

CONSENT AGENDA ITEM

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MEMORANDUM

TO: Central Florida Expressway Authority, CLIENT-MATTER NO.: 19125.0162
Governing Board

FROM: Sidney C. Calloway, Esquire, Right-of-Way Counsel *SCC*

DATE: December 20, 2016

RE: CFX v. Kenneth W. Morris, et al.
Parcels 287/887
Case No.: 2015-CA-006557-O

Shutts & Bowen LLP, Right-of-Way Counsel, submits this Memorandum in support of its request to the CFX Board for approval of an Offer of Judgment, pursuant to Section 73.032 upon Respondents, Kenneth W. Morris and Harvey Lee Morris ("Respondents") as full compensation and complete settlement of all Respondents' claims for compensation and damages associated with CFX's acquisition of Parcels 287 and 887.

DESCRIPTION, CFX MARKET VALUE CONCLUSIONS AND RECOMMENDATION

- I. **Description.** The owners of Parcels 287 and 887 have been identified as Kenneth W. and Harvey Lee Morris. The subject parcels have been acquired by CFX in connection with the Wekiva Parkway, S.R. 429-205 Project. The parent tract from which Parcels 287 and 887 were acquired, consists of five contiguous parcels with a combined area of 36.118± acres and is improved with a large two-story home, five manufactured homes, two manufactured homes converted into an office/storage building, a large detached garage, a storage trailer, dog kennels, a historic schoolhouse building and several large sheds. The parcels are located in both Orange County and the City of Apopka and are zoned A-2 or AG, which provides for residential and agricultural uses. The future land use designations are Agricultural (city) and Rural (county).

Parcel 287 is a limited access right-of-way taking containing 10.350± acres from the parent tract. Parcel 887 is a permanent easement area encompassing 9,054 square feet of land area (0.208± acres), which will be used to construct a bridge over the property owner's current ingress/egress driveway from Haas Road.

- II. (A) **Before Land Value.** The CFX's initial and updated appraisals of the subject property were prepared by Christopher D. Starkey and Marti Matonis Hornell, both State Certified General Real Estate Appraisers employed by Integra Realty Resources (IRR). IRR concluded that the highest and best use of the property, as vacant, is for future residential development. As improved, the highest and best use of the property is for continuation as a single family residence. The Sales Comparison Approach (as vacant) used to estimate the market value of the parent tract as vacant (32.464 acres) and to value the main homestead/single family residence (3.654 acres). The adjusted sales prices for IRR's comparable sales ranged between \$21,884 and \$29,242 per usable acre, with an average of \$25,493. The estimate per acre land value of the parent tract in the before condition was concluded to be \$25,200 per acre. Thus the land value of the parent tract is estimated at **\$818,100** (32.464 acres x \$25,200). The per acre land value for the homestead site was concluded to be \$29,400, which yields a market value estimate of **\$107, 428** (\$29,400 X 3.654 acres).
- (B) **Contributory Value of Building Improvements.** The Income Capitalization Approach used to estimate the contributory value of the manufactured homes on the parent tract in the interim, based on the premise that the improvements could be leased and provide a cash flow until development occurs, which coincides with their remaining economic life. The contributory value of these improvements was then added to the subject property's land value conclusion to arrive at a market value estimate. The present value of the improvements was considered to be approximately \$111,241, or **\$111,250, rounded (\$22,250 average per manufactured home).**
- (C) **Contributory Value of Site Improvements.** The estimated value of the site improvements was concluded to be **\$116, 965.**
- (D) **Value of Homestead Property.** As indicated above, the sales comparison approach, which encompassed three (3) sales transactions occurring between May 2015 and June 2015, was also used to estimate the market value of the homestead site. After applicable adjustments, the adjusted price per square foot ranged from \$88.73 to \$120.41 psf., with an average of \$107.13 psf. A value indication of \$115.50 was concluded for the subject, or **\$366,250 (\$115.50 x 3,171 sf.)**
- (E) **Estimate Market Value Conclusion.** IRR's market value opinion for the subject property, as of the date of value (September 2, 2015) is **\$1,412,600.**
- III. **Value of Part Taken**
- (A) The right-of-way acquisition is located along the southern boundary of the subject property and contains 10.350± acres. However, for the purposes of valuing the the "part acquired" IRR, deducted the "economic unit" for the

homestead land (3.654 acres) from this figure. The improvements impacted by the proposed acquisition include three manufactured homes, the main homestead, totaling 3,171± heated square feet, dog kennels, two single wide manufactured homes, which have been converted into an office/storage buildings, large garage, storage trailer and metal canopy. Other improvements include landscaping consisting of grass and trees, as well as, hog wire fencing and three metal gates, which provide access into the field. A sketch of the Part Acquired is attached to this Memorandum as Exhibit "A".

The value of the land taken is \$168,739 (10.350 – 3.654 acres= 6.696 acres x \$25,200). The improvements are estimated to be \$550,000. Total compensation for land and improvements taken) is \$718,750 (\$168,739 + \$550,000).

(B) Description and Value of Parcel 887-Permanent Easement

Parcel 887 consists of 9,054 square feet of the unimproved driveway providing access to the subject property from Haas Road. As such, it is located within the "effective" homestead site 1.046± acres, which itself is encumbered by an existing ingress/egress easement. This easement area is subject to an agreement with the adjoining property owners (dominant estate) for ingress/egress. Given its subservient status, IRR concluded that the "taking" results in a 50% loss of the property owners' "bundle of rights". Consequently, the estimate value of Parcel 887 is concluded to be:

9,054 sf. X \$14, 700 per acre= \$3, 058, or \$3, 060 Rounded

IV. **Valuation of Remainder Property**

- (A) Description. The remainder description is similar to the before condition with the exception of size and shape. The taking represents a 30%± reduction in size. After the taking, two manufactured homes will remain, but will be within several hundred feet from the proposed Wekiva Parkway. The property will still have sufficient access via the unpaved driveway from Haas Road. Any fencing replacement will be at the cost and discretion of the property owner, since compensation has been provided for the cost of the fence and gates located within the area of the part taken. A sketch of the remainder property is attached hereto as Exhibit "B".
- (B) Highest and Best Use. Holding the property for future development of agricultural/residential development is concluded to be the highest and best use of the property as if vacant. As in the before condition, the highest and best use as improved is for the continued interim use for the remaining rental homes.
- (C) Value of Remaining Building Improvements. The "before" combined rental estimate equaled \$3,500 per month. In the "after" scenario three of the

manufactured homes will be removed and their estimated market rent would be \$500 per month, indicating a combined rental estimate of \$1,000 per month. The annual contributory value of these improvements, after consideration of vacancy, expenses, and a discount rate is estimated to be \$28,430.

- (D) Land Value Damage Loss Due to Proximity. As a result of the acquisition of Parcels 287 and 887, the remainder property's proximity to the Wekiva Parkway is concluded to be the principle cause of damage to the remainder property. Aside from the loss of 3 of the manufactured home, the remainder property is also adversely affected by the loss of privacy and proximity to the Parkway (400 from the further manufactured home and 100 feet from the closest). These after take characteristics, which also include noise, visual impacts and loss of the rural country appeal, undermine the marketability of the site for residential use.

IRR concludes that the diminution in value to the subject property is 40%. The after take value of the Parcel 887 easement is **\$1,835** (9,054 sf x \$14,700 per acre x .60). The remainder property (25.768 acres) is thus valued at **\$389,612** (25.768 x \$15,120 per acre) (\$25,200 per acre x .60). The total valuation conclusion for the remainder property, as of September 2, 2015), is **\$391,600**. **Severance damages of \$302,250** are described as the difference between the Remainder as part of the whole before the take (\$693,850 and remainder value in the after (\$391,600).

- V. **Summary of Compensation**. The compensation due as a result of the taking of Parcels 287 and 887, include the cost to cure and maintain the functionality of the remainder property (hard and soft costs associated with replacement fencing/gates) is:

<u>Parcel 287</u>	
Part Taken	\$718,750
Severance Damages	\$302,250
Cost to Cure	\$7, 686
Total compensation	\$1,028,686 or \$1,030,000

<u>Parcel 887</u>	
Total compensation	\$3,060

- VI. **Procedural Status of Case and Recommendation**

This matter is scheduled for a jury trial on the court's five (5) day jury trial docket beginning November 20, 2017. A jury trial is likely to require between five and seven business days to complete. Additionally, the parties will likely engage in significant pretrial discovery, including depositions, particularly given the fact that Respondents' have not, to date, completed or disclosed any expert reports concerning their opinions on the compensation due as a result of the acquisition of Parcels 287 and 887. Instead,

Respondents requested (and received) court ordered continuances of the previously set trial dates, which included case management and discovery deadlines for disclosure of both expert witnesses and their respective written reports. It is anticipated that Respondents will comply with the established Uniform Order Setting Jury Trial and Case Management Deadlines associated with the referenced trial docket. It is also contemplated that the parties will also prepare for, prosecute and defend several pre-trial motions in limine.

In an effort to resolve this case, minimize CFX's litigation expenses and costs and potentially cap the expenses and costs that are likely to be incurred by Respondents (which are recoverable against the CFX) it is recommended that CFX serve Respondents with an Offer of Judgment ("OJ"), which if accepted, would completely resolve the case, excepting attorney's fees and costs (experts). On the other hand, if the OJ is either rejected or not accepted by Respondents within 30 days from receipt of the OJ, and a jury subsequently renders a verdict equal to or less than the Offer of Judgment, then the property owner shall not recover any expenses or costs (including their expert witness fees), incurred after the expiration date of the OJ.

At this time we have extensive knowledge of various Wekiva Parkway Project property owners' market valuation approaches this project. We are also familiar with the positions taken by Respondents' legal counsel and experts, as well as prior court rulings, settlements and jury trial verdicts. ***Given such, I recommend that CFX serve Respondents with an Offer of Judgment to fully settle Respondents' claims as to Parcels 287 and 887 in the amount of \$1,442,000.*** The recommended Offer of Judgment reflects CFX's expert appraisal valuation of the Respondents property plus a 40% incentive to induce a settlement with Respondents, but also leverage its intended effectiveness in the event Respondent's reject or ignore the Offer of Judgment.

The Right-of-Way Committee recommended approval of the proposed settlement at its December 1, 2016 meeting.

RECOMMENDATION

For the reasons set forth in this Memorandum, Right-of-Way counsel respectfully request the CFX Governing Board approve counsel's recommendation to the Governing Board for service of the Offer of Judgment in the amount of \$1,442,000, in full settlement of all Respondents' claims for full compensation for the taking of Parcels 287 and 887. The recommended Offer of Judgment does not include Respondents' statutory attorney's fees or costs under section 73.092 and 73.091, Florida Statutes.

ATTACHMENTS

- Exhibit A Sketch of the Part Acquired is attached to this Memorandum.
- Exhibit B Sketch of the remainder property.

Reviewed by: Joseph J. Cassiata

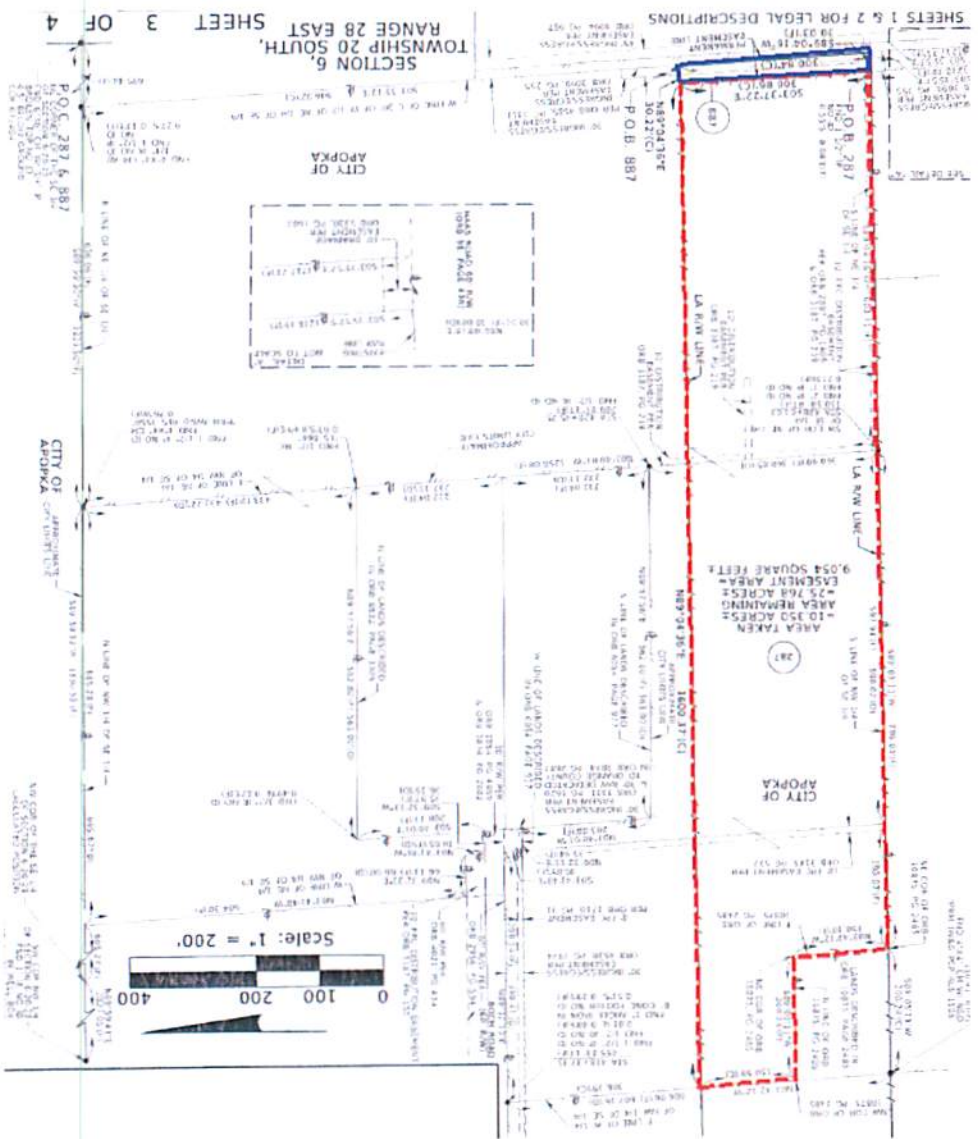


EXHIBIT "A"



EXHIBIT "B"

