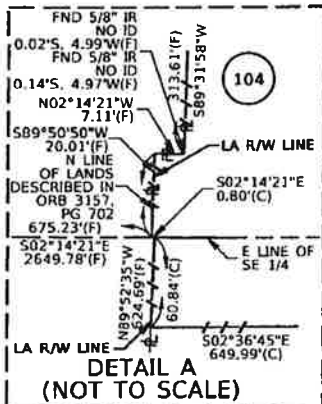
The proposed settlement was recommended for approval by the Right of Way Committee on June 22, 2016. The undersigned counsel respectfully requests that this Board approve settlement in the amount of \$616,500 to fully resolve the Landowners' interests in Parcel 104 and 804, inclusive of attorney's fees and costs.

ATTACHMENTS:

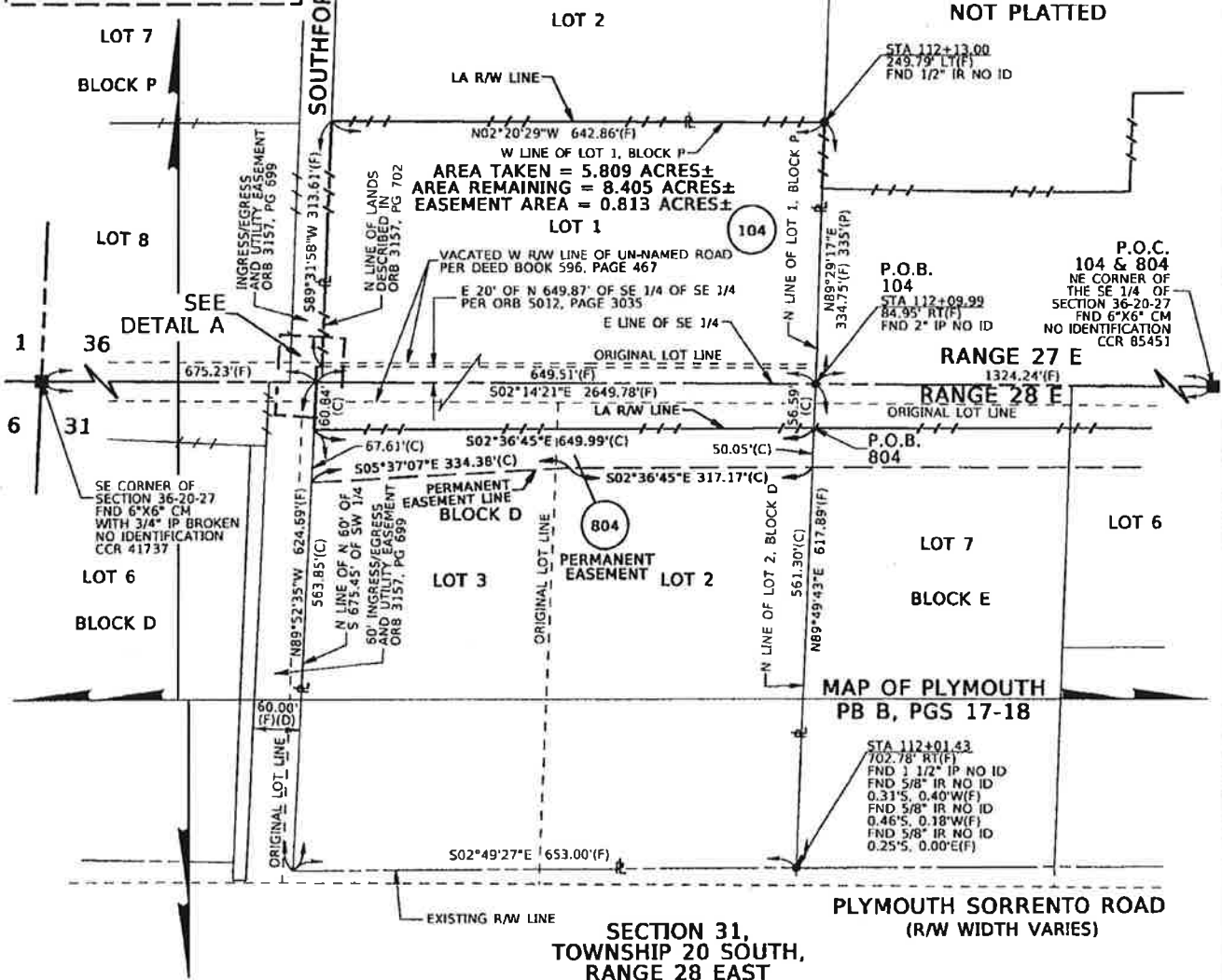
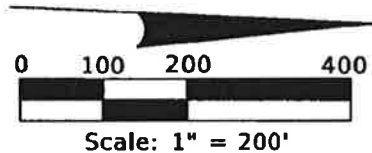
Sketch of Property
Mediated Settlement Agreement

Reviewed by: Joseph Hanratty

SKETCH OF DESCRIPTION



SECTION 36,
TOWNSHIP 20 SOUTH, LOT 3
RANGE 27 EAST



SEE SHEETS 1 & 2 FOR LEGAL DESCRIPTIONS
SEE SHEET 4 FOR GENERAL NOTES AND LEGEND

SHEET 3 OF 4

FOR: ORLANDO-ORANGE COUNTY
EXPRESSWAY AUTHORITY

DATE: FEBRUARY 28, 2013

PROJECT NO.: H20-01

DRAWN: PMM CHECKED: JMS

STATE ROAD 429
OOCEA PROJECT NO. 429-202
PARCEL NO. 104 & 804



GEODATA CONSULTANTS, INC.

SURVEYING & MAPPING

1349 SOUTH INTERNATIONAL PARKWAY
SUITE 2401

LAKE MARY, FLORIDA 32746

VOICE: (407) 732-6965

LAND SURVEYOR BUSINESS LICENSE NO. 6556

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

CENTRAL FLORIDA EXPRESSWAY AUTHORITY, CASE NO: 2014-CA 008446-O
body politic and corporate, and an agency of the state
under the laws of the State of Florida,

Subdivision 39

Petitioner,

Parcel 104/804

vs.

ROBERT M. GROSSENBACHER; et. al.

Respondents.

SETTLEMENT AGREEMENT

Respondents, ROBERT M. GROSSENBACHER; SCOTT GROSSENBACHER and TODD GORSSNBACHER, individually and as Co-Personal Representatives of the Estate of John C. Grossenbacher; CAROLYN DITCH; MARY K. FRISBIE; ELIZABETH G. TOWNSEND; and representatives of the Central Florida Expressway Authority reached the following Settlement Agreement:

1. Petitioner will pay to Respondents, ROBERT M. GROSSENBACHER; SCOTT GROSSENBACHER and TODD GROSSENBACHER, individual and as Co-Personal Representatives of the Estate of John C. Grossenbacher; CAROLYN DITCH; MARY K. FRISBIE; ELIZABETH G. TOWNSEND; (referred to as "Respondents") the sum of Six Hundred Sixteen Thousand Five Hundred Dollars exactly (\$616,500), in full settlement of all claims for compensation from Petitioner whatsoever for the taking of Parcel 104/804, including statutory interest and all claims related to real estate and business damages, attorney's fees and litigation costs, expert witness fees, and costs. The settlement sum may be subject to claims of apportionment by any party in this case having a property interest in or a lien on the subject property. Petitioner previously deposited in the Registry of the Court Petitioner's good faith estimate in the amount of Three Hundred Thirty-Eight Thousand Dollars (\$338,000). Within thirty days (30) days from the date of receipt by Petitioner's counsel of a conformed copy of the Stipulated Final Judgment, Petitioner will pay to Respondents, by deposit in the Registry of the Court the sum of Two Hundred Seventy-Eight Thousand Five Hundred Dollars exactly (\$278,500), representing the difference between the total settlement sum referenced above and the Petitioner's previous deposit in this case.

2. This Settlement Agreement will be placed on the agenda for the Right of Way ("ROW") Committee and Central Florida Expressway Authority ("CFX") Board and is conditioned upon final approval by the ROW Committee and then the CFX Board.

3. Counsel for Petitioner will submit to the Court a standard Motion for Stipulated Final Judgment containing the terms and conditions of this Settlement Agreement within fifteen (15) days from the date of approval of this Settlement Agreement by the CFX Board.

4. The parties agree to waive any confidentiality provisions set forth in Chapter 44 of Florida Statutes, the Florida Rules of Civil Procedure, and the Florida Rules of Evidence, if applicable, for the limited purpose of consideration of this proposed Settlement Agreement by the ROW Committee and the CFX Board.

5. This Agreement resolves all claims whatsoever, including, but not limited to, claims of compensation arising from the taking of Parcel 104/804, severance damages, business damages, tort damages, interest, attorney's fees, attorney's costs, expert fees, expert costs, and any other claim.

6. Respondents signing below confirm and represent that they are fee simple owners of the property and have full authority to participate in the mediation of this parcel as lawful owners of the property and to execute this Settlement Agreement, and Robert M. Grossenbacher represents and warrants that he has full authority to settle on behalf of the remaining fee simple owners and to execute this agreement on their behalf.

7. This Settlement Agreement, executed by the parties and their counsel on this 3rd day of June 2016, contains all the agreements of the parties.



Print Name: Linda S. Brehmer Lanosa
Central Florida Expressway Authority



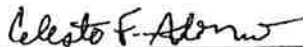
Print Name: Robert M. Grossenbacher
Owner and Authorized Representative for
SCOTT GROSSENbacher and
TODD GROSSENbacher,
individually and as Co-Personal
Representatives of the Estate of John C.
Grossenbacher;
CAROLYN DITCH; and
MARY K. FRISBIE



Print Name: Richard B. Weinman, Esq.
Counsel for CFX



Print Name: ELIZABETH G. TOWNSEND
Owner



Print Name: Celeste Adorno, Esq.
Mediator



Print Name: Joseph M. Hanratty, Esq.
Attorney for Owner