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MEMORANDUM

TO: Central Florida Expressway Authority Board Members

FROM: James Edward Cheek, III, Right of Way Counsel
Winderwee~~dd~~le, Haines, Ward & Woodman, P.A. 

DATE: July 26, 2016

RE: S.R. 429 Wekiva Parkway, Project 429-202; Parcel 111
Recommendation for Board Approval of Settlement Proposal

Winderwee~~dd~~le, Haines, Ward & Woodman, P.A., right of way counsel, seeks this Board's approval of a settlement for Parcel 111 (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 19, 2014.

DESCRIPTION and BACKGROUND:

The subject property is a 4.106 acre parcel located along the west side of Plymouth Sorrento Road, just south of Schopke Road, in Apopka, Florida. The property is owned by Robert G. Kizer, Preston B. Kizer Jr., and Martha W. Kizer ("Landowners"), who acquired the property in 1986 and currently reside on the property. CFX is acquiring .245 acres from the southwest corner for road improvements (Parcel 111), and .167 acres for a permanent utility easement in the northwest portion of the site (Parcel 811). The property is improved with a 1726 square foot single family residence, two storage buildings (about 4,000 square feet and 600 square feet), and other related residential and agricultural improvements.

The proposed road project will include construction of a water retention pond in the depressional area at the rear of the subject property and construction of a four-lane, limited access roadway. A bridge will be constructed above the retention pond. The roadway elevation in this area will be 18 to 20 feet above the grade of the residence. After the taking, the rear of the residence will be approximately 355 feet from the new limited access right of way (water retention area) and 455 feet from the main line of the Wekiva Parkway.

VALUATION:

CFX retained the services of David Hall of Bullard, Hall & Adams, Inc., to appraise the property. Mr. Hall determined that the highest and best use of the property was for continued residential use consistent with the current improvements. Mr. Hall considered three comparable

sales from 2011-2012, with per acre values between \$18,000 to \$30,000. Mr. Hall ultimately reconciled on a value of **\$30,000 per acre** for the property in the before condition, or \$123,180 for the parent tract and **\$15,500** for the land taken. He determined that the improvements on the property were worth \$198,500, for a total parent tract value of \$321,700. After considering the proximity of the residence to the expressway improvements, Mr. Hall damaged the remainder **land by 50%**, and the remainder **improvements by 15%**, for a total damage amount of **\$84,700**. Mr. Hall also found a minor cost to cure of \$1,700 to reestablish fencing in the area of the taking. Mr. Hall's valuation conclusions are summarized as follows:

Value of the Part Taken	\$15,500
Severance Damages	84,700
Cost to Cure	1,700
CFX's Compensation Estimate	\$101,900

The Landowners' appraiser, Richard Dreggors, preliminarily opined that the property was worth **\$35,000 per acre**, and that both the land *and* the improvements were damaged by **50%**. The Landowners also claimed that CFX's contractors improperly trespassed on their remaining property and removed four trees outside the taking area. The Landowners valued the trespass action at \$15,000, and the lost trees at \$10,000. While Mr. Dreggors did not complete a final appraisal for this parcel, he did complete appraisals for the adjoining properties: Parcel 112 and 113. In those parcels, he opined that the value of the property was \$70,000 per acre, or \$100,000 per acre if it had better access to Plymouth Sorrento Road (which Parcel 111 has). Mr. Dreggors' rural residential homesite values were between \$41,000 - \$49,000 per acre, and severance damages on Parcel 112 were 50% for the land and 60% for the improvements. As no appraisal was completed by the Landowners for this Parcel, the following settlement proposal is a result of direct negotiations with Landowners' counsel.

EXPERT AND ATTORNEY FEES / SETTLEMENT PROPOSAL:

The Landowners 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
Attorneys fees (Kurt Bauerle)	30,723
Total Settlement Proposal	\$230,723

The Landowners' expert, Richard Dreggors, incurred fees of \$6,500, but agreed to accept **\$5,000**.

CFX incurred expert fees in the amount of \$10,260.00 from David Hall and \$625.00 from John Speer, for a total of **\$10,885** in expert fees.

The Landowners' attorney, Kurt Bauerle, has agreed to accept statutory attorneys fees based on betterment in the amount of **\$30,723**.

CFX previously deposited \$101,900 into the court registry as its good faith estimate of

value. A settlement in the amount of \$230,723 would require CFX to deposit an additional sum of \$128,823. 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 expenses for CFX in this eminent domain case, and resolve a potential trespass and tree loss lawsuit.

RECOMMENDATION:

The proposed settlement was recommended for Board approval by the Right of Way Committee at the July 27, 2016 meeting. The undersigned counsel respectfully requests that this Board approve settlement in the amount of \$230,723 to fully resolve the Landowners' claims in Parcel 111, inclusive of attorney's fees and expert fees and costs.

ATTACHMENTS:

Sketch of Property

REVIEWED BY:

A handwritten signature in blue ink, reading "Joseph Hassidov", is written over a horizontal line.

SKETCH OF DESCRIPTION

LEGEND AND ABBREVIATIONS



(C)	= CALCULATED	LA	= LIMITED ACCESS
(D)	= DEED	NO	= NUMBER
(F)	= FIELD	ORB	= OFFICIAL RECORDS BOOK
CCR	= CERTIFIED CORNER RECORD	PL	= PROPERTY LINE
CM	= CONCRETE MONUMENT	PH	= PLAT BOOK
DB	= DEED BOOK	PG	= PAGE
FND	= FOUND	PGS	= PAGES
ID	= IDENTIFICATION	P.O.B.	= POINT OF BEGINNING
IP	= IRON PIPE	P.O.C.	= POINT OF COMMENCEMENT
IR	= IRON ROD	R/W	= RIGHT OF WAY
IRC	= IRON ROD AND CAP	SQ	= SQUARE

GENERAL NOTES:

1. THE PURPOSE OF THIS SKETCH IS TO DELINEATE THE DESCRIPTION ATTACHED HERETO. THIS DOES NOT REPRESENT A BOUNDARY SURVEY.
2. THE BEARINGS SHOWN HEREON ARE RELATIVE TO THE FLORIDA STATE PLANE COORDINATE SYSTEM, NORTH AMERICAN DATUM OF 1983/2007 ADJUSTMENT (NAD83/07), EAST ZONE, WITH THE EAST LINE OF THE SOUTHEAST 1/4 OF SECTION 36, TOWNSHIP 20 SOUTH, RANGE 27 EAST, HAVING A BEARING OF NORTH 02°14'21" WEST.
3. UNLESS IT BEARS THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER, THIS SKETCH IS FOR INFORMATIONAL PURPOSES ONLY.
4. THIS SKETCH MAY HAVE BEEN REDUCED IN SIZE BY REPRODUCTION. THIS MUST BE CONSIDERED WHEN OBTAINING SCALED DATA.
5. A CERTIFICATE OF TITLE INFORMATION PREPARED BY FIRST AMERICAN TITLE INSURANCE COMPANY DATED OCTOBER 09, 2012, FILE NO. 2037-2832903, WAS REVIEWED BY THE SURVEYOR. EXCEPTIONS LISTED THEREIN (IF ANY) WHICH AFFECT THE PARCEL DESCRIBED HEREON, WHICH CAN BE DELINEATED OR NOTED, ARE SHOWN HEREON.
6. CITY LIMITS SHOWN HEREON ARE TAKEN FROM THE ORANGE COUNTY GEOGRAPHIC INFORMATION SYSTEM SITE AND ARE APPROXIMATE.
7. ALL RECORDING REFERENCES SHOWN ON THIS SKETCH REFER TO THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, UNLESS OTHERWISE NOTED.
8. THIS SKETCH IS NOT A SURVEY.

SEE SHEET 1 & 2 FOR LEGAL DESCRIPTIONS
SEE SHEET 3 FOR SKETCH OF DESCRIPTION

SHEET 4 OF 4

REVISED PER COMMENTS	PMM	01/27/2014	I HEREBY CERTIFY THAT THIS LEGAL DESCRIPTION AND SKETCH IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER CERTIFY THAT THE LEGAL DESCRIPTION AND SKETCH MEETS THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS, IN CHAPTER 55-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472 OF THE FLORIDA STATUTES, SUBJECT TO RULES AND REGULATIONS SHOWN HEREON.
ADDED PARCEL 811	PMM	12/23/2013	
REVISED PER COMMENTS	PMM	05/19/2013	
REVISED PER COMMENTS	PMM	04/03/2013	
REVISION	BY	DATE	 2-5-2014 K. Paul Bellverre, Professional Land Surveyor No. 6556
FOR ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY DATE: FEBRUARY 14, 2013 PROJECT NO.: H20-01 DRAWN: PMM CHECKED: JMS			STATE ROAD 429 OOCEA PROJECT NO. 429-202 PARCEL NO. 111 & 811
			 GLODATA CONSULTANTS, INC. SURVEYING & MAPPING 1149 SOUTH INTERNATIONAL PARKWAY SUITE 200 LAKE MARY, FLORIDA 32746 VOICE: (407) 732-6965 LAND SURVEYOR BUSINESS LICENSE NO. 6556