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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 140
Recommendation for Board Approval of Settlement Proposal

Winderweedle, Haines, Ward & Woodman, P.A., right of way counsel, seeks this Board's approval of a settlement for Parcel 140 (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 May 15, 2014.

DESCRIPTION and BACKGROUND:

This case involves the partial taking of unimproved property owned by GGH 10, LLC ("Landowner"), located at 3100 Bailey Hill Road, Apopka, Florida, approximately ¼ mile west of Plymouth Sorrento Road. The subject is a 10.633 acre, irregularly-shaped lot located in unincorporated Orange County, Florida. CFX is acquiring approximately half of the property.

The property is a vacant piece of land that had previously been excavated by the Acme Recycling Corporation and used for a clay pit, and then subsequently as a land clearing debris disposal facility. Soil borings from a level 2 contamination impact assessment indicate landfill debris (mostly wood, tree trunks, asphalt, tires and concrete) between two and eight feet deep covering most of the property, except for an area of approximately half an acre in the southeast corner of the parcel. It appears that there is no physical access to the property, as Bailey Hill Road ends approximately 600 feet east of the southeast corner of the property. The Landowner would therefore have to rely on obtaining either an implied easement or statutory easement of necessity across adjoining property.

CFX initially retained the services of Craig Ebaugh with Bledsoe & Ebaugh, LLC, to appraise the property. Mr. Ebaugh concluded that, due to the subject's marginal land characteristics and lack of physical access, development potential was questionable. He therefore utilized three comparable sales of similarly marginal land that had values between \$4,000 - \$6,000 per acre, and reconciled on a value of **\$5,000 per acre**. This resulted in a total compensation

estimate of **\$30,400**, which is the amount deposited into the court registry as CFX's good faith estimate of value.

For trial purposes, CFX subsequently retained the appraisal services of Chad Durrance of Durrance & Associates to update the appraisal to the date of taking. Mr. Durrance considered additional cost information to remediate the site and to acquire and construct access to the site, including removal of a much greater amount of debris than was originally estimated. Mr. Durrance similarly concluded that the property had limited development potential, and identified comparable sales ranging in value from \$2,000 - \$5,000 per acre. Mr. Durrance determined that the property would be worth \$4,000 per acre if it had access. However, due to uncertainty of access and the costs associated with establishing and constructing access, he determined that the property was worth **\$500 per acre**, for a total parent tract value of \$5,000. Mr. Durrance's compensation estimate is summarized as follows:

Value of Part Taken (4.943 acres)	\$2,500.00
<u>Severance Damages to Remainder (5.6 acres)</u>	<u>\$1,500.00</u>
Total Compensation	\$4,000.00

The Landowner has retained the appraisal services of Rick Dreggors with Calhoun, Dreggors & Associates, Inc. Mr. Dreggors opined that the highest and best use of the subject is for a single residential homesite, to be constructed on the half-acre of allegedly developable property located in the southeast corner (where they opine that an implied easement exists). Mr. Dreggors considers five comparable sales that range in size from 3 acres to 11 acres, all of which had access and contained all useable uplands. The properties sold for between \$23,000-\$49,000 per acre. Mr. Dreggors reconciles on a value of **\$30,000 per acre**, for a total parent tract value of \$318,900.

In the after condition, the Landowner contends that the remainder will be left land-locked, as access to the purported implied easement over the adjoining property will be cut-off by the expressway. Furthermore, the entire half-acre of allegedly developable property is located within the taking, leaving only non-developable property in the remainder. Mr. Dreggors' compensation estimate is summarized as follows:

Value of Part Taken	\$148,200
<u>Severance Damages to Remainder</u>	<u>\$165,700</u>
Total Compensation	\$313,900

SETTLEMENT PROPOSAL and EXPERT FEES:

Mediation was conducted on April 12, 2016 without a successful resolution. This ROW Committee previously approved an Offer of Judgment in the amount of \$50,000 to resolve this case, exclusive of fees and costs. On July 6, 2016, Landowner served CFX with a "Reverse" Offer of Judgment in the amount of \$99,999.99 (the maximum allowed pursuant to Florida Statute §73.032(3)), exclusive of fees and costs. A Reverse Offer of Judgment entitles the Landowner's attorney to recover fees pursuant to §73.092(2), which considers an attorney's time spent in the case, as well as other equitable factors, as opposed to recovery based on a percentage of the benefit obtained. This case was scheduled to go to trial during the September 12, 2016 trial docket, but

has been continued pending this outcome of this Committee's decision on the proposed settlement offer.

The Landowner submitted expert invoices in the following amounts:

Appraiser (Richard Dreggors)	\$41,143.00
Land Planner (Ed Williams)	7,075.00
Land Planner (Jim Hall)	15,193.00
Real Estate Expert (Ross Payne)	6,400.00
<u>Engineer (Glena Morris)</u>	<u>34,109.00</u>
Total	\$103,920.00

CFX's experts submitted the following invoices:

Appraiser (Chad Durrance)	\$25,816.50
Appraiser (Craig Ebaugh)	8,900.00
Real Estate Expert (Ted Estes)	16,675.00
<u>Engineer (Leland Morcee)</u>	<u>5,864.50</u>
Total	\$57,256.00

After further negotiations, the Landowner has agreed to resolve this case "all-in" for \$199,999. While this is an all-inclusive settlement, an estimated break-down of this settlement proposal is included for informational purposes:

Compensation to Landowner	\$99,999.00
Expert Fees	77,032.33
<u>Attorneys fees (based on betterment)</u>	<u>22,967.67</u>
Total	\$199,999.00

CFX previously deposited \$30,400 into the court registry as its good faith estimate of value. A settlement in the amount of \$199,999 would require CFX to deposit an additional sum of \$169,599. 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 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 a settlement in the amount of \$199,999, inclusive of attorneys fees and costs, to resolve the Landowner's interest in Parcel 140.

ATTACHMENTS:

Sketch of Property

REVIEWED BY: Joseph Hassiotore

SKETCH OF DESCRIPTION



Scale: 1" = 200'

SECTION 25,
TOWNSHIP 20 SOUTH,
RANGE 27 EAST

8" EASEMENT TO
FLORIDA POWER CORPORATION
ORB 2374, PG 155

NW CORNER OF
THE SE 1/4 OF
SECTION 25, T20S, R27E
CALCULATED POSITION
NO POINT FOUND OR SET

STA 178+10.34
488.98' LHT
END 5/8" IR
PROP CORNER R/S 1311

AREA TAKEN = 4.943 ACRES±
AREA REMAINING = 5.690 ACRES±

LESS OUT FOR ROAD
ORB 7223 PG 3102

END OF
CURVATURE
R=11078.00'(C)
Δ=02°19'53"(C)
L=450.77'(C)
CD=450.74'(C)
CB=N10°21'47"W

LESS OUT FOR ROAD
ORB 1311 PG 501

N LINE OF E 1/2 OF
S 1/2 OF NW 1/4 OF
SE 1/4 OF SE 1/4

E LINE OF W 1/2 OF
N 1/4 OF SE 1/4

P.O.B.
END 4" X 4" IR
PRM 3 4475
WIDTH 47' 0" (BTL)
END 12" IR
NO 10
0.01% C 32.00'

NOT PLATTED

LA R/W LINE

30' EASEMENT FOR
RIGHT OF WAY
ORB 2163 PG 254

500' 02' 40" E 47° 12' 12" N

NOT PLATTED

CITY OF APOPKA

CITY OF APOPKA

SE CORNER OF
SECTION 25, T20S, R27E
END 6" X 6" IR
TOP BROKEN
NO IDENTIFICATION
N 199°24'16"E
P 416731.175
END 5/8" IR
NO IDENTIFICATION
E 10.5' 0.04 W
(T.R. 8544)

30' R/W ACQUISITION
PER OR 997 PG 103

RANGE 27 E

RANGE 28 E

SECTION 30,
TOWNSHIP 20 SOUTH,
RANGE 28 EAST

SHEET 2 OF 3

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

FOR: ORLANDO-ORANGE COUNTY
EXPRESSWAY AUTHORITY

DATE: MARCH 14, 2013

PROJECT NO: H20-01

DRAWN: PMM CHECKED: JMS

STATE ROAD 429
OOCEA PROJECT NO. 429-202
PARCEL NO. 140



CEDATA CONSULTANTS, INC.

SURVEYING & MAPPING

2700 WESTHALL LANE
SUITE 137

MAITLAND, FLORIDA 32751

VOICE 1407/660-2722 FAX 660-8228

LAND SURVEYOR BUSINESS LICENSE NO. 6556

SKETCH OF DESCRIPTION

LEGEND AND ABBREVIATIONS

(C)	= CALCULATED	L	= LENGTH
(F)	= FIELD	LA	= LIMITED ACCESS
CB	= CHORD BEARING	LT	= LEFT
CCR	= CERTIFIED CORNER RECORD	NO	= NUMBER
CD	= CHORD DISTANCE	ORB	= OFFICIAL RECORDS BOOK
CM	= CONCRETE MONUMENT	±	= PROPERTY LINE
Δ	= DELTA (CENTRAL ANGLE)	PG	= PAGE
DB	= DEED BOOK	P.O.B	= POINT OF BEGINNING
FND	= FOUND	P.O.C.	= POINT OF COMMENCEMENT
ID	= IDENTIFICATION	R	= RADIUS
IP	= IRON PIPE	RT	= RIGHT
IR	= IRON ROD	R/W	= RIGHT OF WAY
IRC	= IRON ROD AND CAP	STA	= STATION

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 25, TOWNSHIP 20 SOUTH, RANGE 27 EAST, HAVING A BEARING OF SOUTH 00°06'03" 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 FIDELITY NATIONAL TITLE INSURANCE COMPANY DATED SEPTEMBER 15, 2013, ORDER NO. 4378014, 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 FOR LEGAL DESCRIPTION
SEE SHEET 2 FOR SKETCH OF DESCRIPTION

SHEET 3 OF 3

UPDATED TITLE WORK REVISED PER COMMENTS REVISED PER COMMENTS REVISION		PMM 10/07/2013 PMM 06/20/2013 PMM 05/09/2013 BY DATE	I HEREBY CERTIFY THAT THIS LEGAL DESCRIPTION AND SKETCH IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER CERTIFY THAT THIS LEGAL DESCRIPTION AND SKETCH MEETS THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 32-37, FLORIDA ADMINISTRATIVE CODE, SUBJECT TO CHAPTER 172 OF THE FLORIDA STATUTES, AND 201 TO 2019 AND 2020 IN FLORIDA.
FOR: ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY DATE: MARCH 14, 2013 PROJECT NO.: H20-01 DRAWN: PMM CHECKED: IMS		STATE ROAD 429 OOCEA PROJECT NO. 429-202 PARCEL NO. 140	GEODATA CONSULTANTS, INC. SURVEYING & MAPPING 2700 WESTHALL LANE SUITE 137 MAITLAND, FLORIDA 32751 VOICE: (407) 660-2322 FAX: 660-8273 LAND SURVEYOR BUSINESS LICENSE NO. 6556