




MEMORANDUM

TO: Central Florida Expressway Authority CLIENT-MATTER NO.: 19125.0145
Board Members

FROM: Suzanne M. Driscoll, Esq., Right-of-Way Counsel 

DATE: September 23, 2016

RE: State Road 429 Wekiva Parkway, Project 429-204; Parcel 242
Proposed Offer of Judgment

Shutts & Bowen LLP, Right-of-Way Counsel, seeks the approval of the CFX Board for an Offer of Judgment in full settlement of Parcel 242 owned by Larry M. Everly, Sr. and Connie F. Everly, Trustees for State Road 429 Wekiva Parkway, Project 429-204.

DESCRIPTION AND BACKGROUND

Parcel 242 is a fee simple partial taking consisting of 4.170 acres. The parent tract was 27.586 acres in size and the remainder property is 23.416 acres. The property is located at 3100 Ondich Road in Apopka, Orange County, Florida. The subject property is improved with a 1,380 s.f. manufactured home containing 3 bedrooms and 3 bathrooms built in the late 1990s. There are 2 additional buildings consisting of a metal warehouse and modular office building. Other improvements include fencing, an electric gate and irrigation system. The property is zoned A-1, citrus rural district by Orange County.

The CFX's appraisal of the property was prepared by Chad Durrance of Durrance and Associates. Mr. Durrance opined the highest and best use of the property is for continued residential use. Mr. Durrance used six (6) comparable land sales with prices ranging from \$24,200 per acre to \$29,300 per acre to arrive at an estimate of the land value of the Subject Property of \$27,500 per acre and a value of \$114,700 for the land taken. Additionally, he estimated the contributory value of the electric gate and miscellaneous fencing improvements on the parcel at \$30,700.

Mr. Durrance used five (5) improved sales to determine the value of the manufactured home and its associated improvements with prices ranging from \$17 to \$32 s.f. In the after condition, the manufactured home is within 213 feet of the new right-of-way line for the SR 429 roadway, which has significantly changed the character of the neighborhood in the after

condition. Mr. Durrance concluded severance damages in the amount of \$200,000 to the manufactured home and surrounding land as a result of the proximity of the roadway and the change in character of the neighborhood. Additionally, with the assistance of an engineer, Mr. Durrance concluded that the net cost to reestablish the driveway connection and electronic gate and fencing is \$78,500. Accordingly, Mr. Durrance's total valuation for Parcel 242 is \$423,900 (\$114,700 land; \$30,700 improvements; \$200,000 damages; and \$78,500 cure).

Larry M. Everly, Sr. and Connie F. Everly, Trustees are represented by Tom Callan, Esq. We have attempted to engage in settlement negotiations with Mr. Callan in an effort to settle this parcel. Unfortunately, Mr. Callan has some health issues that require a surgery in December 2016, which is likely the cause for a delay in settlement negotiations. While this case is currently set on the Court's May 2017 trial docket, due to Mr. Callan's health issues, it may ultimately be removed as Mr. Callan has already requested that the pretrial deadlines be extended. Accordingly, in an effort to move this case forward and to provide the property owners a settlement offer and potentially cap the costs to be incurred by the property owner (which are recoverable against the CFX), we are proposing an Offer of Judgment. If the Offer of Judgment is accepted by the property owners, the case would be concluded. If the Offer of Judgment is not accepted within 30 days, then it expires. If a jury subsequently renders a verdict equal to or less than the Offer of Judgment, the property owner shall not recover any costs (including expert fees) incurred from the expiration of the Offer of Judgment through trial.

Based upon our extensive knowledge and review of numerous parcels on the project, positions taken by opposing counsel and experts, prior settlements and prior jury verdicts, I would propose an Offer of Judgment for Parcel 242 in the amount of \$597,840, plus statutory attorney's fees and experts costs. The Offer of Judgment reflects an increase in the land value and severance damages, and additional monies for the improvements and cure costs.

For the above-cited reasons, Right-of-Way counsel requests the CFX Board approve an Offer of Judgment in the amount of \$597,840, plus statutory attorney's fees and experts costs, which is in the CFX's best interest.

RECOMMENDATION

We respectfully request that the CFX Board approve the Offer of Judgment in the amount of \$597,840, plus statutory attorney's fees and experts costs in full settlement of all claims for compensation in the acquisition of Parcel 242.

This matter was recommended for approval by the Right-of-Way Committee at its meeting on September 28, 2016.

ATTACHMENTS

Exhibit "A" – Sketch of the Subject Property

Exhibit "B" – Photographs of the Subject Property and Area

Reviewed by: Joseph Passiotore

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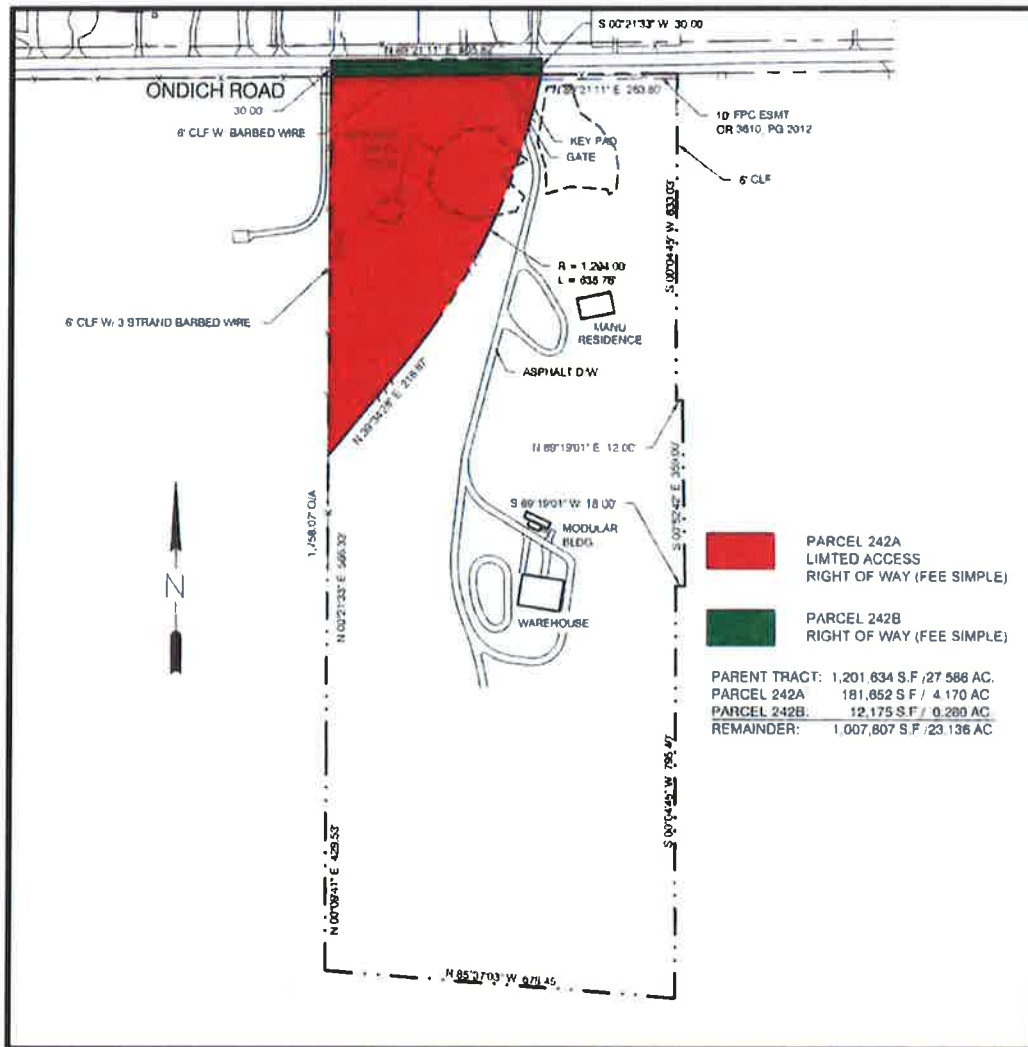
EXHIBIT “A”

meter/breaker boxes, mechanical roll gate, and electronic keypad. The contributory value of the improvements taken was outlined previously in the Before value and is summarized below.

Total Improvements Taken \$30,700 (R)

Deducting the value of the part taken (land and improvements) from the Before Value results in a Remainder Value "As Part of the Whole", as summarized below.

Before Value	\$834,700
Part Taken (\$114,700+ \$30,700)	<u>145,400</u>
Remainder Value "As Part of the Whole"	<u>\$689,300</u>



REMAINDER DESCRIPTION

After the taking, the remainder will contain 23.416 acres of land, which is a reduction of about 15% compared to the Before size of 27.586 acres. The remainder has an irregular configuration and the same building improvements as existed prior to the taking, however the driveway access has been severed.

EXHIBIT “B”



View of manufactured residence and screened porch (Photo #3)



Southern view of rolling mechanical gate, asphalt drive and electronic keypad (Photo #4)



AERIAL MAP OF SUBJECT