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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 429-204; Parcel 236
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 236 (the "Taking" or "Property"), which was acquired by condemnation for the construction of the S.R. 429 Wekiva Parkway, Project 429-204. The Court entered a Stipulated Order of Taking for this parcel on May 30, 2014.

DESCRIPTION and BACKGROUND:

The subject property is a 71.32 acre parcel located along the west side of Plymouth Sorrento Road, north of Kelly Park Road. CFX is acquiring 11.43 acres for a four-lane divided expressway with an elevated interchange immediately north of the property with a ramp to State Road 453. The taking bisects the remainder, leaving a 51 acre east remainder with frontage on Plymouth Sorrento Road, and an 8.6 acre west remainder with no legal access.

The property is improved with two single family homes, various equestrian improvements, internal roadways and perimeter fencing. The largest home contains 6,305 square feet, and is located within the taking area. The second home contains 3,242 square feet and is located outside of the taking. The equestrian improvements include a 14,000 square foot stable, open storage barn, hay storage building and two stud barns.

HISTORY of the PROPERTY:

At the time of the taking, the property was owned by Bridle Path, LLC. Bridle Path acquired an undivided 45% interest in the parent tract on November 12, 2004 for \$1,600,000, and acquired the remaining 55% interest on August 15, 2005 for \$3,150,000 (according to document tax stamps on the deeds). The property was approved for planned development known as Bridle Path PD, which contemplated construction of 29 single-family homes in an equestrian community. The owner invested over \$1,750,270 to develop the property. In December 2005, Bridle Path entered into a Letter of Intent with Brownstone Builders to develop the first "smart home"

community in the United States and which would feature Nextgen (next generation) homes. Allegedly, sometime in April of 2006, Brownstone and its partners became aware of the proposed alignment of the Wekiva Parkway and withdrew their Letter of Intent. On February 23, 2007, Bridle Path mortgaged the property to AHIFO-18, LLC for \$5,200,000 (principle amount). On May 4, 2011, Bridle Path initiated an inverse condemnation action against CFX claiming that the property was effectively taken in June of 2007, when the Expressway Authority started showing the Wekiva Parkway alignment on maps running through Bridle Path's PUD. The inverse claim was subsequently dismissed after initiation of the instant eminent domain action. Bridle Path ultimately filed bankruptcy (initially under Chapter 11, and currently under Chapter 7). AHIFO-18, Bridle Path's creditor, was the successful bidder at the foreclosure sale and currently owns the property.

VALUATION:

CFX retained the services of Walter Carpenter of Pinel & Carpenter, Inc., to appraise the property. Mr. Carpenter determined that the highest and best use of the property was for a residential subdivision and considered four comparable sales and one listing agreement with similar highest and best uses. The values of these sales ranged from about \$20,000 to \$79,000 per acre. Mr. Carpenter reconciled on a value of **\$60,000 per acre**. In addition, Mr. Carpenter valued the 6,305 square foot home located within the taking area at \$200,000. This results in a total parent tract value of \$4,279,200.

Mr. Carpenter assessed severance damages of 15% to the eastern remainder property (about 51 acres) as a result of proximity to the expressway, which will be elevated 18-40 feet above the existing elevation of the remainder. In addition, 45 foot-tall light poles will be installed adjacent to the travel lanes at 200 foot intervals along the entire length of the east and west remainders. He damaged the western remainder (about 8.6 acres) by 85%, since this parcel will be landlocked after the taking. Mr. Carpenter's total compensation estimate is summarized as follows:

Value of the Part Taken – (11.431 acres)	\$685,900
Value of home taken	200,000
Severance Damages	900,200
Cost to Cure	5,500
CFX's Compensation Estimate	\$1,791,600

The Landowner retained the appraisal services of Richard Dreggors, of Calhoun, Dreggors & Associates, Inc., who similarly determined that the subject property had a highest and best use as a residential subdivision. He considered three comparable sales that ranged in value from about \$75,000-\$109,000 per acre, and reconciled on a value of **\$80,000 per acre**. He valued the single family residence located within the taking area to be worth \$719,400. This results in a total parent tract value of \$6,425,000. Mr. Dreggors found 40% severance damages to the eastern remainder due to proximity of the beltway, and about 95% damages to the western remainder because it will not have access in the after condition.

The Landowner's valuation estimate is summarized as follows:

Value of the Part Taken -- (11.431 acres)	\$914,500
Value of home taken	719,400
<u>Severance Damages</u>	<u>2,309,200</u>
Landowner's Compensation Estimate	\$3,943,100

EXPERT AND ATTORNEY FEES / SETTLEMENT PROPOSAL:

The Landowner has submitted expert invoices in the amount of \$48,067.50, as summarized below:

Richard Dreggors (Appraiser)	\$30,380
Tipton and Associates	2,475
PSG Construction	8,900
<u>Vanassee Hangen Brustlin, Inc.</u>	<u>6,313</u>
Total	\$48,068

The Landowner's experts have agreed to accept a total of \$43,261 to resolve their fees and costs. CFX's expert fees in this case totaled \$40,938.75, as summarized below:

Walter Carpenter (Appraiser)	\$26,804
<u>McIntosh and Assoc. (Engineer/Land Planning)</u>	<u>14,135</u>
Total	\$40,939

Mediation was conducted on July 30, 2014, which resulted in an impasse. Subsequent negotiations resulted in a settlement whereby the Landowner agreed to accept **\$2,999,995.00**, to resolve this case, plus attorneys and expert fees and costs. This agreement was initially reached with Bridle Path, LLC, represented by Kurt Bauerle, and then put on "hold" during the bankruptcy proceedings. AHIFO-18 has agreed to accept this negotiated settlement, and has indicated that any further proceedings or negotiations would be handled through new counsel and, most likely, new experts. A summary of the proposed settlement agreement is as follows:

Compensation to Landowners	\$2,999,995
Statutory Attorney's fees (Kurt Bauerle)	311,679
<u>Expert fees</u>	<u>43,261</u>
Total Settlement	\$3,354,939

CFX previously deposited \$1,791,600 into the court registry as its good faith estimate of value. A settlement in the amount of \$3,354,939 would require CFX to deposit an additional sum of \$1,560,597. 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 and expenses for CFX in this case, especially considering the uncertainty of a new and potentially higher claim should AHIFO-18 seek new counsel and expert reports.

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 \$3,354,939 to fully resolve the Landowners' interests in Parcel 236, inclusive of attorney's fees and expert fees and costs.

ATTACHMENTS:

Sketch of Property

REVIEWED BY: 

SKETCH OF DESCRIPTION

FARCEL 236

PURPOSE: LIMITED ACCESS RIGHT OF WAY

ESTATE: FEE SIMPLE

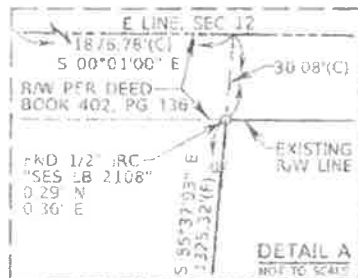
TOWNSHIP 20 SOUTH
RANGE 28 EAST

PLYMOUTH SORRENTO ROAD

E LINE, SEC 12 (R/W VARIES)

ONDICH ROAD
(60' R/W) 1

12



TOWNSHIP 20 SOUTH
RANGE 27 EAST

REMAINDER
51.072 AC±

14' FLORIDA POWER
CORPORATION EASEMENT
OR 1707, PG 947

DETAIL B
NOT TO SCALE

SCALE:
1" = 400'

LEGEND

- C = CALCULATED
- CCR = CERTIFIED CORNER RECORD
- CB = CHORD BEARING
- CM = CONCRETE MONUMENT
- F = FIELD
- FND = FOUND
- ID = IDENTIFICATION
- IPC = IRON PIPE W/CAP
- IR = IRON ROD
- IRC = IRON ROD W/CAP
- L = LENGTH
- LA = LIMITED ACCESS
- LS = LICENSED BUSINESS
- IS = LAND SURVEYOR
- OR = OFFICIAL RECORDS
- PB = PLAT BOOK
- PG = PAGE
- POB = POINT OF BEGINNING
- POC = POINT OF COMMENCEMENT
- P = PROPERTY LINE
- R = RADIUS
- RSE = RANGE
- RAW = RIGHT OF WAY
- SEC = SECTION
- TD = TANGENT BEARING
- TWP = TOWNSHIP
- W/ = WITH
- Δ = CENTRAL ANGLE

GENERAL NOTES

1. THE BEARINGS SHOWN HEREON ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, 1983 NORTH AMERICAN DATUM, 2007 ADJUSTMENT, WITH THE SOUTH LINE OF THE SOUTH EAST 1/4 OF SECTION 1, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, HAVING A BEARING OF SOUTH 89°21'11" WEST.
2. THERE MAY BE OTHER RECORDED DOCUMENTS FOUND IN ORANGE COUNTY RECORDS AFFECTING THIS PROPERTY THAT ARE NOT SHOWN ON THIS SKETCH OF DESCRIPTION.
3. ATTENTION IS DIRECTED TO THE FACT THESE MAPS MAY HAVE BEEN ALTERED IN SIZE BY REPRODUCTION. THIS MUST BE CONSIDERED WHEN OBTAINING SCALE DATA.
4. A CERTIFICATE OF TITLE INFORMATION PREPARED BY FIRST AMERICAN TITLE INSURANCE COMPANY DATED APRIL 19, 2012, FILE NO. 2037-2727303 WAS REVIEWED BY THE SURVEYOR AND EXCEPTIONS (IF ANY) NOTED ON S.A.T. (S.A.T. IS NOT SHOWN HEREON).

FOR: ORLANDO ORANGE COUNTY EXPRESSWAY AUTHORITY

DESIGNED BY: RJM	DATE: 3/18/14
DRAWN BY: DJK	JOB NO.
APPROVED BY: RJM	COCEA PROJECT NO. 429-204

URS

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REVISIONS

SHEET 2 OF 2