

WINDERWEEDLE, HAINES, WARD & WOODMAN, P.A.
329 Park Avenue North
Second Floor
Post Office Box 880
Winter Park, Florida 32790-0880
Telephone (407) 423-4246
Facsimile (407) 645-3728

MEMORANDUM

TO: Central Florida Expressway Authority Board Members *HAC*
FROM: James Edward Cheek, III, Right of Way Counsel
Winderweedle, Haines, Ward & Woodman, P.A.
DATE: February 21, 2017
RE: S.R. 429 Wekiva Parkway, Project 429-204; Parcels 255 - Approval for Settlement

Winderweedle, Haines, Ward & Woodman, P.A., right of way counsel, seeks this Board's approval of a settlement with Khoi Nguyen and Thuynhan Huynh ("Owners"), for Parcel 255 (the "Taking" or "Property"), which was acquired by eminent domain for the construction of the S.R. 429 Wekiva Parkway, Project 429-204.

DESCRIPTION and BACKGROUND:

Parcel 255 involves the total taking of a 2.435 acre piece of property located on 3129 Ondich Road, approximately 1,150 feet west of Plymouth Sorrento Road, in unincorporated Orange County. The property is improved with a 1,490 square foot, three bedroom, two bathroom residence which was built in 1971. Other site improvements include a shed, wood fence with metal gates, well, septic system, and gravel driveway and parking area. The property is zoned A-1, Citrus Rural District by Orange County, and the future land use designation is Rural/Agricultural, with a maximum of one dwelling unit per ten acres.

The landowners purchased the property in 2005 for \$269,900. The property has since been abandoned, and Nationstar Mortgage Company holds an outstanding mortgage with a payoff amount of \$259,542.59. In addition, Orange County has a special assessment lien in the amount of \$2,892.43. Thus, the total amount of the outstanding obligations for the parcel is \$262,435.02.

CFX's appraisal of the property was prepared by David Hall of Bullard, Hall & Adams, Inc. Mr. Hall determined that the highest and best use of the property was for single family residential use, and that the improvements are consistent with this use and have a remaining economic life. To determine land value, Mr. Hall considered four comparable sales which were all located within very close proximity to the subject, and closed within one year of the date of taking. These sales range from an adjusted price of \$19,531 per acre to \$39,373 per acre. Mr. Hall ultimately reconciled on a value of **\$39,000 per acre, or \$95,000 for the total value of the land taken.**

To determine the value of the improvements, Mr. Hall considered five improved sales which ranged in value between \$76.18 per square foot and \$99.42 per square foot. He ultimately concluded on a value of **\$95.00 per square foot**, for a total value of **\$141,600 for the improvements**. Mr. Hall's valuation conclusions can be summarized as follows:

| | |
|---------------------------|------------------|
| Land Value | \$ 95,000 |
| <u>Improvement Value</u> | <u>\$141,600</u> |
| Total Compensation | \$236,600 |

The landowners are represented by Kent Hipp of Gray Robinson, P.A., who retained the appraisal services of Rick Dreggors with Calhoun, Dreggors & Associates, Inc. As of the date of settlement negotiations, the Court had not yet issued a case management order requiring the landowners to complete an appraisal report. However, the landowners have submitted the preliminary analysis of Mr. Dreggors, including his improved and unimproved comparable sales charts, sales write-ups, and background information.

The landowners appear to agree that the highest and best use of the subject is for continued rural residential use, with the improvements being consistent with this use and continuing to have a remaining economic life. Mr. Dreggors considered six comparable land sales with per acre values ranging from \$41,667 per acre to \$76,923 per acre. The sales identified by Mr. Dreggors are located farther away from the subject than the sales identified by Mr. Hall, based on the contention that the sales close to the subject were negatively influenced by the expressway project. The landowners concluded that the subject property's land value, as though vacant, was worth **\$50,000 per acre**, for a total land value of **\$121,750**.

Mr. Dreggors then considered seven improved comparable sales to determine the contributory value of the improvements on the subject. The value of these improvements ranged from \$108 per square foot to \$143 per square foot. The landowners reconciled on a value of **\$140 per square foot**, for a total improvement claim of **\$208,600**. Thus, the total value sought by the landowners in this case was \$330,400, as summarized below:

| | |
|---------------------------|------------------|
| Land Value | \$121,750 |
| <u>Improvement Value</u> | <u>\$208,600</u> |
| Total Compensation | \$330,350 |

EXPERT AND ATTORNEY FEES:

As the proposed settlement was reached early in the negotiation process, the landowners have submitted the invoice of only one expert: Calhoun, Dreggors & Associates in the amount of \$9,306. The landowners are willing to accept an "all-in" settlement in the amount of \$310,000. While this settlement does not apportion the settlement sum among the landowners, attorneys, and experts, an allocation can be estimated based in part on the statutory attorney fee formula provided in §73.092(c), Florida Statutes. This estimated allocation is provided below for informational purposes:

| | |
|--------------------------------------|------------------|
| Compensation to the Landowner | \$280,000 |
| Attorneys' Fees | \$ 24,000 |
| Expert Fees | \$ 6,000 |
| Total "All-In" Settlement | \$310,000 |

CFX previously deposited \$207,200 as its good faith estimate of value. Settlement in the amount of \$310,000 would require CFX to deposit an additional \$102,800 into the court registry.

Acceptance of the proposed settlement is recommended and is in CFX's best interest. Prolonging litigation will subject CFX to additional attorney's fees and costs as well as additional expert fees and costs, which CFX would ultimately be responsible for as part of the landowner's compensation as provided by §73.091 and §73.092, *Florida Statutes*. The proposed settlement provides an estimated amount of \$280,000 to the landowners, which is only \$10,000 above the original purchase price of \$270,000 on November 10, 2005. This settlement significantly minimizes expert fees at only \$6,000, and minimizes litigation expenses by resolving this case in advance of extensive discovery, depositions, motion practice, and trial preparation. Acceptance of the proposal further eliminates the risk of a jury trial. The proposed settlement will resolve all pending matters in this case, including the property owner's attorney's fees and expert fees and costs.

RECOMMENDATION:

The Right of Way Committee recommended CFX Board approval of the proposed settlement on February 22, 2017. The undersigned respectfully requests that this Board approve the proposed settlement in the amount of \$310,000 in full settlement of all claims for compensation for the acquisition of Parcel 255.

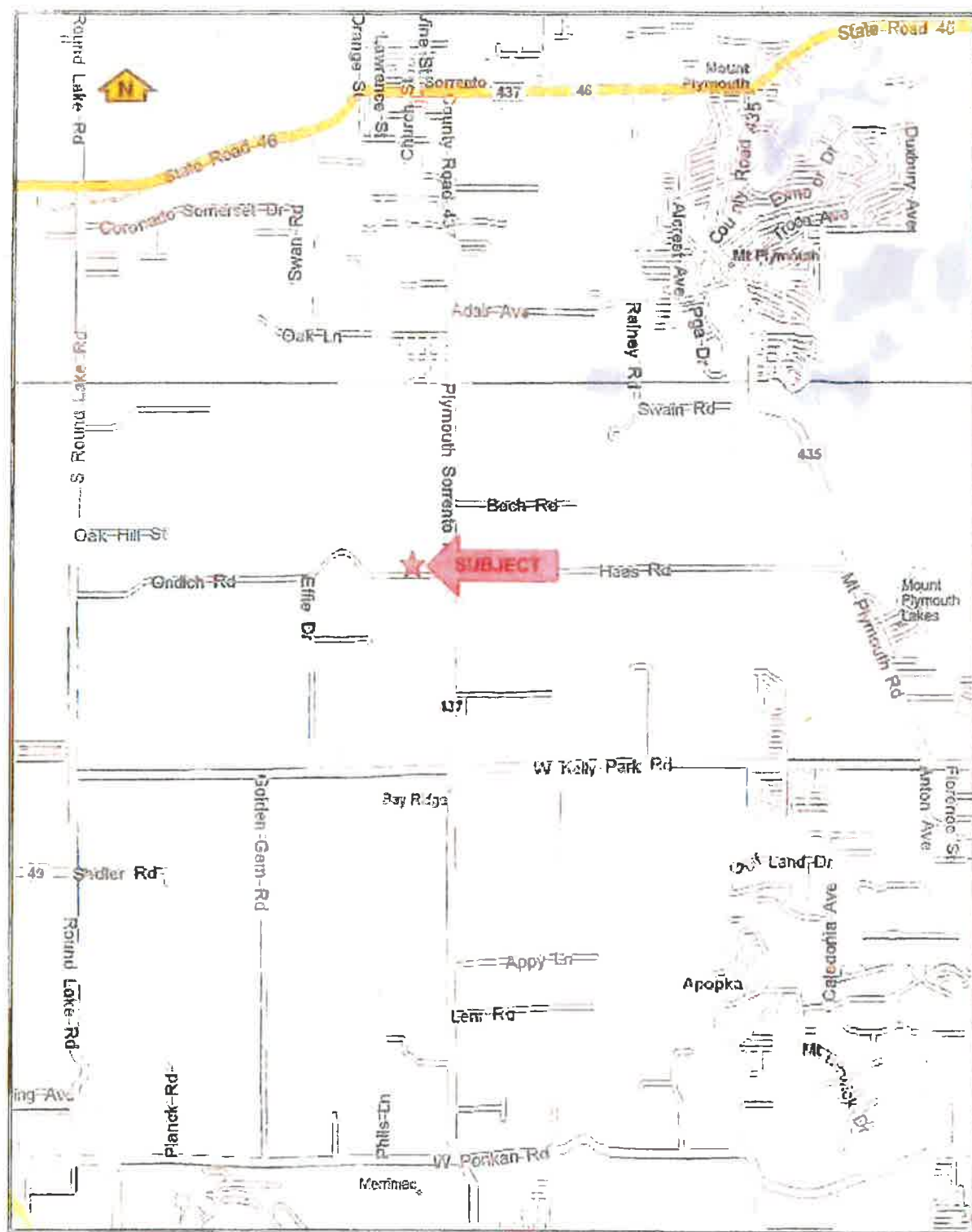
ATTACHMENT:

Exhibit A-Sketch of Subject Property
Exhibit B-Map Depicting Location of Property

REVIEWED BY: _____

ESTATE: FEE SIMPLE

SHEET: 2 OF 2



SUBJECT LOCATION MAP
PARCEL 255