

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MINUTES CENTRAL FLORIDA EXPRESSWAY AUTHORITY Right of Way Committee Meeting June 28, 2017

Location: CFX Headquarters Boardroom
4974 ORL Tower Road
Orlando, Florida 32807

Committee Members Present:

Bob Babcock, Orange County Representative Alternate, Committee Chairman
Laurie Botts, City of Orlando Representative
Frank Raymond, Osceola County Representative
Jean Jreij, Seminole County Representative
Christopher Murvin, Citizen Representative
Brendon Dedekind, Citizen Representative
Anita Geraci-Carver, Lake County Representative Alternate

CFX Staff Present at Dais:

Joseph L. Passiatore, General Counsel
Laura Kelley, Executive Director
Linda S. Brehmer Lanosa, Deputy General Counsel
Mimi Lamaute, Paralegal/Recording Secretary

Item 1: CALL TO ORDER

The meeting was called to order at 2:00 p.m. by Chairman Babcock.

Item 2: PUBLIC COMMENT

There was no public comment.

Item 3: APPROVAL OF MINUTES

Action: A motion was made by Ms. Botts and seconded by Mr. Raymond to approve the April 26, 2017 Right of Way Committee meeting minutes as presented.

Vote: The motion carried unanimously with seven members present and voting AYE by voice vote.

Item 4: S.R. 408 (EASTMAR COMMONS PARTNERSHIP) PROJECT 408-128 (REFERENCE PROJECT 408-304) PARCEL 814

Ms. Keeter with Dewberry, CFX's General Engineering Consultant, requested the Committee's recommendation for Board approval of a purchase agreement with Eastmar Commons Partnership.

CFX would like to acquire the entire fee simple interest over Parcel 814 for the widening of S.R. 408 from S.R. 417 to Alafaya Trail. The widening of S.R. 408 includes a sound wall. The acquisition would be for future construction, maintenance, drainage, related facilities, or other appropriate and legally authorized uses.

Action: A motion was made by Ms. Botts and seconded by Mr. Dedekind to recommend to the Board approval of the Proposed Purchase Agreement in the amount of \$750.00 for the purchase of the fee simple interest in Parcel 814.

Vote: The motion carried unanimously with seven members present and voting AYE by voice vote.

Item 5: S.R. 429 (HENDERSON) WEKIVA PARKWAY PROJECT (PROJECT 429-202) PARCELS 112 (PARTS A & B) / 712

Ms. Haylee O'Dowd with Winderweedle Haines Ward & Woodman, P.A., is requesting the Committee's recommendation for Board approval of the proposed settlement with Cynthia J. Henderson and Robert S. Henderson (the "Owners").

CFX is acquiring approximately 7.5 acres, leaving a 6.4 acre remainder. CFX's appraisal of the property was prepared by David Hall with Bullard, Hall & Adams, Inc. Mr. Hall opined the value of the taking of Parcels 112/712 at \$395,500 (\$218,800 for the land taken, \$175,400 for damages, \$1,000 cost to cure, and \$300 value for Parcel 712).

The Owners retained the appraisal services of Rick Dreggors with Calhoun, Dreggors & Associates, Inc. Mr. Dreggors opined the total value of compensation at \$946,000 (\$547,800 for the land, \$396,700 for damages, \$1,000 cost to cure and \$500 value for Parcel 712).

In addition, the Owners submitted a special damage claim in the amount of \$82,956.00 for miscellaneous expenses and claims not covered in the appraisal report, including loss of use of the remainder property as a result of access issues. The Owners also submitted a separate "cost to cure" claim related to construction of a replacement driveway. The Owners claimed that the slope of the driveway constructed by CFX was too steep and did not comport with the construction plans or the City of Apopka's driveway standards, and therefore had to be replaced. This "cost to cure" claim totaled \$48,773.00. The Owners' total demand was in the amount of \$1,077,729.00, excluding attorney's fees and costs.

The parties reached a proposed settlement in the amount of \$854,825 (compensation to landowners \$750,000 and statutory attorney's fees and costs \$104,825).

Discussion ensued regarding the negotiation of settlements which include experts' fees and experts' costs. Ms. O'Dowd explained why the experts' fees and costs associated with this case were not included in the settlement.

There is currently a pending offer to the Owners by CFX for the experts' fees and costs.

Mr. Passiatore stated that in-house Legal endorsed the settlement and that the experts' fees would either be negotiated satisfactorily or taken to hearing.

Action: A motion was made by Mr. Raymond and seconded by Ms. Geraci-Carver to recommend to the Board approval of the proposed settlement agreement in the amount of \$854,825 for Parcels 112 and 712, including attorney's fees and attorney's costs but not including expert fees and expert costs and subject to apportionment claims, if any.

Vote: The motion carried unanimously with seven members present and voting AYE by voice vote.

**Item 6: S.R. 429 (BANK OF AMERICA, N.A.) WEKIVA PARKWAY PROJECT (PROJECT 429-204)
PARCEL 259**

Suzanne M. Driscoll with Shutts & Bowen, P.A. presented this matter in Mr. Shontz's absence. She is requesting the Committee's recommendation for Board approval of a negotiated settlement with Bank of America, N.A. (the "Owner").

Parcel 258 is a fee simple whole acquisition of 2.443 acres for use as a limited access right-of-way. CFX retained the appraisal services of David Hall of Bullard, Hall & Adams, Inc. During a subsequent inspection the condition of the residence had drastically changed. During the property owners absence from the property it appeared to have been ransacked and scrapped for materials. The house had extensive damage. Mr. Hall prepared an updated appraisal report valuing the property at \$96,300 (\$73,300 for the land taken and \$23,300 for the improvements due to extensive damage to the residence and barn/apartment).

Outside counsel for Bank of America, Charlotte Murrell with Quarles & Brady in Tampa, provided a copy of a Uniform Residential Appraisal report by Charles Sean Grau of Timely Appraisal Service, who valued the property at \$195,000 as of April 13, 2015.

The parties reached a proposed settlement in the amount of \$146,254.18. Bank of America has agreed to waive any and all attorneys' fees and costs and experts' fees and costs.

Action: A motion was made by Ms. Botts and seconded by Mr. Jreij to recommend to the Board approval of the proposed settlement in the amount of \$146,254.18, in full settlement of all claims for compensation in the acquisition of Parcel 259.

Vote: The motion carried unanimously with seven members present and voting AYE by voice vote.

Item 7: S.R. 429 (MAHAFFEY) WEKIVA PARKWAY PROJECT (PROJECT 429-205) PARCEL 288

Ms. Driscoll is requesting the Committee's recommendation for Board approval of a negotiated settlement with Thomas Olin Mahaffey, Jr. and Julie Mahaffey (the "Owners").

Parcel 288 is a fee simple acquisition of 0.69 acre from a parent tract of 27.03 acres for use as a limited access right-of-way. CFX retained the appraisal services of Chris Starkey of Integra Realty Resources-Orlando. Mr. Starkey's initial report valued the taking at \$1,200,000 (\$551,000 for improvements and \$649,000 for land only. Mr. Starkey subsequently prepared an updated appraisal report. He estimated the total value of compensation at \$316,000 (\$19,580 for the land, \$295,420 for damages to the Owners' remainder, and \$692 for the net cost to cure).

The Owners retained the appraisal services of Rick Dreggors with Calhoun, Dreggors & Associates, Inc. Mr. Dreggors estimated the value of the taking at \$890,400 (\$44,900 for the land and \$845,500 for the damages).

The parties reached a proposed settlement in the amount of \$833,640.24 (\$603,200 for the land taken, plus \$76,890.24 in full settlement of all experts' fees and costs, and \$153,550 in full settlement of statutory attorneys' fees).

Ms. Botts reminded the Committee that this matter previously came before this Committee on a request to serve an Offer of Judgment however given Mr. Starkey's change in opinion of the appraised value, the Offer of Judgment was not served because the offer of judgment would have been less than CFX's new appraised value.

Action: A motion was made by Ms. Botts and seconded by Mr. Murvin to recommend to the Board approval of the proposed settlement in the amount of \$833,640.24 in full settlement of all claims for compensation for Parcel 288 including attorney's fees and attorney's costs, and expert fees and expert costs subject to apportionment claims, if any.

Vote: The motion carried unanimously with seven members present and voting AYE by voice vote.

Item 8: S.R. 453 (BRACELAND) WEKIVA PARKWAY PROJECT (PROJECT 429-206) PARCEL 312

Ms. Driscoll is requesting the Committee's recommendation for Board approval of a proposed settlement with Deborah Day and Tom Braceland (the "Owners"). She is also requesting the Committee's recommendation for Board approval for experts' fees and costs for up to \$90,250. She explained the parties are still in the process of negotiating experts' fees and experts' costs.

Parcel 312 is a fee simple acquisition of 0.808 acres for use as limited access right-of-way.

Mr. Starkey estimated the value of the taking at \$75,000 (\$29,000 for the land taken, \$44,000 for damages, and \$2,000 cost to cure).

The Owners retained the appraisal services of Grant W. Austin with American Valuation, Inc. Mr. Austin estimated the value of the taking at \$380,000.

The parties reached a proposed settlement in the amount of \$209,000 (\$175,000 for the land taken and \$33,900 statutory attorney's fees and costs). In addition, Ms. Driscoll is requesting the Committee's recommendation for approval to allow negotiations of experts' fees and experts' costs for up to \$90,250. For a total proposed approximate settlement in the amount of \$299,240.00.

The Committee asked questions, which were answered by Ms. Brehmer Lanosa.

Action: A motion was made by Mr. Raymond and seconded by Mr. Murvin to recommend to the Board approval of the proposed settlement in the amount of \$299,240 including statutory attorney's fees and costs and experts' fees and experts' costs in full settlement of all claims for compensation in the acquisition of Parcel 312.

Vote: The motion carried unanimously with seven members present and voting AYE by voice vote.

Item 9: S.R. 429 (DUKE ENERGY FLORIDA, LLC) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCELS 241, 242 AND 259

Ms. Driscoll is requesting the Committee's recommendation for Board approval of the proposed Subordination of Easements Agreement between CFX and Duke Energy Florida ("Duke Energy"). Duke Energy currently holds perpetual easements for the transmission and distribution of electricity encumbering Parcels 241, 242 and 249 in Section 429-204 of the Wekiva Parkway.

Duke Energy will be able to re-establish the distribution lines on these parcels to provide service to the remaining improvements.

The Committee asked questions, which were answered by Ms. Driscoll.

Action: A motion was made by Ms. Geraci-Carver and seconded by Mr. Jreij to recommend to the Board approval of the proposed Subordination of Easements Agreement as to Parcels 241, 242 and 259 of the S.R. 429 Wekiva Parkway Project, Section 429-204.

Vote: The motion carried unanimously with seven members present and voting AYE by voice vote.

Item 10: S.R. 453 (DUKE ENERGY FLORIDA, LLC) WEKIVA PARKWAY PROJECT (PROJECT 429-206) PARCELS 311, 312, 314, 315, 316, 319, 320, 322, 328, AND 335

Ms. Driscoll is requesting the Committee's recommendation for Board approval of the proposed Subordination of Easements Agreement between CFX and Duke Energy Florida.

Duke Energy currently holds perpetual easements for the transmission and distribution of electricity encumbering the following Parcels (please note that some of the parcels were omitted from the memo subject line provided to this Committee): Parcels 311, Part A and Part B, and Parcel 811; Parcel 312; Parcel 314, Part A and Part B; Parcel 316, Part A and Part B, and Parcel 816; Parcel 319; Parcel 320 and 820; Parcel 322 and 822; Parcel 328, Part A and Part B; and Parcel 335 of the State Road 453 Wekiva Parkway Project, Section 492-206.

Duke will be able to re-establish the distribution lines on these parcels to provide service to the remaining improvements. The Subordination Agreement eliminates any reference to indemnification by CFX.

Action: A motion was made by Mr. Raymond and seconded by Ms. Geraci-Carver to recommend to the Board approval of the proposed Subordination of Easements Agreement as to Parcels 311, Part A and Part B, and Parcel 811; Parcel 312; Parcel 314, Part A and Part B; Parcel 316, Part A and Part B, and Parcel 816; Parcel 319; Parcel 320 and 820; Parcel 322 and 822; Parcel 328, Part A and Part B; and Parcel 335 of the State Road 453 Wekiva Parkway Project, Section 492-206.

Vote: The motion carried unanimously with seven members present and voting AYE by voice vote.

Item 11: S.R. 429 (SIMMONS, WATSON, AMERICAN FINANCE, LLC, BROWN, BRIDGES, AND YEOMANS) WEKIVA PARKWAY PROJECT (PROJECTS 429-203, 429-204 and 429-206) PARCELS 168, 179, 251, 258, 318 AND 319

Ms. Brehmer Lanosa is requesting the Committee's recommendation for Board approval of a proposed settlement to resolve outstanding experts' fees and costs incurred by Respondents in six different parcels. CFX served Offers of Judgment in the cases involving those parcels and the offers were accepted.

Detailed invoices of the services rendered by each of the Respondents' experts and the experts' files were received and reviewed. After negotiations, the parties reached a proposed resolution of all the experts'

fees and costs. The total settlement is in the amount of \$91,335.00. CFX's experts' fees and costs on the same cases totaled \$167,000.

This proposed settlement resolves all of the fees except for possible post-judgment expert fees in two cases where there may be post-judgment issues.

The Owner's attorney agreed that for parcels 179, 258, 318 and 319, the settlement resolves all issues and any other claims.

Action: A motion was made by Ms. Botts and seconded by Mr. Jreij to recommend to the Board approval of the proposed settlement in the amount of \$91,335, in settlement of all expert fees and costs incurred by Respondents for Parcels 168, 179, 251, 258, 318, and 319, subject to a reservation to assert for post-judgment expert fees and costs in connection with Parcel 168.

Vote: The motion carried unanimously with seven members present and voting AYE by voice vote.

Item 12: S.R. 429 (CIOC) WEKIVA PARKWAY PROJECT (PROJECT 429-203) PARCELS 169/869

Ms. Brehmer Lanosa is requesting the Committee's recommendation for Board approval of a proposed settlement with Cynthia A. Cioci (the "Owner").

CFX retained the appraisal services of David K. Hall with Bullard, Hall & Adams, Inc. Mr. Hall opined the value of the taking of Parcels 169/869 at \$346,300 (\$49,100 for Parcel 169, Parts A & B, \$3,500 easement Parcel 869, and \$293,700 severance damages).

The Owner retained the appraisal services of Rick Dreggors with Calhoun, Dreggors & Associates, Inc. Mr. Dreggors opined the total value of compensation at \$727,654 (\$81,900 for Parcel 169, Parts A & B, \$5,800 for Parcel 869, \$8,400 improvements, \$567,600 severance damages, and \$63,954 interest).

The parties reached a settlement in the amount of \$592,928 (\$519,000 compensation to owner, \$14,000 in expert fees and \$59,928 statutory attorney's fees).

Action: A motion was made by Mr. Jreij and seconded by Ms. Botts to recommend to the Board approval of the proposed settlement in the amount of \$592,928, in full settlement of all claims of compensation including business damages, interest, attorney's fees, expert fees, costs, and any other claim, except supplemental attorney's fees for apportionment, if any.

Vote: The motion carried unanimously with seven members present and voting AYE by voice vote.

Item 13: S.R. 429 (TYSZKO) WEKIVA PARKWAY PROJECT (PROJECT 429-203) PARCEL 228

Ms. Brehmer Lanosa is requesting the Committee's recommendation for Board approval of a proposed settlement with Michael Tyszko (the "Owner"). Ms. Brehmer Lanosa reminded the Committee that this matter was before the Committee previously.

CFX retained the appraisal services of Walter Carpenter with David K. Hall with Bullard, Hall & Adams, Inc. Mr. Hall opined the value of the taking of Parcels 169/869 at \$346,300 (\$49,100 for Parcel 169 (Parts A & B), \$3,500 easement Parcel 869, and \$293,700 severance damages). For trial purposes CFX retained a second appraiser, Michael McElveen with Urban Economics. Mr. McElveen valued the property at \$34,700.

The Owner retained the appraisal services of Martin Engelmann, Jr. with Tropical Realty Appraisal Services. Mr. Engelmann opined the total value of compensation at \$206,000. The Owner's expert fees totaled \$91,036.99.

The parties were able to reach a proposed all-in settlement in the amount of \$240,000 which includes the value of the property taken, expert fees, expert costs and statutory attorney's fees. This is approximately \$10,000 less than the previous settlement offer.

Action: A motion was made by Mr. Raymond and seconded by Mr. Dedekind to recommend to the Board approval of the proposed settlement in the amount of \$240,000, in full settlement of all claims of compensation including business damages, tort damages, interest, attorney's fees, expert fees, costs, and any other claim.

Vote: The motion carried unanimously with seven members present and voting AYE by voice vote.

Item 14: S.R. 429 (ARAN CARTER) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCEL 253

Ms. Brehmer Lanosa is requesting the Committee's recommendation for Board approval of a proposed mediated settlement with Aran Glenn Carter (the "Owner".) Previously, the Right of Way Committee and Board approved an offer of judgment in the amount of \$695,075, excluding attorney's fees, expert fees, and costs, but the offer of judgment was not accepted.

CFX retained the appraisal services of Chad Durrance with Durrance and Associates. Mr. Durrance opined the value of the taking at \$539,000 (\$218,900 for the land, \$225,000 for the residence and \$95,100 in damages).

The Owner retained the appraisal services of Rick Dreggors with Calhoun, Dreggors & Associates, Inc. Mr. Dreggors opined the total value of compensation at \$945,000. The Owner submitted their own estimate of value, in addition to Mr. Dreggors' estimate of value. The Owner's demand was for a total of \$974,335.

The parties mediated on June 14, 2017, and continued settlement discussions after the mediation. The parties were able to reach a proposed all-inclusive settlement in the amount of \$933,898.50 (\$770,000 for the land, \$69,898.50 for expert fees, \$84,000 for statutory attorney's fees, and an additional \$10,000 bridge the gap).

Action: A motion was made by Mr. Raymond and seconded by Mr. Murvin to recommend to the Board approval of the proposed settlement in the amount of \$933,898.50, in full settlement of all claims of compensation including business damages, interest, attorney's fees, attorney's costs, and expert fees, expert costs and any other claim associated with the taking of Parcels 287/887.

Vote: The motion carried unanimously with seven members present and voting AYE by voice vote.

Item 15: S.R. 429 (MORRIS) WEKIVA PARKWAY PROJECT (PROJECT 429-205) PARCELS 287/887

Ms. Brehmer Lanosa is requesting the Committee's recommendation for Board approval of a proposed settlement for expert fees, and costs.

CFX served an Offer of Judgment in the amount of \$1,442,000, excluding attorney's fees, expert fees, and expert costs. The Offer of Judgment was accepted.

As part of full compensation, CFX is required to pay all reasonable costs incurred in the defense of the proceedings. The Owner submitted invoices totaling \$167,430.84. CFX Right of Way Counsel had CFX experts review the invoices to determine the reasonableness of the expert fees requested. After questioning and eliminating items that appeared redundant or unnecessary, the parties reached a settlement in the amount of \$142,494.89.

Action: A motion was made by Ms. Geraci-Carver and seconded by Mr. Dedekind to recommend to the Board approval of the proposed settlement in the amount of \$142,494.89, in full settlement of all expert fees and costs associated with the taking of Parcels 287/887.

Vote: The motion carried unanimously with seven members present and voting AYE by voice vote.

Item 16: OTHER BUSINESS

Mr. Passiatore, CFX General Counsel, thanked the Committee members for their service. He informed the Committee that there are approximately 15 to 20 Right of Way cases remaining in the Wekiva Parkway Project. He invited the Committee to attend the Wekiva Parkway Ribbon Cutting Ceremony scheduled for July 27 at 9:00 a.m.

Mr. Passiatore introduced Ms. Anita Geraci-Carver, who has been appointed as the Lake County Alternate Representative. Mr. Brian Sheahan has been appointed as the Lake County Representative.

Item 12: **ADJOURNMENT**

Chairman Babcock adjourned the meeting at approximately 3:30 p.m.

Minutes approved on August 16, 2017.

Pursuant to the Florida Public Records Law and CFX Records Management Policy, audio tapes of all Board and applicable Committee meetings are maintained and available upon request to the Records Management Liaison Officer at publicrecords@CFXWay.com or 4974 ORL Tower Road, Orlando, FL 32807.