

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

**MEMORANDUM**

**TO: Central Florida Expressway Authority Board**

**FROM: James Edward Cheek, III, Right of Way Counsel** HAO  
**Winderweedle, Haines, Ward & Woodman, P.A.**

**DATE: April 24, 2017**

**RE: S.R. 429 Wekiva Parkway, Project 429-202; Parcel 153**  
**Approval of Settlement Proposal**

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Winderweedle, Haines, Ward & Woodman, P.A., right of way counsel, seeks Board approval of a settlement with Ponkin Road Property, LLC, for Parcel 153 of the State Road 429 Wekiva Parkway Project. The Court entered an Order of Taking on July 10, 2014.

**DESCRIPTION and BACKGROUND:**

CFX is acquiring 3.019 acres from an 18.202 acre property located on the southwest corner of the signalized intersection of Plymouth Sorrento Road and Ponkan Road in Apopka, Florida. The property is largely unimproved (except for some minor fencing and an older, unoccupied building), and is owned by Ponkin Road Property, LLC ("PRP"), which is a business entity registered to Mr. James Gissy.

PRP acquired the property through two acquisitions: the 3.09-acre northeast corner of the property was acquired in December 2004 for \$440,000 (about \$142,400 per acre); the remaining 15 acres was acquired in December 2005 for \$375,000 (about \$25,000 per acre). CFX acquired property from the back (east) portion of the parent tract, leaving a 15.183-acre. The remainder property is currently listed for sale for \$5,250,000, or \$350,000 per acre.

Mr. Chad Durrance, MAI with Durrance and Associates, appraised the subject property on behalf of CFX. His initial appraisal report was dated March 6, 2014, which estimated the value of the property taken as of February 10, 2014, to be \$170,000.00. This appraisal was the basis for CFX's good faith estimate of value. The Court entered an Order of Taking on July 10, 2014, and the good faith estimate was deposited on July 21, 2014. Mr. Durrance subsequently prepared a draft of an updated appraisal with the July 21, 2014 date of value. His updated value estimate was \$245,500.00, as described in more detail below.

The property has been annexed into the City of Apopka, but has not yet been rezoned. The existing county zoning is A-1 (ZIP) – Citrus Rural District (Zoning in Progress). After

conversations with the Planning Manager for the City of Apopka, Mr. Durrance determined that it was reasonably probable that the property could ultimately be rezoned for commercial development, and that the highest and best use of the property is for future commercial development. It is also worth noting that the property located across the street from the subject, at the southeast corner of Plymouth Sorrento Road and Ponkan Road, was annexed into the City of Apopka in 2007 and received a change in land use to Commercial and a zoning designation of C-1.

To determine land value, Mr. Durrance considered seven (7) comparable sales and several listings which ranged in value between \$72,600.00 per acre to \$281,400.00 per acre. Two of the comparable sales utilized by Mr. Durrance are currently listed for sale for substantially more than the sale price identified in his appraisal: Sale 1 was sold in May of 2012 for \$72,600.00 per acre, but is currently listed for \$218,000.00 per acre, and Sale 3 was sold in December 2012 for \$281,400.00 per acre, and is currently listed for \$437,125.00 per acre. These properties are located at the first intersection south of the subject along Plymouth Sorrento Road, at Lester Road/Yothers Road. Mr. Durrance ultimately reconciled on a value of **\$80,000.00 per acre**, which equates to \$1,456,000.00 for the value of the parent tract, and **\$241,500.00 for the part taken.**

CFX's acquisition will reduce the size of the parent tract by 17%. The configuration of the property is similar to the "before" condition, as the taking is from the rear of the property, and the parcel will retain its road frontage. Within the acquisition area, CFX will construct fencing adjacent to the remainder property line, a pond access road, sloped embankment and the new expressway, which is elevated as it approaches the Ponkan Road overpass. The western boundary of the remainder will be at or near grade with the adjacent expressway. The travel lands will be elevated 14 feet above grade at the southern property boundary, increasing to 25 feet above grade at the northern boundary. The travel lanes will be setback about 125 feet from the remainder's western boundary. Mr. Durrance concludes that the presence of the expressway will not have a negative influence on the future commercial use of the remainder, and therefore does not find any severance damages. He values improvements (fencing) within the area of taking to be worth \$1,800.00, and finds a cost to cure of \$2,200.00.

These valuation conclusions are summarized as follows:

Land Value	\$241,500.00
Improvement Value	1,800.00
<u>Cost to Cure</u>	<u>2,200.00</u>
<b>Total Compensation</b>	<b>\$245,500.00</b>

The owner is represented by Kent Hipp of Gray Robinson, P.A., who has retained the appraisal services of Rick Dreggors with Calhoun, Dreggors & Associates, Inc. Mr. Dreggors similarly determined that the property's highest and best use is for commercial development. To determine value, Mr. Dreggors considered five (5) comparable sales that ranged in value from \$174,629.00 per acre (\$4.01 per square foot) to \$309,804.00 per acre (\$7.11 per square foot).

While most of Mr. Dreggors' sales are located a considerable distance further from the subject than Mr. Durrance's, both appraisers did have one sale in common. Mr. Dreggors' "Comparable Sale 812" is the same sale utilized by Mr. Durrance as "Sale 6." Each appraiser

listed the value of this sale differently, based on different determinations of net land size. Mr. Durrance determined that this sale indicated a value of \$143,400.00 per acre, while Mr. Dreggors determined that this sale indicated a value of \$174,629.00 per acre.

Mr. Dreggors ultimately determined that the subject had a value of \$5.75 per square foot, or **\$250,480.00 per acre**, which equates to \$4,558,600 for the total value of the subject, and **\$756,100.00** for the value of the part taken. He then determined that the value of the improvements within the taking is **\$3,700.00**, and the Cost to Cure is **\$1,400.00**. Mr. Dreggors similarly concluded that the subject would not suffer any severance damages. He therefore concludes that the total compensation for the subject should be \$761,200.00.

The owner's compensation claims are summarized as follows:

Land Value	\$756,100.00
Improvement Value	3,700.00
<u>Cost to Cure</u>	<u>1,400.00</u>
<b>Total Compensation</b>	<b>\$761,200.00</b>

#### **EXPERT and ATTORNEY FEES / SETTLEMENT PROPOSAL:**

The Landowners have submitted expert invoices in the amount of \$71,545.76 as summarized below:

Calhoun, Dreggors & Assoc.	\$28,400.00
VHB (Land Planners)	10,561.62
Tipton Associates, Inc.	9,117.89
Civil Engineering Solutions, Inc.	21,966.25
<u>Barefoot Brothers Contractors</u>	<u>1,500.00</u>
<b>Total Landowner Expert Fees</b>	<b>\$71,545.76</b>

The Landowners have agreed to accept **\$64,966.00** for the total amount of all expert fees in this case.

CFX's expert fees in this case totaled \$87,491.00, as summarized below:

Durrance & Associates	\$58,757.75
McIntosh & Associates	28,017.25
<u>Breedlove, Dennis and Associates</u>	<u>716.00</u>
<b>Total CFX Expert Fees</b>	<b>\$87,491.00</b>

The undersigned counsel has analyzed the invoice amounts of the Landowner's experts and believes that the negotiated rate included within the total expert settlement amount indicated above is reasonable.

This case is scheduled to go to trial on the September 2017 trial docket. Negotiations

between the parties resulted in the attached settlement agreement whereby the Landowners agreed to accept \$425,000.00 to resolve compensation for the property, \$64,966.00 for expert fees, and \$83,750.00 for attorneys' fees (based on statutory benefit). The parties executed a Settlement Agreement (attached to this memo), the terms of which are summarized below:

<b>Compensation to Landowners</b>	<b>\$425,000.00</b>
Attorney's fees (Kent Hipp)	83,750.00
<u>Expert fees and costs</u>	<u>64,966.00</u>
<b>Total "All-In" Settlement</b>	<b>\$573,716.00</b>

CFX previously deposited \$170,000.00 into the court registry as its good faith estimate of value. A settlement in the amount of \$573,716.00 would require CFX to deposit an additional sum of \$403,716.00 (inclusive of attorneys' fees and expert fees).

Acceptance of the proposed settlement is recommended and is in CFX's best interest. Prolonged litigation will subject CFX to additional attorneys' 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. Acceptance of the proposal will eliminate further risk and unnecessary expenses for CFX in this case.

#### **RECOMMENDATION:**

The Right of Way Committee recommended CFX Board approval of the proposed settlement on April 26, 2017. The undersigned counsel respectfully requests that this Board approve a settlement in the amount of \$573,716.00 to fully resolve Ponkin Road Property, LLC's interest in this case, including attorney's fees and expert fees and costs.

#### **ATTACHMENTS:**

Exhibit A - Sketch of Subject Property  
Exhibit B - Map Depicting Location of Property  
Exhibit C - Settlement Agreement

REVIEWED BY:



# EXHIBIT A

# SKETCH OF DESCRIPTION



Scale: 1" = 200'

SECTION 25,  
TOWNSHIP 20 SOUTH,  
RANGE 27 EAST

NOT PLATTED

NOT PLATTED

MATCH LINE SEE SHEET 3

NOT PLATTED

CITY OF  
APOPKA

PONKAN ROAD 60' R/W

30' R/W EASEMENT  
PER DB 402, PG 33

SEE SHEET 1 FOR LEGAL DESCRIPTION  
SEE SHEET 4 FOR GENERAL NOTES AND LEGEND

SHEET 2 OF 4

FOR: ORLANDO-ORANGE COUNTY  
EXPRESSWAY AUTHORITY

DATE: MARCH 21, 2013

PROJECT NO.: H20-01

DRAWN: PMM CHECKED: JMS

STATE ROAD 429  
OOCEA PROJECT NO. 429-202  
PARCEL NO. 153



GEODATA CONSULTANTS, INC.

SURVEYING & MAPPING  
2700 WESTHALL LANE  
SUITE 137  
MAITLAND, FLORIDA 32751

VOICE: (407) 660-2322 FAX: 660-8223  
LAND SURVEYOR BUSINESS LICENSE NO. 6556

# SKETCH OF DESCRIPTION

SECTION 25,  
TOWNSHIP 20 SOUTH,  
RANGE 27 EAST

NOT PLATTED

MATCH LINE SEE SHEET 2

NOT PLATTED  
CITY OF APOPKA

P.O.C.  
NE CORNER OF  
SECTION 25-20-27  
FND 1" IP  
NO IDENTIFICATION  
CCR 47889  
N: 1597617.4504  
E: 476790.8267

RANGE 27 E  
RANGE 28 E



Scale: 1" = 200'

SECTION 30,  
TOWNSHIP 20 SOUTH,  
RANGE 28 EAST

SHEET 3 OF 4

SEE SHEET 1 FOR LEGAL DESCRIPTION  
SEE SHEET 4 FOR GENERAL NOTES AND LEGEND

FOR: ORLANDO-ORANGE COUNTY  
EXPRESSWAY AUTHORITY

DATE: MARCH 21, 2013

PROJECT NO.: H20-01

DRAWN: PMM CHECKED: JMS

STATE ROAD 429  
OOCEA PROJECT NO. 429-202  
PARCEL NO. 153



GEODATA CONSULTANTS, INC.

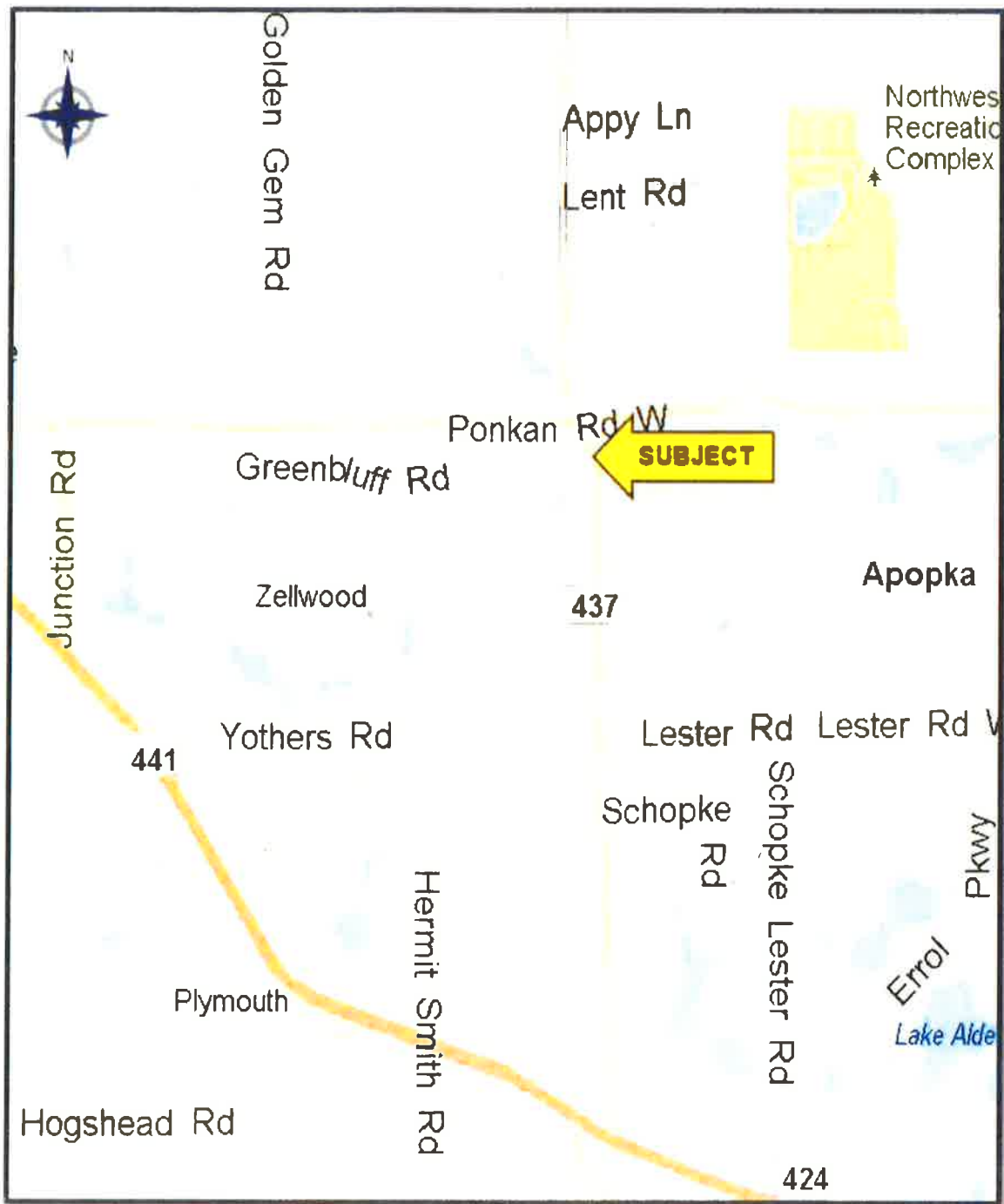
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# EXHIBIT B





## LOCATION MAP

# EXHIBIT C

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA

CENTRAL FLORIDA EXPRESSWAY AUTHORITY,  
a body politic and corporate, and an agency of the state  
under the laws of the State of Florida,

Petitioner,

CASE NO: 2014-CA-5613  
Subdivision 39  
Parcel 153

vs.

PONKIN ROAD PROPERTY, LLC, a  
Florida limited liability company, and SCOTT  
RANDOLPH, Orange County Tax Collector,

Respondent(s).

SETTLEMENT AGREEMENT

Respondent, PONKIN ROAD PROPERTY, LLC ("Respondent"), and representatives of the Central Florida Expressway Authority ("Petitioner") reached the following Settlement Agreement:

1. Petitioner will pay to Respondent the sum of Four Hundred Twenty Five Thousand Dollars exactly (\$425,000) (hereinafter, the "Settlement Sum"), in full settlement of all claims for compensation from Petitioner whatsoever for the taking of Parcel 153; including, but not limited to, statutory interest and all claims related to real estate and business damages, and severance damages, if any, but excluding attorney's fees and litigation costs, and expert 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 One Hundred Seventy Thousand Dollars (\$170,000) (hereinafter, the "Previous Deposit"). 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 Respondent the sum of Two Hundred Fifty-Five Thousand Dollars exactly (\$255,000), representing the difference between the Settlement Sum and Petitioner's Previous Deposit in this case.

2. In addition to the Settlement Sum referenced in Paragraph 1 of this Settlement Agreement, Petitioner will pay to the trust account of Respondent's attorney the sum of Eighty-Three Thousand Seven Hundred Fifty Dollars (\$83,750) (hereinafter, the "Attorney Fees and Costs") in full settlement and satisfaction of all attorney's fees, including all fees related to monetary benefits, non-monetary benefits, all law firm litigation costs in this case, and all apportionment claims, including supplemental attorneys' fees and costs related to apportionment claims, if any.

3. In addition to the Settlement Sum and the Attorney Fees and Costs, Petitioner will pay to the trust account of Respondent's attorney the sum of Sixty-Four Thousand Nine Hundred Sixty-Six Dollars (\$64,966) in full settlement and satisfaction of all expert fees and costs incurred by Respondent in this case.

4. 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.

5. Counsel for Petitioner and Respondent will jointly submit to the Court a mutually approved Stipulated Final Judgment containing the terms and conditions of this Settlement Agreement within twenty (20) days from the date of approval of this Settlement Agreement by the CFX Board.

6. 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.

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

8. This Settlement Agreement resolves all claims whatsoever, including any and all claims of compensation arising from the taking of Parcel 153, severance damages, business damages, interest, attorney's fees, attorney's costs, expert fees, expert costs, apportionment claims, including supplemental attorneys' fees and costs related to apportionment claims, and any other claim.

9. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Settlement Agreement.

10. By signing below, the undersigned representative of Respondent represents and warrants that he has full authority to settle on behalf of Respondent and Respondent is the sole owner of Parcel 153. No further consents, authorizations or approvals from any other shareholders, officers, directors or others are required for this Settlement Agreement to be effective and enforceable against all parties who may have a claim or an interest in the subject property by, through or under Respondent.

[Signature page follows]

  
\_\_\_\_\_  
Petitioner

Page 2 of 3

  
\_\_\_\_\_  
Respondent

11. This Settlement Agreement, executed by the parties and their counsel on the date(s) indicated below, contains all the agreements of the parties.

Linda S. B. Lanosa

Linda Brehmer Lanosa, Esq. for  
Central Florida Expressway Authority

Date: April 11, 2017

James L. Gissy

James L. Gissy, Managing Member, for  
Ponkin Road Property, LLC

Date: 4-10-17

\_\_\_\_\_  
Richard B. Weinman, Esq.  
Counsel for Central Florida Expressway

Date: \_\_\_\_\_

\_\_\_\_\_  
Kent L. Hipp, Esq.  
Counsel for Ponkin Road Property, LLC

Date: \_\_\_\_\_

11. This Settlement Agreement, executed by the parties and their counsel on the date(s) indicated below, contains all the agreements of the parties.

\_\_\_\_\_  
Linda Brehmer Lanosa, Esq. for  
Central Florida Expressway Authority

Date: \_\_\_\_\_

\_\_\_\_\_  
*Richard B. Weinman*

Richard B. Weinman, Esq.  
Counsel for Central Florida Expressway

Date: 4/10/17

\_\_\_\_\_  
James L. Gissy, Managing Member, for  
Ponkin Road Property, LLC

Date: \_\_\_\_\_

\_\_\_\_\_  
*Kent L. Hipp*

Kent L. Hipp, Esq.  
Counsel for Ponkin Road Property, LLC

Date: 4/7/17