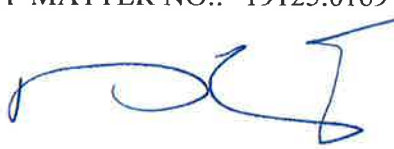




# MEMORANDUM

TO: Central Florida Expressway Authority      CLIENT-MATTER NO.: 19125.0169  
 Board Members

FROM: David A. Shontz, Esq., Right-of-Way Counsel 

DATE: January 23, 2017

RE: State Road 453 Wekiva Parkway, Project 429-206; Parcel 314  
 Proposed Settlement Including Fees and Costs

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Shutts & Bowen LLP, Right-of-Way Counsel, seeks the approval by the CFX Board of a negotiated settlement between Deborah New, (the "Owner") and the Central Florida Expressway Authority (the "CFX") for the acquisition of Parcel 314 (the "Taking" or "Property") for the construction of State Road 453 Wekiva Parkway, Project 429-206.

## DESCRIPTION AND BACKGROUND

Parcel 314 is a fee simple whole taking of 6.1 acres consisting of Part A, containing 5.141 acres for use as limited access right-of-way, and Part B, containing 0.963 acres for use as right-of-way. The property is located north of the Lake/Orange County line, west of Plymouth Sorrento Road and south of Coronado Somerset Road in Lake County, Florida.

The subject is improved with a single family residence, containing 1,852 square feet of living area. Other site improvements include a gravel stabilized driveway, concrete apron in front of the garage, fencing, gate, 12' x 24' aluminum shed, in-ground swimming pool, septic system and well, and 8' by 17' dog kennel run and dog house. The property is comprised of two tax parcels. The north 5 acres is zoned A, Agriculture, by Lake County; and the southern acre is zoned R1, residential use, by Lake County. The subject property has a future land use designation of Regional Office, by Lake County.

The CFX's appraisal of the property was prepared by Richard K. MacMillan, of The Appraisal Group of Central Florida, Inc. Mr. MacMillan opined the highest and best use of the property "as if vacant" is as a single-family home site and the highest and best use "as improved" is for continued single-family residential use. Mr. MacMillan used four (4) comparable land sales ranging in size from 2.696 acres to 6.0 acres, with prices ranging from \$22,917 per acre to \$28,713 per acre to arrive at an estimate of the land value of the Subject Property of \$25,000 per acre or \$152,600 as the land value.

Mr. MacMillan used three (3) improved sales ranging from \$170,000 to \$230,000 to arrive at a value of \$285,000 for the subject property by the Market Approach. Thus, Mr. MacMillan opines the value of the land at \$152,600 and the improvements at \$132,400 for a total compensation of \$285,000.

Ms. New is represented by Kurt Bauerle of Harris Harris Bauerle Ziegler Lopez, P.A. Although an appraisal report was not completed, Mr. Bauerle argued, that based upon other parcels within the subject neighborhood previously appraised, he would be in and around \$600,000 for the taking. Mr. Bauerle additionally argued that settlement of an adjacent parcel of similar size was \$478,000 and, therefore, an appropriate settlement for this parcel due to its similarity.

Procedurally, this case had not yet been set for trial and, therefore, minimal experts' costs were expended to date for both parties.

As we analyze each case on its own factual basis and merits, and based upon our knowledge of other opposing appraisal reports and arguments of opposing counsel in other cases, we were able to reach a negotiated settlement in the amount of \$417,000 in full settlement of all claims for compensation by the property owner, plus minimal experts fees of \$4,750. This additional amount involves an increase in land value and improvements. Additionally, the settlement adds statutory attorney's fees of \$48,510, for a total settlement of \$470,260. The attached Settlement Agreement memorializes the agreement between Mr. Bauerle and Right-of-Way counsel.

For the above-cited reasons, Right-of-Way counsel requests a recommendation for approval of the negotiated settlement in the amount of \$417,000, plus statutory attorney's fees of \$48,510 and costs of \$4,750, which is in the CFX's best interest. Settlement of the underlying claim, and all fees and costs will eliminate further risk and unnecessary expenses that the CFX will ultimately incur with further litigation of the condemnation action to acquire Parcel 314.

At its January 25, 2017 meeting, the CFX Right-of-Way Committee voted to recommend approval of the negotiated settlement to the CFX Board.

### **RECOMMENDATION**

We respectfully request that the CFX Board approve the proposed settlement agreement with a total settlement of \$470,260 in full settlement of all claims for compensation in the acquisition of Parcel 314, including all statutory attorney's fees and costs.

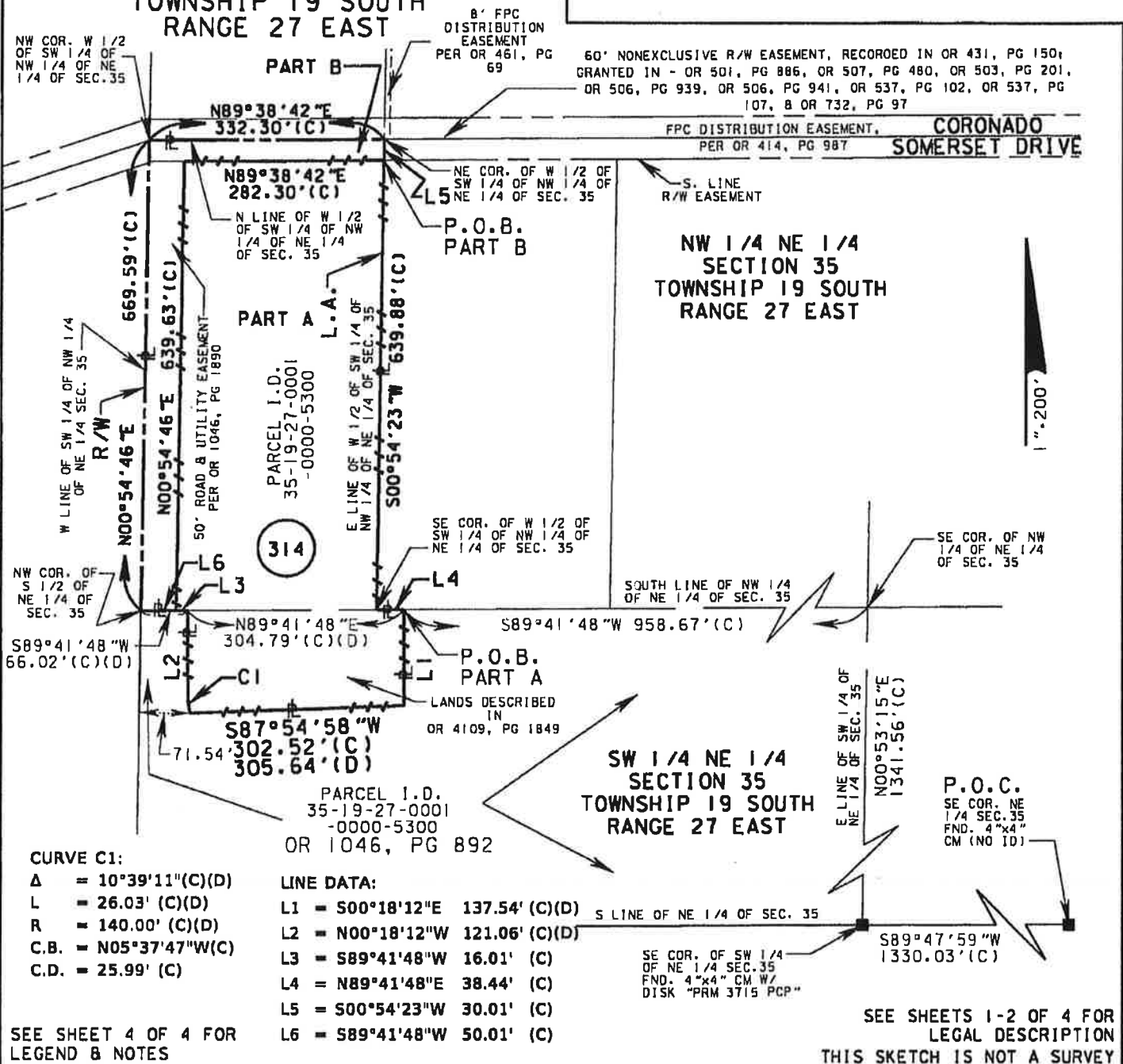
### **ATTACHMENTS**

- Exhibit "A" – Sketch of the Subject Property
- Exhibit "B" – Photographs of the Subject Property and Area
- Exhibit "C" – Settlement Agreement
- Exhibit "D" – Respondent's Expert Invoice

Reviewed by: Joseph J. Siniatore  
General Counsel

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PARCEL: 314  
SECTION 35  
TOWNSHIP 19 SOUTH  
RANGE 27 EAST



**CURVE C1:**  
 $\Delta = 10^{\circ}39'11''(C)(D)$   
 $L = 26.03'(C)(D)$   
 $R = 140.00'(C)(D)$   
 $C.B. = N05^{\circ}37'47''W(C)$   
 $C.D. = 25.99'(C)$

**LINE DATA:**  
 $L1 = S00^{\circ}18'12''E \ 137.54'(C)(D)$   
 $L2 = N00^{\circ}18'12''W \ 121.06'(C)(D)$   
 $L3 = S89^{\circ}41'48''W \ 16.01'(C)$   
 $L4 = N89^{\circ}41'48''E \ 38.44'(C)$   
 $L5 = S00^{\circ}54'23''W \ 30.01'(C)$   
 $L6 = S89^{\circ}41'48''W \ 50.01'(C)$

SEE SHEET 4 OF 4 FOR LEGEND B NOTES

SEE SHEETS 1-2 OF 4 FOR LEGAL DESCRIPTION  
THIS SKETCH IS NOT A SURVEY

RIGHT OF WAY PARCEL SKETCH		STATE ROAD 453 (WEKIVA PARKWAY)		CENTRAL FLORIDA EXPRESSWAY AUTHORITY		SECTION 429-206 (2C)	
REVISE PARTS A & B		CWW	6/15	DRMP PROJECT NO. 12-0150.000	SHEET 4 OF 5	DATE: 08/07/14	SKETCH PREPARED BY <b>DRMP</b> ENGINEERS - SURVEYORS - PLANNERS - SCIENTISTS 941 LAKE BALDWIN LANE ORLANDO, FLORIDA 32814 (407) 896-0594 L.B. No. 2648
REVISE DESCRIPTION HEADER		ALQ	5/15	PARCEL NUMBERS	CWW	12/14	
TOTAL TAKE		ALQ	4/15	ADD REMAINDER	CWW	11/14	
REVISION		BY	DATE	PER COMMENTS	CWW	9/14	
		BY	DATE	REVISION	BY	DATE	

EXHIBIT "A"

**PHOTOGRAPHS**



(1) Westerly view of Coronado Somerset Drive.  
Photograph taken by Thomas A. Riddle, MAI on July 31, 2014



(2) Easterly view of Coronado Somerset Drive.  
Photograph taken by Thomas A. Riddle, MAI on July 21, 2015

**PHOTOGRAPHS**



(3) Southerly view of the entrance driveway to the subject property.  
Photograph taken by Thomas A. Riddle, MAI on July 21, 2015



(4) Southerly view of the entrance driveway to the subject property.  
Photograph taken by Thomas A. Riddle, MAI on July 31, 2014

**PHOTOGRAPHS**



(5) Southerly (front) view of the subject residence.  
Photograph taken by Thomas A. Riddle, MAI on July 31, 2014



(6) Easterly (side) view of the subject residence.  
Photograph taken by Thomas A. Riddle, MAI on July 31, 2014

**PHOTOGRAPHS**



(7) Westerly (side) view of the subject residence.  
Photograph taken by Thomas A. Riddle, MAI on July 31, 2014



(8) Northwesterly (rear) view of the subject residence.  
Photograph taken by Thomas A. Riddle, MAI on July 31, 2014



**PHOTOGRAPHS**

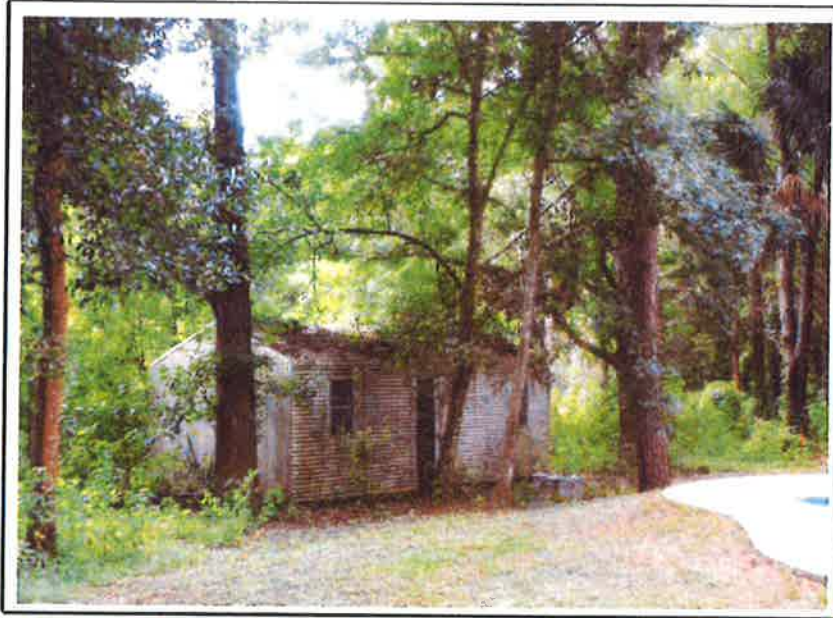


(9) Northerly (rear) view of the swimming pool.  
Photograph taken by Thomas A. Riddle, MAI on July 31, 2014



(10) Interior view of the subject enclosed porch on the south end of the residence.  
Photograph taken by Thomas A. Riddle, MAI on July 31, 2014

**PHOTOGRAPHS**



(13) Exterior view of the storage shed.  
Photograph taken by Thomas A. Riddle, MAI on July 31, 2014



(14) Interior view of the storage shed.  
Photograph taken by Thomas A. Riddle, MAI on July 31, 2014

**PHOTOGRAPHS**



(15) View of dog kennel.  
Photograph taken by Thomas A. Riddle, MAI on July 31, 2014



(16) Southerly view of subject residence.  
Photograph taken by Richard K. MacMillan, MAI on September 28, 2015

Parcel: 314  
Project: Wekiva Parkway 429-206  
County: Lake

Aerial with Camera Angles



Aerial from the Lake County Property Appraiser's Website

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT  
IN AND FOR LAKE COUNTY, FLORIDA**

CENTRAL FLORIDA EXPRESSWAY  
AUTHORITY, a body politic and corporate, and  
an agency of the state under the laws of the State  
of Florida,

Petitioner,

v.

CASE NO.: 2015-CA-001524

DEBORAH NEW, et al.,

Parcel 314

Respondents.

Judge Singeltary

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**SETTLEMENT AGREEMENT**

Counsel for the Petitioner, **CENTRAL FLORIDA EXPRESSWAY AUTHORITY** (“CFX”), and for Respondent, **DEBORAH NEW**, (“Respondent”) have reached the following negotiated settlement of Parcel 314:

1. Respondent, Deborah New, shall have and recover from the Petitioner the sum of **FOUR HUNDRED SEVENTEEN THOUSAND AND NO/100 DOLLARS (\$417,000.00)** in full payment for the property designated as Parcel 314 herein taken, severance damages, business damages, tort damages, if any, and all other damages and claims with the exception of attorney’s fees and costs, subject to apportionment, if any.

2. Petitioner is entitled to credit in the amount of **TWO HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$270,000.00)** previously deposited into the Registry of the Court in this case by Petitioner.

3. Respondent does have and recover of and from the Petitioner the sum of **FORTY-EIGHT THOUSAND, FIVE HUNDRED TEN AND NO/100 DOLLARS (\$48,510.00)**, as attorney’s fees for services rendered on behalf of Respondent by the Harris Harris Bauerle Ziegler Lopez, PA firm in this cause, pursuant to §§73.091 and 73.092, *Florida Statutes* (2015).

4. Respondent does have and recover of and from the Petitioner the sum of **FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00)** for experts’ fees and costs incurred on behalf of Respondent in this matter.

5. This Settlement Agreement will be placed on the agendas for the CFX Right of Way Committee meeting and the CFX Board, and is conditioned upon final approval by the CFX Board.

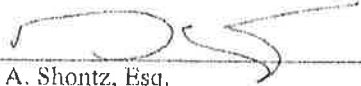
6. Upon approval of this Settlement Agreement by the CFX Board, Counsel for Petitioner and Counsel for Respondent shall jointly submit to the Court for entry a Stipulated Final Judgment in this matter as soon as practical.

7. Within thirty (30) days from the date of receipt by Petitioner's Counsel of a conformed copy of the Stipulated Final Judgment, Petitioner will pay to Respondent, by deposit into the Registry of the Court the balance due of **ONE HUNDRED FORTY-SEVEN THOUSAND, ONE HUNDRED SEVENTY AND NO/100 DOLLARS (\$147,170.00)**, this sum being the difference between the Petitioner's initial deposit and the final agreed settlement amount, plus a \$170.00 Clerk's fee.

8. Within thirty (30) days from the date of receipt by Petitioner's Counsel of a conformed copy of the Stipulated Final Judgment, Petitioner shall issue a check for the total amount of **FIFTY-THREE THOUSAND, FIVE HUNDRED TEN AND NO/100 DOLLARS (\$53,510.00)**, payable to the firm of Harris Harris Bauerle Ziegler Lopez, P.A. and mail said check to Kurtis T. Bauerle, Esq., Harris Harris Bauerle Ziegler Lopez, P.A., 1201 East Robinson Street, Orlando, Florida 32801, as payment in full for all statutory attorney's fees and experts' fees and costs as provided in this Agreement.

9. This Settlement Agreement, executed by the respective counsel on behalf of the parties, contains all of the agreements of the parties.

CENTRAL FLORIDA EXPRESSWAY DEBORAH NEW, RESPONDENT  
AUTHORITY, PETITIONER



David A. Shontz, Esq.  
Attorney for Petitioner  
Dated: November 17, 2016

*Jaxxon*  
ORLDOCS 15073170 1 ✓



Kurtis T. Bauerle, Esq.  
Attorney for Respondent  
Dated: ~~November~~ January 17, 2017

# Calhoun, Dreggors & Associates, Inc.

• Real Estate Appraisers & Consultants •

January 13, 2017

Kurt T. Bauerle, Esq.  
c/o Harris Harris Bauerle Ziegler Lopez  
1201 East Robinson Street  
Orlando, FL 32801

RE: **Owner:** New  
**Project:** Wekiva Parkway  
**Parcel No.:** 314  
**County:** Lake

## INVOICE

Review subject property information, exterior inspection of property, land sales research/analysis, review nearby land sales, conference with owner's representative, prepare for and meet with owner's representative to review our analysis.

Abrams Schmidt:	22.50 Hrs. x \$175/Hr. =	\$3,937
Dreggors:	4.75 Hrs. x \$275/Hr. =	<u>1,306</u>
<b>Total</b>		<b>\$5,243</b>

Thank you,

Richard C. Dreggors, GAA  
President

RCD/ddp

728 West Smith Street • Orlando, Florida 32804  
Tel (407) 835-3395 • Fax (407) 835-3393

EXHIBIT "D"

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<b>OWNER</b>	<b>NEW</b>	<b>COURTNEY ABRAMS SCHMIDT</b>
<b>PROJECT</b>	<b>WEKIVA PARKWAY</b>	
<b>PARCEL(S)</b>	<b>314</b>	
<b>COUNTY</b>	<b>LAKE</b>	

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<b>DATE</b>	<b>TYPE OF SERVICE</b>	<b>HOURS</b>
04/07/16	REVIEW FILE; PULL SUBJECT DATA.	1.75
04/08/16	PRELIMINARY SALES RESEARCH.	2.75
08/15/16	RESEARCH/ANALYSIS OF SALES.	4.50
08/18/16	RESEARCH/ANALYSIS OF SALES.	4.00
08/22/16	SUMMARY ANALYSIS OF COMPARABLES; MEETING WITH RICK TO REVIEW SALES AND ANALYSIS.	2.75
08/26/16	UPDATED SUMMARY ANALYSIS OF SURROUNDING PROPERTY VALUES.	2.25
08/29/16	CALL WITH ATTORNEY REGARDING SALES INFORMATION.	0.75
09/12/16	REVIEW OF CONDEMNOR APPRAISAL; RESEARCH/ANALYSIS OF SALES.	<u>3.75</u>
	<b>TOTAL HOURS</b>	<b>22.50</b>



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<b>OWNER</b>	<b>NEW</b>	<b>RICHARD C. DREGGORS, GAA</b>
<b>PROJECT</b>	<b>WEKIVA PARKWAY</b>	
<b>PARCEL(S)</b>	<b>314</b>	
<b>COUNTY</b>	<b>LAKE</b>	

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<b>DATE</b>	<b>TYPE OF SERVICE</b>	<b>HOURS</b>
04/05/16	REVIEW INFORMATION ON THE SUBJECT PARCEL; REVIEW NEARBY LAND SALES; CONFERENCE WITH OWNER'S REPRESENTATIVE; EXTERIOR INSPECTION OF SUBJECT PARCEL.	2.25
08/22/16	MEETING WITH ASSOCIATE TO REVIEW OUR ANALYSIS.	1.00
08/23/16	PREPARE FOR AND MEET WITH OWNER'S REPRESENTATIVE TO REVIEW OUR ANALYSIS.	<u>1.50</u>
	<b>TOTAL HOURS</b>	<b>4.75</b>