

# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: Central Florida Expressway Authority Board Members

FROM: Linda S. Brehmer Lanosa, Deputy General Counsel  
Suzanne Driscoll, Esq., Shutts & Bowen *Linda S. Brehmer Lanosa*

DATE: January 24, 2017

RE: *Central Florida Expressway Authority v. Daryl and Laura Alderman, et al.*  
Case No. 2015-CA-004105-O, Parcel 241  
Location: 3252 Ondich Road, unincorporated Orange County, Florida  
Total Taking of 20.112 acres

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### INTRODUCTION

The case was successfully mediated on December 22, 2016, after the disclosure of updated expert reports, but before a significant amount of pre-trial discovery and other work had been performed. The parties have reached a proposed all-inclusive settlement in the amount of \$1,496,175, including interest, statutory attorney's fees, expert fees, and costs as described below.

### DESCRIPTION OF PROPERTY AND TAKING

Parcel 241 is a fee simple whole taking consisting of 20.112 acres. Parcel 241 is located on the south side of Ondich Road just west of Plymouth Sorrento in unincorporated Orange County, Florida.

Mr. and Mrs. Alderman bought the property in 1998. Mr. Alderman built the 2,572 square foot house on the property in 2004. It had 3 bedrooms and 2 bathrooms. Additional improvements included 4 storage sheds, a horse feeding stall and barn, a pond and lush landscaping. They had four horses, which were given away because of the taking.

To date, Mr. and Mrs. Alderman received the good faith estimate of value in the amount of \$846,200 plus a replacement housing purchase additive ("Purchase Additive") in the amount of \$94,000. The Purchase Additive will be recaptured as part of the proposed settlement. The Aldermans received some additional relocation benefits for incidental expenses.

### CFX'S APPRAISAL REPORT

David Hall, ASA, State-Certified General Appraiser, of Bullard, Hall and Adams, appraised the property for CFX. He opined the highest and best use of Parcel 241 is for continued single family residential use.

In his updated appraisal report, Mr. Hall increased the estimated land value from \$28,000 per acre to \$37,500 per acre or \$754,200. Mr. Hall used four (4) improved sales to determine the value of the improvements, with prices ranging from \$105.62 to \$111.52 per square foot. Mr. Hall valued the improvements at \$110 per square foot for a total of \$283,000. A summary of Mr. Hall's estimate of value is below.

Land Taken (\$37,500 per acre)	\$ 754,200
Improvements	\$ 283,000
Total for Owner	<b>\$1,037,200</b>

### **MR. AND MRS. ALDERMAN'S APPRAISAL REPORT**

Tom Callan, counsel for Mr. and Mrs. Alderman, retained Martin Englemann, MAI, MRICS, to appraise the property. Mr. Englemann concluded that the highest and best use of the property is for future residential development.

Rather than looking for comparable sales in the general area of Parcel 241, Mr. Englemann relied upon comparable sales in Winter Garden, Clermont and southeast Orlando. All of his comparable sales are in superior locations, with superior zoning (PD, PUD, etc.), and have utilities either onsite or available nearby, unlike Parcel 241. These sales range in sale price from \$74,277 to \$111,343 per acre. Mr. Englemann estimates the land value of Parcel 241 at \$80,000 per acre or **\$1,610,000**. He did not increase his estimate of value of Parcel 241 with the value of the improvements because the improvements had no long term contributory value.

### **STATUTORY ATTORNEY'S FEES AND EXPERT FEES**

Statutory attorney's fees are based upon the benefit achieved. With an all-inclusive settlement number, the exact monetary benefit achieved excluding attorney's fees and expert fees is not known. Nevertheless, assumptions can be made to measure the reasonableness of an all-inclusive settlement.

Assuming the amount of full compensation to the property owner is \$1,306,000, the monetary benefit achieved is \$1,306,000 less the first written offer of \$833,300, for a total monetary benefit of \$472,700. Statutory attorney's fees are the sum of 33% of the benefit up to \$250,000 ( $\$250,000 \times 33\% = \$82,500$ ) plus 25% of the benefit over \$250,000 but less than \$1 million ( $\$222,700 \times 25\% = \$55,675$ ), for a total statutory attorney fee of **\$138,175**. By way of comparison, the statutory attorney's fee based upon the owners' demand of \$1,610,000 would be based upon a benefit of \$776,700, yielding an attorney's fee of \$214,175.

Regarding expert fees, Tom Callan on behalf of Mr. and Mrs. Alderman retained 4 experts and presented invoices totaling \$65,124.06. The invoices are attached and summarized below.

<b>Expert</b>	<b>Invoice</b>
Franklin Street (Martin Englemann)	\$ 31,519.58
VHB, Inc.	21,456.98
PSG Construction	7,700.00
Juris Corporation	4,347.50
Orange Legal	100.00
<b>Total</b>	<b>\$65,024.06</b>

After reviewing the invoices, the hourly rates, and the services performed, counsel for CFX determined that a payment of **\$48,000** for the landowners' expert fees and costs would be a reasonable amount for settlement purposes.

**PROPOSED ALL-INCLUSIVE SETTLEMENT**

After considering compensation to the owners, to the owners' lawyers, and to the owners' experts, the parties reached a proposed all-inclusive settlement in the amount of \$1,496,175. A table comparing the parties' positions with a hypothetical breakdown of the proposed settlement is below.

	<b>CFX</b>	<b>Owners' Demand</b>	<b>Proposed Settlement</b>
Land Value	\$1,037,000	\$1,610,000	\$1,306,000
Statutory Attorney's Fees		214,175	138,175
Expert Fees and Costs		65,024	48,000
Additional Sum			4,000
<b>Total for Owner</b>		<b>\$1,889,199</b>	<b>\$1,496,175</b>

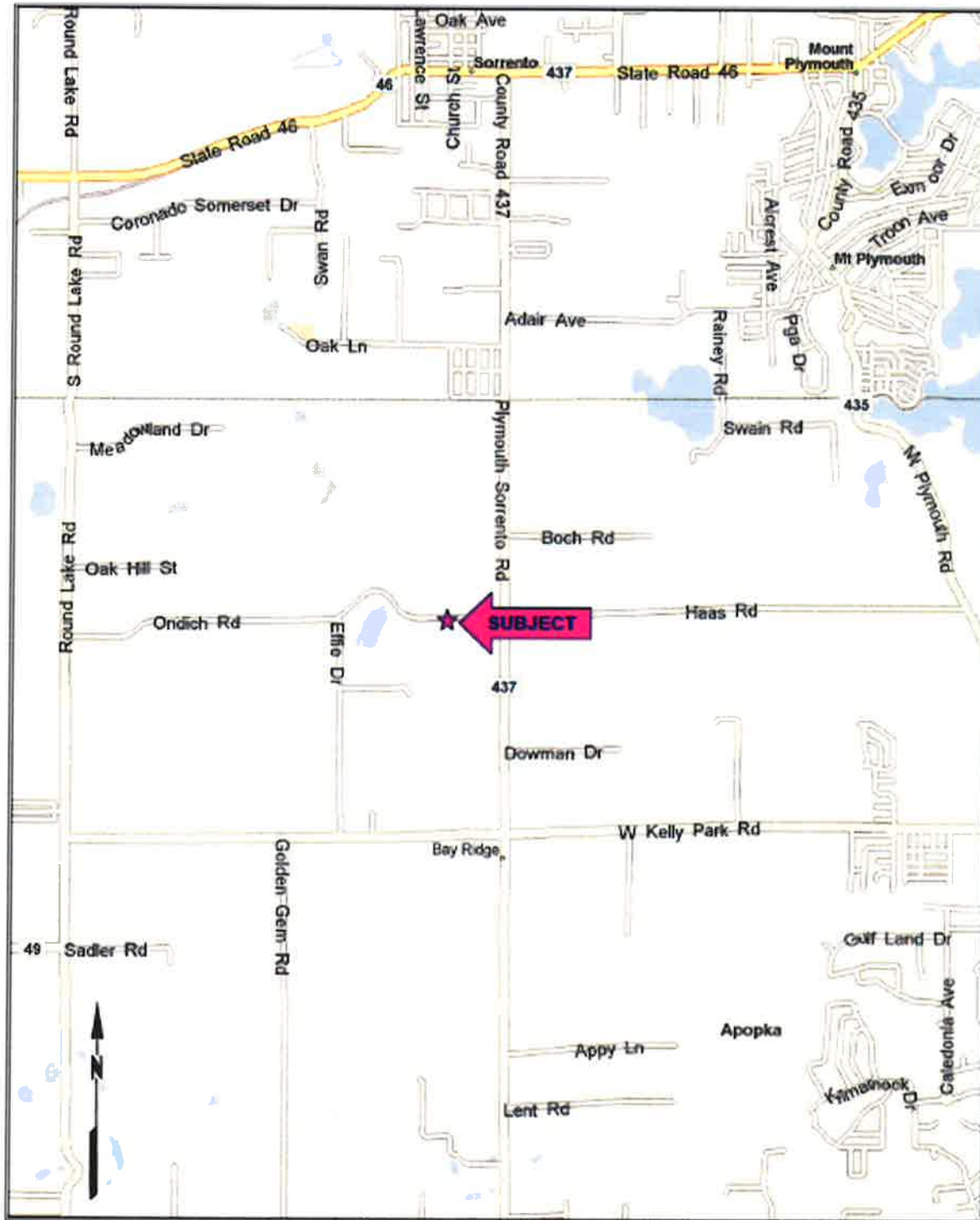
This breakdown of the all-inclusive settlement amount is for the purpose of analyzing the settlement amount and may not represent the actual allocation.

**REQUESTED ACTION**

Board approval is requested to accept the Mediated Settlement Agreement in the amount of \$1,496,175 to settle all pending claims for the taking of Parcel 241, including full compensation for the property, severance damages, business damages, tort damages, interest, attorney's fees, attorney's costs, expert fees, expert costs, and any other claim, subject to apportionment. The \$94,000 Purchase Additive will be recaptured as part of the proposed settlement.

The Right of Way Committee recommended approval on January 25, 2017.

Reviewed by: Joseph Flaminio



**SUBJECT LOCATION MAP  
PARCEL 241**



**AERIAL PHOTO  
PARCEL 241**



**PHOTOGRAPHS OF SUBJECT  
PARCEL 241**



**3. LOOKING SOUTHEAST AT THE RESIDENCE**



**4. LOOKING NORTHEAST AT THE RESIDENCE**

**PHOTOGRAPHS OF SUBJE  
PARCEL 2**



**9. LOOKING NORTHWEST AT THE LARGE SHED**



**10. LOOKING NORTHWEST AT A SHED**

**PHOTOGRAPHS OF SUBJECT  
PARCEL 241**



11. LOOKING NORTHEAST AT SOME OF THE SHEDS



12. LOOKING SOUTH AT THE ZIP LINE



**PHOTOGRAPHS OF SUBJECT  
PARCEL 241**



**13. LOOKING SOUTH AT THE CORRAL.**



**14. LOOKING WEST AT THE SHEDS AND HORSE FEEDING STABLE.**