


**WINDERWEEDLE, HAINES, WARD & WOODMAN, P.A.**  
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**MEMORANDUM**

**TO: Central Florida Expressway Authority Board Members**

**FROM: James Edward Cheek, III, Right of Way Counsel**  
**Winderweedle, Haines, Ward & Woodman, P.A.** 

**DATE: July 26, 2016**

**RE: S.R. 429 Wekiva Parkway, Project 429-202; Parcel 130 Part A and B**  
**Recommendation for Board Approval of Settlement Proposal**

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Winderweedle, Haines, Ward & Woodman, P.A., right of way counsel, seeks this Board's approval of a settlement for Parcel 130. CFX filed its eminent domain action on June 16, 2014. The Court entered an Order of Taking on August 12, 2014.

**DESCRIPTION and BACKGROUND:**

Parcel 130 involves a relatively small strip taking for the purpose of improving Yothers Road. The subject property is located along the north side of Yothers Road, approximately 1,000 feet west of its intersection with Plymouth Sorrento Road, in unincorporated Orange County, Florida. The parent tract contains 4.4548 acres of land area. The Parcel 130 acquisition is a rectangular shaped taking of approximately .1928 acres of land. The taking is located in the southwest portions of the subject property and is comprised of approximately .0773 acres of unencumbered land area and approximately .1155 acres of land area located within the Yothers Road right-of-way.

CFX retained the services of Mr. Stephen J. Matonis with Integra Realty Resources to appraise the property. The subject property is improved with a 1,626 square foot single family residence that was built in 1976, two manufactured homes containing 720 and 672 square feet of heated area, a warehouse, and other supporting site improvements. Mr. Matonis notes that the subject property is zoned ZIP (Zoning-In-Progress) by the City of Apopka. Mr. Matonis concludes that the highest and best use, as improved, is for interim rental of the improvements until the demand for residential development of the site is warranted.

The comparable land sales reflect a range of value of \$28,800 to \$39,849 per acre of land area. Mr. Matonis concluded to a fee simple market value estimate of \$32,000 per acre, or \$135,225 for the total parent tract land value. The contributory value of the improvements was estimated to be \$51,800. This resulted in an estimated market value conclusion for the parent tract of \$193,025. The value of the land taken was estimated to be \$2,659, and the contributory

value of the improvements in the taking were estimated to be \$6,000. Minor site improvements in the taking included an access drive to the subject residences and chain link fencing with three-strand barbed wire. Mr. Matonis developed a minor net cost to cure at \$4,900.

The subject taking does not directly impact any of the building improvements. However, due to the remainder's adjacency to the limited access right of way line in the after condition, Mr. Matonis opined that the land and improvements were damaged by 10%, or \$27,301. These valuation conclusions are summarized as follows:

Value of Part Taken (land and improvements)	\$ 8,659
Damages to Remainder (10%)	\$27,301
<u>Cost to Cure</u>	<u>\$ 4,900</u>
<b>Total Compensation</b>	<b>\$40,860</b>

#### **“REVERSE” OFFER OF JUDGMENT**

On July 14, 2016, the Landowners, through their attorney Raymer Maguire, served a “Reverse” Offer of Judgment to settle this case in the amount of \$62,500, exclusive of attorneys fees and costs. A Reverse Offer of Judgment entitles the Landowner’s attorney to recover fees pursuant to §73.092(2) if the jury returns a verdict equal or greater than the amount of the offer. This section of the statute awards fees based on an attorney’s time spent in the case, as well as other equitable factors, as opposed to an award based on a percentage of the benefit obtained.

The Landowner has submitted expert invoices in the amount of \$13,649.00, as set forth below:

Gary Pendergast (Appraiser)	\$2,070.00
VHB/Jim Hall (Land Planner)	4,279.68
MEI Civil /Dan Morris (Engineer)	3,100.13
Ed Williams	3,875.00
<u>JTS Tech</u>	<u>325.20</u>
<b>Total</b>	<b>\$13,649.01</b>

These experts have agreed to accept \$12,284.00 to resolve their fees.

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

Mr. Maguire has agreed to accept attorneys fees based on statutory betterment in the amount of \$7,141 ( $\$62,500 - \$40,860 = \$21,640 \times 33\%$ ).

The total settlement proposal is summarized as follows:

Compensation to the Landowner	\$62,500
Expert fees	12,284
Attorneys fees	7,141

<b>Total Settlement Amount</b>	<b>\$81,925</b>
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CFX previously deposited \$40,860 into the court registry as its good faith estimate of value. A settlement in the amount of \$81,925 would require CFX to deposit an additional sum of \$41,065. 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 Landowner's compensation as provided by §73.091 and §73.092, Florida Statutes. Acceptance of the proposal will also eliminate further risk associated with a Reverse Offer of Judgment, as well as expenses related to a jury trial.

**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 \$81,925, inclusive of attorney's fees and costs, to resolve the Landowner's interest in Parcel 130.

**ATTACHMENTS:**

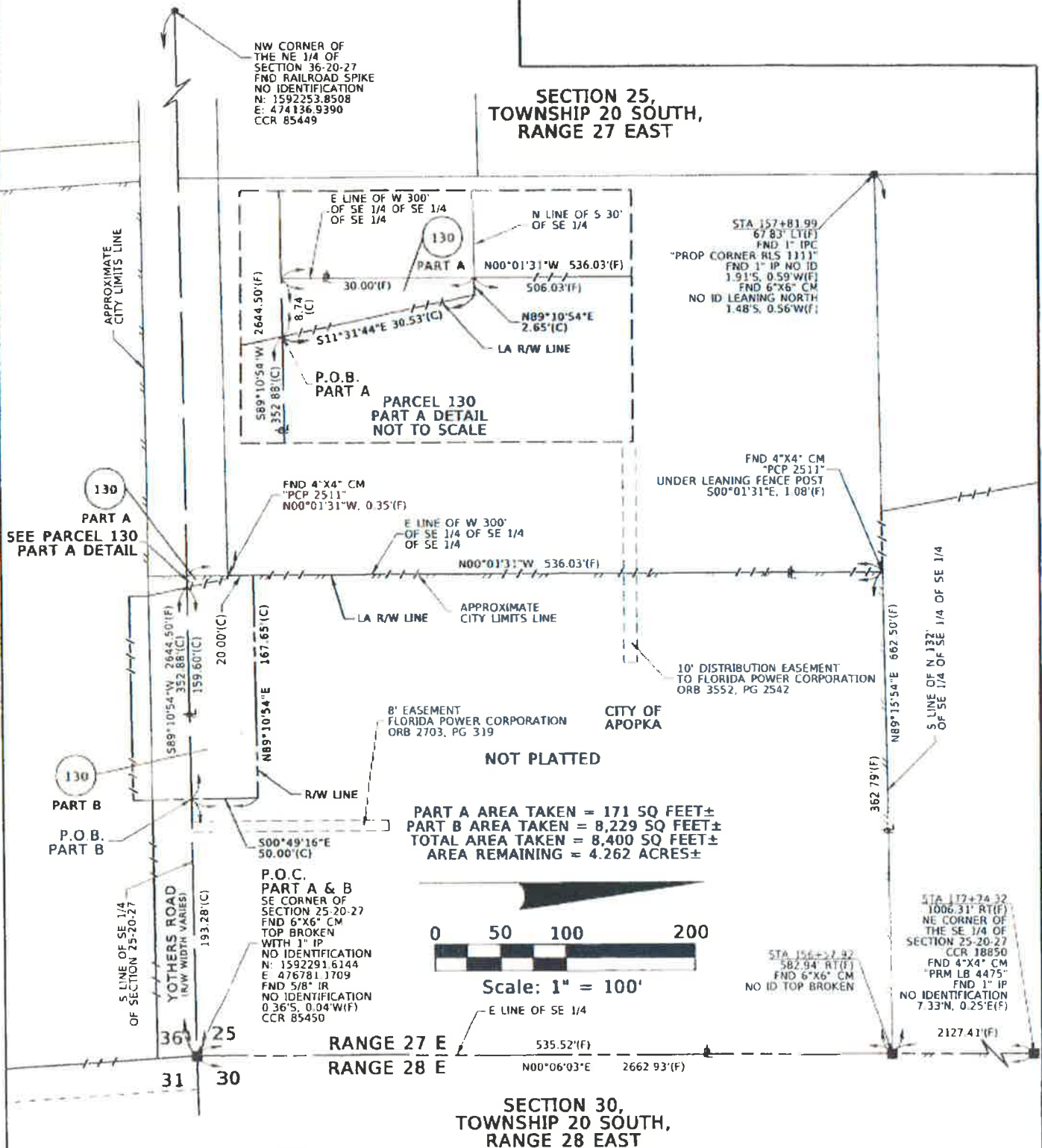
Sketch of Property

REVIEWED BY:



# SKETCH OF DESCRIPTION

SECTION 25,  
TOWNSHIP 20 SOUTH,  
RANGE 27 EAST



SEE SHEET 1 FOR LEGAL DESCRIPTION  
SEE SHEET 3 FOR GENERAL NOTES AND LEGEND

SHEET 2 OF 3

FOR: ORLANDO-ORANGE COUNTY  
EXPRESSWAY AUTHORITY

DATE: MAY 23, 2013

PROJECT NO.: H20-01

DRAWN: PMM CHECKED: JMS

STATE ROAD 429  
OOCEA PROJECT NO. 429-202  
PARCEL NO. 130



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