


CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: Central Florida Expressway Authority Board Members

FROM: Linda S. Brehmer Lanosa, Deputy General Counsel 

DATE: September 26, 2016

RE: *Central Florida Expressway Authority v. Howard and Judith Benton et al.*,
Case No. 2015-CA-001237, Parcels 320/820
Location: 22437 Coronado Somerset Drive, Sorrento, Lake County, Florida
Parent: 6.282 acres; Taking: 3.281 plus 0.059 ac.; Remainder: 2.048 and 0.894 ac.

DESCRIPTION OF PROPERTY AND TAKING

Howard and Judith Benton are the owners of a 6.282-acre tract of property off of Coronado Somerset Drive, which is south of Wolf Branch Road and west of County Road 437 in Lake County, Florida. The property has a zoning designation of Agriculture District and a future land use designation of Regional Office. The property is improved with a single-family residence built in 1974 containing 2,147 square feet with a 2-car garage, shed and barn. The property is encumbered with a non-exclusive right-of-way easement for Coronado Somerset Drive. The easement is improved with a two-lane asphalt paved road and is 60 feet wide.

The taking consists of two parcels. Parcel 322 is a 3.281-acre fee simple taking encompassing the residence and bisecting the property into two remainders. Parcel 822 is a 0.059-acre taking for the land within the existing Coronado Somerset Drive. In the after condition, the northern remainder, which is 2.048 acres, will not have access. The 0.894-acre southern remainder will still have access off of Coronado Somerset Drive.

CFX'S APPRAISAL REPORT

Christopher D. Starkey, MAI, appraised the property for CFX. He concluded that the highest and best use of the property as improved is for continued residential use. The highest and best use of the property as if vacant is for agricultural uses and future long-term commercial. Applying the sales comparison approach, Mr. Starkey estimated the value at \$31,500 acre and the value of the parent tract's land at \$198,000. Mr. Starkey analyzed the value of the improvements on the property with the cost approach and estimated the depreciated replacement cost of the improvements at \$91,000. Combining the value of the land with the improvements totals \$289,000.

Mr. Starkey then applied the sales comparison approach to value the property as improved. The sales ranged in price from \$83.87 to \$116.12 per square foot or, after adjustments, from \$110.30 to \$146.10 per square foot. At \$140 per square foot, the value of the property as improved was \$301,000.

4974 ORL TOWER RD. ORLANDO, FL 32807 | PHONE: (407) 690-5000 | FAX: (407) 690-5011

Reconciling the various approaches, Mr. Starkey concluded that the value of the parent tract as improved totaled **\$295,000**.

Regarding severance damages, the remainder parcels consist of two non-contiguous parcels. The northern remainder will not have access and will be diminished in value by 90% with a land value of \$3,150 per acre. The southern remainder has access, but is much smaller in size. The value of the southern remainder will be diminished by 50%. The value of the remainder tracts diminished in value from \$98,000 before the taking to \$21,000 after the taking, with severance damages of \$77,000. The cost to cure to provide fencing to the northern and southern remainders totals \$4,100.

In sum, Mr. Starkey estimated full compensation as follows:

	Starkey
Land Taken (at \$31,500 per acre) Part A: 3.281 acres Part B: 0.059 acres	\$ 105,000
Improvements Taken (single family home, attached garage, barb fencing, wood fending, hog wire fencing, trees)	\$ 92,000
Severance Damages (at 90% and 50%)	\$ 77,000
Cost to Cure (fencing)	\$ 4,100
Total for Owners	\$278,100

OWNERS' APPRAISAL REPORT

The owners retained Richard C. Dreggors, GAA, state-certified general real estate appraiser, to value the property. He concluded that full compensation as of the date of the taking, September 9, 2015, should be **\$499,500**.

To value the parent tract before the taking, Mr. Dreggors first valued the land and then the single-family residence. He valued the land at \$45,000 per acre, relying upon sales ranging from \$39,063 to \$49,342 per acre. The estimate of value for just the land of the parent tract is \$282,600. Regarding the single-family residence, Mr. Dreggors relied upon sales ranging in price from \$107 to \$125 per square foot, with a value of \$110 per square foot or \$236,200 for the residence alone. Mr. Dreggors also stated that the reproduction cost of the 40-year old home would be \$516,714 subject to 60% depreciation based upon a 30-year effective age and a 50-year economic life, yielding a depreciated value of \$206,700. Mr. Dreggors concluded that the total value of the parent tract before the taking was **\$505,000**.

Regarding severance damages, Mr. Dreggors concluded that the remainders would no longer allow the properties to be independently developed and had nominal values of \$7,500. Mr. Dreggors added a cost to cure of \$2,000 to reestablish fencing and for a boundary survey. Severance damages are computed by subtracting the value of the part taken (\$370,000) from the value of the parent tract in the before condition (\$505,000), and then subtracting the value of the remainder (\$5,500). The table below summarizes Mr. Dreggors opinion of value.

	Dreggors
Land Taken (at \$45,000 per acre)	\$147,600
Improvements Taken	\$222,400
Severance Damages	\$129,500
Total for Owners	\$499,500

EXPERT FEES AND COSTS

Counsel for the owners submitted invoices from two experts, which are itemized below.

Expert	Invoice
Calhoun, Dreggors & Associates	\$14,719.00
MEI Civil, LLC	\$14,374.50
Total	\$29,093.50

Copies of the invoices are attached.

NEGOTIATIONS AND PROPOSED SETTLEMENT

The parties mediated on September 13, 2016. One of the complexities in this case involved the relocation benefits that the owners received prior to the mediation. The Bentons received Replacement Housing Payments (“RHP”) in the amount of \$139,535.50, which allowed the Bentons to move into a comparable replacement dwelling with a value of up to \$285,900, even though their existing residence had an adjusted value of \$125,998.98. Since the RHP was based upon the initial deposit made by CFX, a subsequent settlement in an amount greater than the initial deposit requires a portion of the RHP to be credited back to CFX. For example, a settlement in the amount of \$401,000 for the property taken results in a payment to the Bentons of only \$92,225.60, rather than the difference between the settlement amount and the amount of the initial deposit (\$401,000 less \$263,100 or \$137,900) because CFX is entitled to an additional credit of \$45,674.40 per the RHP formula.

After additional post-mediation discussions, the parties reached a proposed compromise consisting of an all-inclusive settlement of **\$478,000**. The exact breakdown of the all-inclusive settlement amount is unknown. Assuming full compensation to the owners is \$401,000, the statutory attorney’s fee is \$48,510 and the expert fees are \$28,490.

This proposed settlement should neither be construed nor interpreted to be CFX's position at trial or in any other case, nor should the proposed settlement be construed or interpreted to be an agreement with the owners' factual or legal positions.

REQUESTED ACTION

Board approval is requested to accept the proposed Settlement Agreement in the amount of **\$478,000**, resolving all claims for compensation for the taking of Parcels 320/820, including severance damages, tort damages, business damages, interest, attorney's fees, attorney's costs, expert fees, expert costs, and any other claim, subject to apportionment, if any.

The Right of Way Committee recommended approval on September 28, 2016.

cc: Sidney Calloway, Esq., Shutts & Bowen

Attachments: Aerials and Photographs
Mediated Settlement Agreement
Invoices from Counsel for the Owners

Reviewed by: _____

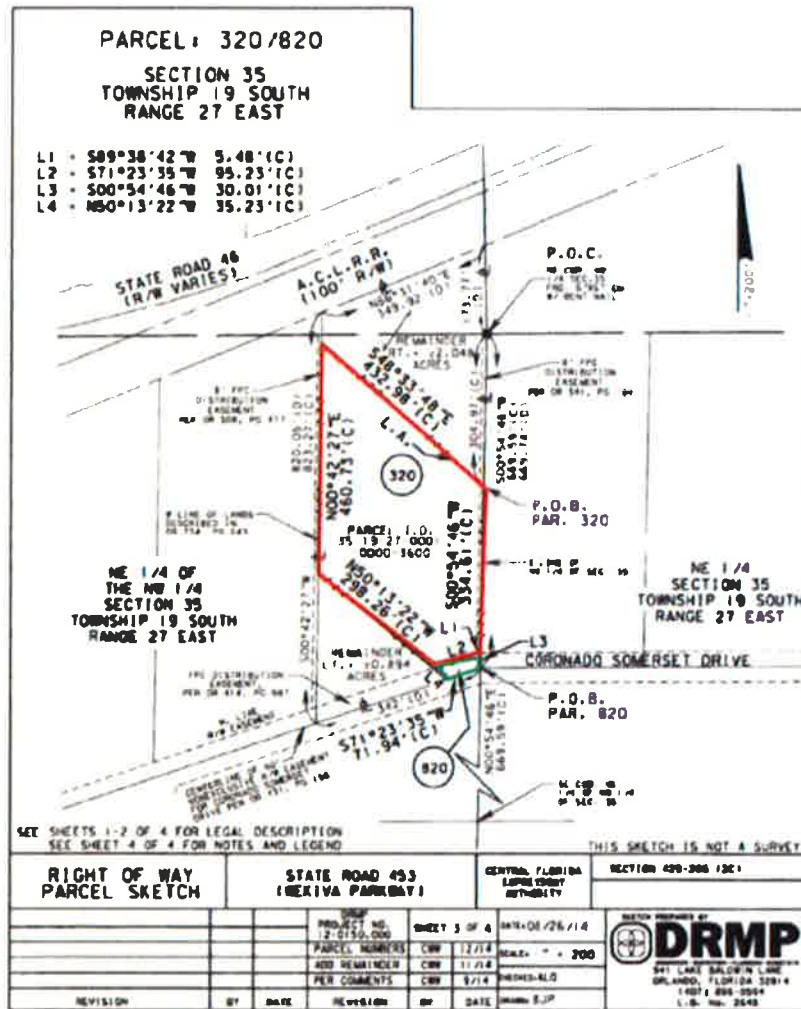




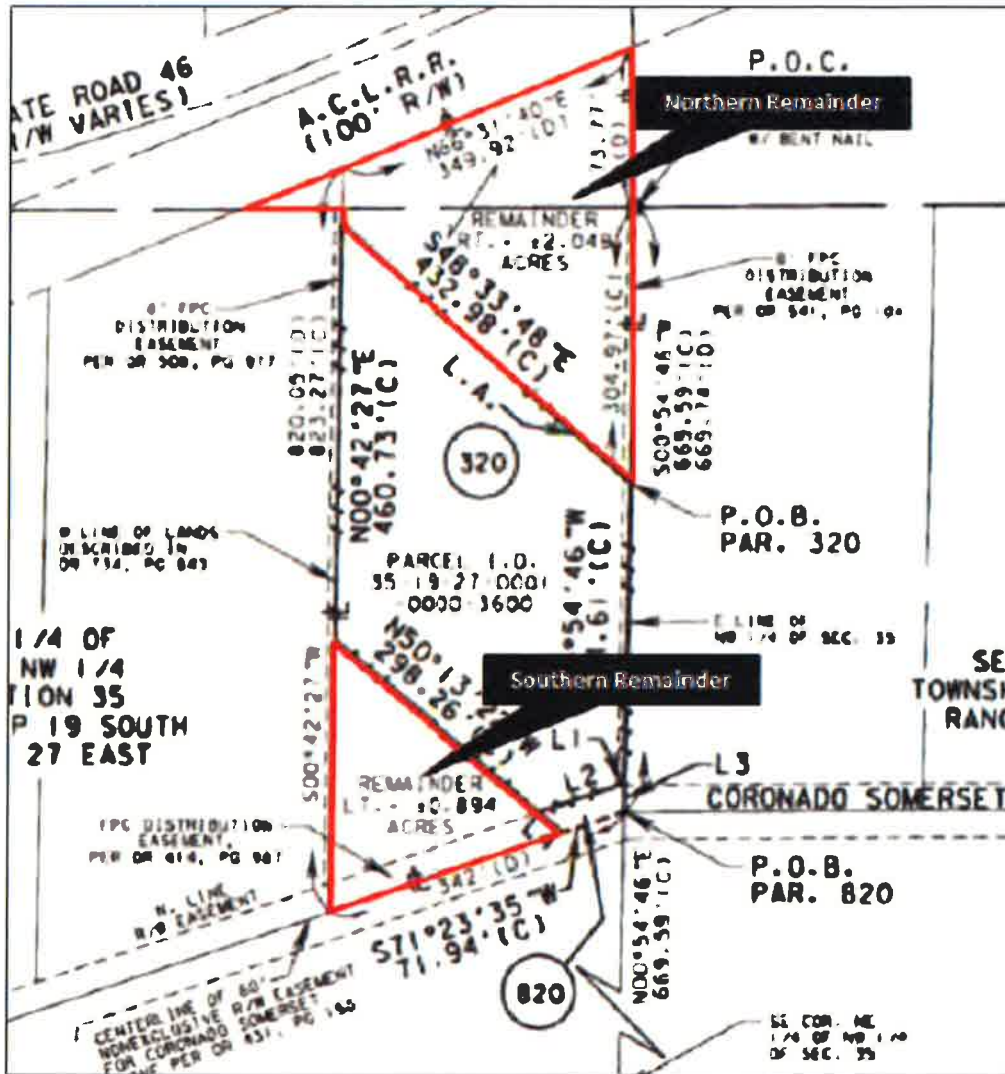


Wekiva Parkway - Section 429-206, Parcel 320 and Parcel 820
22437 Coronado Somerset Drive
Sorrento, Florida

Part Acquired Sketch



Wekiva Parkway - Section 429-206, Parcel 320 and Parcel 820



CFX vs. Benton
 Parcel No. 320 & 820 Wekiva Parkway (Lake County)

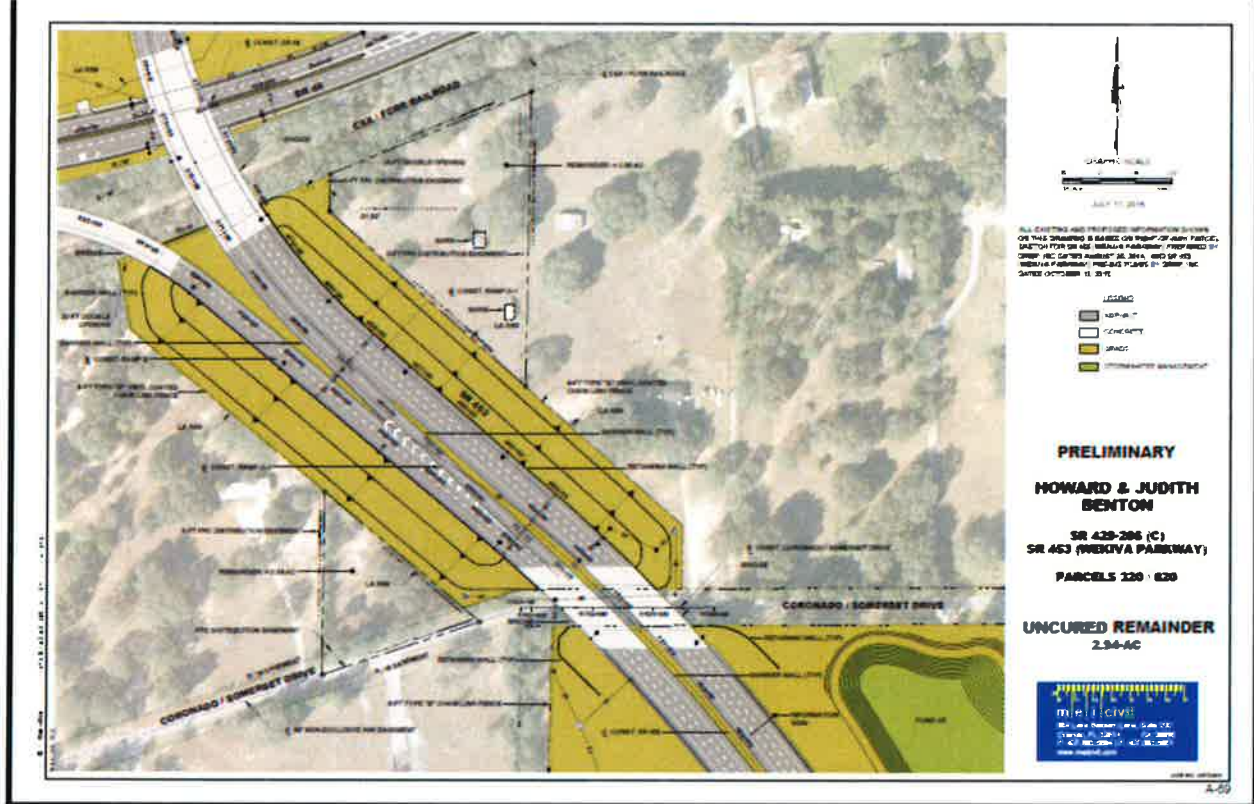
PROPERTY SKETCH

Parcel No. 320 & 820
 Wekiva Parkway
 Lake County



Calhoun, Dreggers & Associates, Inc.

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

CENTRAL FLORIDA EXPRESSWAY AUTHORITY, CASE NO: 2015-CA-001237
body politic and corporate, and an agency of the state
under the laws of the State of Florida,
Petitioner, Parcels 320/820

vs.

Judge _____

CURTIS WAYNE MCNEIL, et. al.

Respondents.

SETTLEMENT AGREEMENT

Respondents, Howard Benton and Judith Benton, and representatives of the Central Florida Expressway Authority reached the following Settlement Agreement:

1. Petitioner will pay to Respondents, Howard Benton and Judith Benton, referred to as "Respondents," the sum of **Four Hundred Seventy-Eight Thousand Dollars** exactly (\$478,000), in full settlement of all claims for compensation from Petitioner whatsoever for the taking of Parcel 320 and 820, including statutory interest and all claims related to real estate and business damages, severance damages, tort damages, attorney's fees and litigation costs, expert witness fees, and costs. The settlement sum may be subject to claims of apportionment by any party in this case having a property interest in or a lien on the subject property. Petitioner previously deposited in the Registry of the Court Petitioner's good faith estimate in the amount of Two Hundred Sixty-Three Thousand One Hundred Dollars (\$263,100). In addition, because Respondents previously received a Replacement Housing Payment ("RHP"), Petitioner is entitled to an additional credit of Forty-Five Thousand Six Hundred Seventy-Four Dollars and forty cents (\$45,674.40). Within thirty days (30) days from the date of receipt by Petitioner's counsel of a conformed copy of the Stipulated Final Judgment, Petitioner will pay to Respondents, by deposit in the Registry of the Court the sum of **One Hundred Sixty-Nine Thousand Two Hundred Twenty-Five Dollars and sixty cents exactly (\$169,225.60)**, representing the difference between the total settlement sum referenced above and the Petitioner's previous deposit plus the RHP credit in this case.

2. This Settlement Agreement will be placed on the agenda for the Right of Way ("ROW") Committee and Central Florida Expressway Authority ("CFX") Board and is conditioned upon final approval by the ROW Committee and then the CFX Board.





3. The parties agree to continue the trial of this matter pending review by the CFX ROW Committee and CFX Board.

4. The parties agree to waive any confidentiality provisions set forth in Chapter 44 of Florida Statutes, the Florida Rules of Civil Procedure, and the Florida Rules of Evidence, if applicable, for the limited purpose of consideration of this proposed Settlement Agreement by the ROW Committee and the CFX Board.

5. Counsel for Petitioner will submit to the Court a standard Motion for Stipulated Final Judgment containing the terms and conditions of this Settlement Agreement within fifteen (15) days from the date of approval of this Settlement Agreement by the CFX Board.

6. This Agreement resolves all claims whatsoever, including claims of compensation arising from the taking of Parcels 320 and 820, severance damages, business damages, tort damages, interest, attorney's fees, attorney's costs, expert fees, expert costs, and any other claim.

7. This Settlement Agreement, executed by the parties and their counsel on the dates below, contains all the agreements of the parties.

 Print Name: <u>Linda S. B. Lanosa</u> Central Florida Expressway Authority	 Print Name: <u>Howard N. Benton</u> Owner
Date: <u>9/16/16</u>	Date: <u>9/16/16</u>
Print Name: _____ Counsel for CFX	 Print Name: <u>Judith Benton</u> Owner
Date: _____	Date: <u>9/16/16</u>
Print Name: _____ Mediator	 Print Name: <u>Edgar Lopez</u> Attorney for Owner
Date: _____	Date: <u>9/15/16</u>

Calhoun, Dreggors & Associates, Inc.

• Real Estate Appraisers & Consultants •

August 29, 2016

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

RE: Owner: Benton
Project: Wekiva Parkway
Parcel No.: 320/820
County: Lake

INVOICE

Review CFX documents and appraisal report, review subject information, conferences with owner's representative, meeting with owners, review right-of-way plans, land sales research/analysis, meeting with contractor to review RCN analysis, improved sales research/analysis, inspection of sales, preparation of appraisal, meeting with owners to review.

LaBarre:	36.50 Hrs. x \$150/Hr. =	\$ 5,475
Abrams-Schmidt:	29.25 Hrs. x \$175/Hr. =	5,119
Dreggors:	15.00 Hrs. x \$275/Hr. =	<u>4,125</u>
Total		\$14,719

Thank you,

Richard C. Dreggors, GAA
President

RCD/ddp

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

OWNER	BENTON	KIMBERLY LABARRE
PROJECT	WEKIVA PARKWAY	
PARCEL(S)	320	
COUNTY	LAKE	

<i>DATE</i>	<i>TYPE OF SERVICE</i>	<i>HOURS</i>
07/07/15	REVIEW REPORTS AND DOCUMENTS.	2.25
07/09/15	SPOKE TO OWNERS REPRESENTATIVE REGARDING NEED FOR AN RCN; SALES RESEARCH.	4.00
07/14/15	PREPARE FOR PROPERTY INSPECTION.	0.75
07/15/15	INSPECT SUBJECT PROPERTY.	1.25
07/17/15	MET WITH RICK TO DISCUSS APPRAISAL ISSUES; CALLED CFX AND EXPRESSWAY AUTHORITY; RESEARCHING MAPS AND CONSTRUCTION PLANS.	0.25
08/01/15	SPOKE TO CONTRACTOR REGARDING SUBJECT IMPROVEMENTS.	0.50
08/03/15	SPOKE TO RICK REGARDING PLANS AND TAKE.	0.25
09/02/15	REVIEWED RCN FROM CONTRACTOR FOR BOTH CFX AND OWNER; SPOKE TO RICK REGARDING REPORTS.	1.00
09/03/15	PREPARE FOR AND ATTEND CONFERENCE CALL WITH OWNER'S REPRESENTATIVE; RESEARCH FOR NEW UPDATED SALES; MET WITH RICK TO DISCUSS.	3.25
09/08/15	SPOKE TO SURVEYOR AND PREPARE DOCUMENTS TO OBTAIN FEE QUOTE; SENT INFORMATION TO OWNER'S REPRESENTATIVE.	0.50
09/22/15	MET WITH CONTRACTOR TO DISCUSS SUBJECT PROPERTY.	0.25
10/22/15	SALES RESEARCH; MEETING WITH RICK TO DISCUSS.	5.25
10/23/15	MEET WITH RICK TO GO OVER SALES ANALYSIS; CONTINUE SALES RESEARCH.	4.00
10/27/15	VERIFY SALES; PREPARE SALE WRITE-UPS.	3.75
10/28/15	PREPARE TAKING ANALYSIS AND ANALYZING DAMAGES TO REMAINDER; CONTINUE TO VERIFY SALES.	5.00
10/29/15	PREPARE SUMMARIES OF OUR ANALYSIS; MEETING WITH RICK.	2.00

OWNER	BENTON	KIMBERLY LABARRE
PROJECT	WEKIVA PARKWAY	
PARCEL(S)	320	
COUNTY	LAKE	

DATE	TYPE OF SERVICE	HOURS
01/25/16	SPOKE TO OWNER'S REPRESENTATIVE; MET WITH RICK TO DISCUSS APPRAISAL ISSUES FOR OWNER'S REPRESENTATIVE.	<u>2.25</u>
	TOTAL HOURS	36.50

OWNER	BENTON	COURTNEY ABRAMS
PROJECT	WEKIVA PARKWAY	
PARCEL(S)	320	
COUNTY	LAKE	

DATE	TYPE OF SERVICE	HOURS
06/23/15	REVIEW SCOPE OF WORK WITH RICK; PREPARE FOR MEETING; RESEARCH CITY OF MOUNT DORA DOCUMENTS.	2.25
07/07/16	ANALYSIS OF SALES; WORKED ON SUBJECT EXHIBITS; REVIEW OF UPDATED CONDEMNOR APPRAISAL.	2.50
07/08/16	ASSISTED WITH APPRAISAL; ANALYSIS OF DAMAGES.	6.25
07/11/16	ASSISTED WITH APPRAISAL; REVIEW OF ENGINEERING REPORT.	6.00
07/12/16	ASSISTED WITH APPRAISAL; WORKED ON ADDENDA.	5.50
07/13/16	MEETING WITH RICK TO REVIEW ANALYSIS; FINALIZE ADDENDA.	4.75
08/15/16	PREPARE FOR MEETING; MEETING WITH OWNERS AND EXPERTS.	<u>2.00</u>
	TOTAL HOURS	29.25

OWNER	BENTON	RICHARD C. DREGGORS, GAA
PROJECT	WEKIVA PARKWAY	
PARCEL(S)	320	
COUNTY	LAKE	

DATE	TYPE OF SERVICE	HOURS
03/27/15	REVIEW INFORMATION FROM OWNER'S REPRESENTATIVE.	1.50
05/29/15	PREPARE FOR AND REVIEW DOCUMENTS; CONFERENCE WITH OWNER'S REPRESENTATIVE.	1.00
06/24/15	PREPARE FOR MEETING; REVIEW EXAMPLES OF CONVERTED HOMES ALONG STATE ROAD 46.	1.25
07/17/15	MEETING WITH ASSOCIATE.	0.50
08/03/15	REVIEW R/W PLANS; MEET WITH ASSOCIATE TO REVIEW NEED FOR A SURVEY.	0.25
09/02/15	REVIEW RCN FOR SUBJECT IMPROVEMENTS; CONFERENCE WITH ASSOCIATE.	0.75
09/03/15	PREPARE FOR AND CONFERENCE WITH OWNER'S REPRESENTATIVE TO REVIEW SCOPE OF REMAINING WORK.	0.50
09/22/15	MEETING WITH CONTRACTOR TO REVIEW THE RCN ANALYSIS.	0.25
10/22/15	ASSIST WITH LAND SALES RESEARCH AND ANALYSIS; ASSIST WITH IMPROVED SALES RESEARCH OF HOMES; ANALYSIS OF SALES; REVIEW WITH ASSOCIATE.	2.75
10/23/15	REVIEW SALES WITH ASSOCIATE.	0.50
10/29/15	REVIEW OUR BEFORE VALUES AND DATA ANALYSIS OF TAKING AND DAMAGES TO THE REMAINDER; REVIEW WITH ASSOCIATE.	1.00
01/25/16	MEETING WITH ASSOCIATE TO REVIEW OUR ANALYSIS AND REMAINING SCOPE OF WORK.	0.50
07/13/16	REVIEW/WRITE REPORT.	2.75
08/15/16	PREPARE FOR AND MEET WITH OWNERS TO REVIEW VALUATION OF PROPERTY.	<u>1.50</u>
	TOTAL HOURS	15.00

please make checks payable to:

m e i civil, LLC

964 Lake Baldwin Lane, Suite 200

Orlando, FL 32814

407-893-6894

fax 407-893-6851

www.meicivil.com

bill to:

Edgar Lopez, Esquire

Harris, Harris, Bauerle, Zeigler and Lopez

1201 E. Robinson Street

Orlando, FL 32801

Invoice Date: 9/9/2016

Invoice Number: 47044H-1REV

Invoice Amount Due: **\$14,374.50**

JOB: SR 429, Parcel 320 / 820

Howard & Judith Benton

Engineering Analysis

Description	Hours	Rate	Fee	Total
Principal (DLM)	28.5	\$265.00	\$7,552.50	\$7,552.50
Senior Project Manager (KSH)	3.0	\$205.00	\$615.00	\$615.00
Senior Designer (JRR)	39.5	\$125.00	\$4,937.50	\$4,937.50
Designer (MP)	6.5	\$90.00	\$585.00	\$585.00
			Subtotal	\$13,690.00
			Expense (5%)	\$684.50
			Total Fee Due	\$14,374.50

Payment Due Upon Settlement of Fees and Costs

Work Descriptions for Daniel L. Morris, P.E.

-47044h

Job Name *SR429, 320/820, Howard and Judith Benton*

<i>Date</i>	<i>Hours</i>	<i>Task</i>	<i>Work Description</i>
11/16/2015	2.0		review appraisal report and roadway construction plans
7/8/2016	5.5		review latest appraisal report and roadway construction plans
7/9/2016	9.0		coordinate exhibit preparation, analysis of impacts, preliminary engineering report
7/10/2016	5.0		coordinate exhibit preparation, analysis of impacts, preliminary engineering report
7/11/2016	4.5		finalize preliminary engineering report
8/15/2016	2.5		prepare for and attend meeting with property owners, experts and attorneys
<i>Total Hours:</i>	28.5		

Work Descriptions for Kevin S. Hebert, PE

-47044H

Job Name *SR 429 Sect 206, P320/820, Benton, Howard & Judith*

<i>Date</i>	<i>Hours</i>	<i>Work Description</i>
12/2/2015	3.0	Prep and attend site visit, improvement locates, photographs
<i>Total Hours:</i>	3.0	

Work Descriptions for John R. Russell

047044

Job Name *Wekiva Parkway P320 Howard Benton*

<i>Date</i>	<i>Hours</i>	<i>Task</i>	<i>Work Description</i>
7/7/2016	2.0		Download & Review FDOT Roadway Plans
7/7/2016	4.0		Draft FDOT Roadway Plans - R/W; Edge of Pvrmt's & Retaining Walls
7/7/2016	2.0		Download & Review Appraisal Report
7/8/2016	2.0		USGS, Site Aerial, FEMA & Location Map Exhibits
7/8/2016	2.0		Existing Conditions & Boundary
7/8/2016	5.0		Proposed Right of Way & Roadway BaseLine
7/9/2016	6.0		Draft Proposed Roadway Plans - Road & Bridge
7/10/2016	3.0		UnCured Remainder Exhibit
7/10/2016	6.0		Draft Proposed Roadway Plans - Road & Bridge
7/11/2016	2.0		Before Conditions Exhibit
7/11/2016	3.0		Area of Take Exhibit
7/11/2016	1.0		SetUp & Print Exhibits
7/11/2016	1.5		Update & Plot Final Exhibits per Engineer Comments

Total Hours: *39.5*

Work Descriptions for Mitchell Pentecost

-47044H

Job Name *SR429, P320/820, Benton, Howard & Judith*

<i>Date</i>	<i>Hours</i>	<i>Work Description</i>
11/16/2015	0.5	Setup physical job folder
11/17/2015	1.0	Begin work on before conditions/AOT to locate septic system
12/2/2015	2.5	Site visit, probe for septic tank/drain field and locate and measure based on fixed points.
12/3/2015	1.0	Sketch points taken yesterday to show septic/drainfield on aerial in taking.
12/7/2015	0.5	Add old existing drainfield/septic to sketch
12/8/2015	1.0	Tweak sketches for plot.
<i>Total Hours:</i>	6.5	