

# L&G Engineering

Transportation Consultants

March 19, 2019

Hon. David Fuentes  
Attn: Jorge Pena, R.P.I.C.  
Hidalgo County Commissioner, Pct. #1  
1902 Joe Stephens Ave. Suite 1  
Weslaco, Texas 78599

RE: County: Hidalgo  
TxDOT CSJ No. 0921-02-356  
Mile 6 W Rd., (Westgate Ave.)  
Parcel No. 62

Dear Mr. Pena:

Attached herewith is a counter-offer as submitted by Esequiel Garcia, Jr. and Leonarda Garcia, owner of Parcels 62 on March 11, 2019. L & G Engineering has reviewed the aforementioned and hereby recommends that counteroffer be **approved**. Attached also is the N-9, Administrative Settlement Evaluation and Approval Form.

L & G Engineering believes the counteroffer is a legal and cost savings issue and a timing issue due to the imminent "let" date. More importantly due to recent court awards on similar projects and the cost to litigate through the Special Commissioners' Hearing we recommend that the counteroffer of **\$14,898.39** be accepted.

Please review these documents and feel free to contact me at (956) 585-1909 if you wish to discuss this matter personally.

Sincerely,

Luana Gonzalez.  
Right of Way Administrator

Attachments: As noted.

cc: File  
Carlos Peralez, PE



## HIDALGO COUNTY ADMINISTRATIVE EVALUATION AND APPROVAL FORM

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**ROW CSJ:** 0921-02-356

**County:** Hidalgo

**Highway:** Mile 6 W

**Project Limits:** From Mile 9 North to Mile 11

**Parcel No.:** 62

**Owner's Name:** Esequiel Garcia Jr. and Leonarda Garcia

**Approved Offer:** \$2,034.00

**Date Offer Sent:** 07/24/2018

**Owner's Counteroffer:** \$14,898.39

**Date Counteroffer Received:** 03/11/2019

**Factors considered in evaluation:**

1. Valuation Issues

- a.  Reconciliation of all available appraisals, including Owner's.
- b.  Other: Damages

2. Legal Issues

- a.  Analysis of recent court awards on similar properties or projects.
- b.  Analysis of recent court decisions which may affect the outcome of a condemnation action.
- c.  Analysis of previously unlitigated issues.
- d.  Other: \_\_\_\_\_

3. Cost Savings

- a.  Approximate cost to litigate through Special Commissioners' Hearing \$12,000.00
- b.  Approximate additional cost to litigate through jury trial \$15,000.00
- c.  Other: \_\_\_\_\_

4. Timing Issues

- a.  Maintain project schedule: 06/2019  
Possession of this property is needed by: 02/2019  
Projected possession date, if settled is: 03/2019  
Projected possession date, if condemned is: 08/2019  
Letting date: 08/2019
- b.  Other: \_\_\_\_\_

5. Other Issues

\_\_\_\_\_

\*\* The following documents have been considered and are incorporated by reference: appraisals, appraisal review form, owner's counteroffer and supporting documentation, negotiator's log, and \_\_\_\_\_

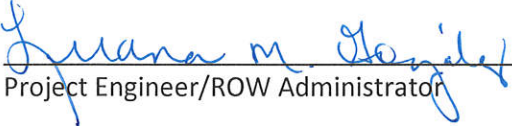
**Analysis and Conclusion:**

Our  approval/  disapproval recommendation is based on the items checked above and has been evaluated as follows: (attach additional sheets as necessary)

Parcel 62 is a partial acquisition containing 337 sq. ft., parcel of land out of Lot 14, the Estates at Westhaven Subdivision an addition to the City of Weslaco, Hidalgo County, Texas. On July 24, 2018 Acquisition Provider (L&G) made an offer of \$2,034.00 to purchase the property to Esquiuel and Leonarda Garcia. On March 11, 2019 the property owner submitted a counter offer for \$14,898.39 dollars. In the counter-offer Ms. Garcia stated that they received an estimate of \$7,898.39 from the Homeowners Association President to rebuild the subdivision entrance wall that will be impacted from the road widening. She also requested additional damages due to the new proximity of the road to their property. Based on the information provided within the the counter offer and discussion by the acquisition team it is recommended that the Administrative Settlement be approved. Also, the cost and length of time associated with a condemnation would far surpass the counter offer. We believe that the proposed counter-offer is within a reasonable range.

This administrative settlement of \$ 14,898.39  is /  is not recommended for approval as being reasonable, justified, prudent and in the public interest.

**RECOMMENDATION(S):**

  
\_\_\_\_\_  
Project Engineer/ROW Administrator

3/19/19  
\_\_\_\_\_  
Date

\_\_\_\_\_  
RPIC/Authorized Pct. Representative

\_\_\_\_\_  
Date

**COUNTY APPROVAL:**

\_\_\_\_\_  
County Judge

\_\_\_\_\_  
Date

March 11, 2019

Dir Sirs,

My husband and I have reviewed the information that you sent us as far as the purchase of our property located at Westhaven Estates Lot #14 in Weslaco and we reject the offer given to us for the amount of \$2,034.

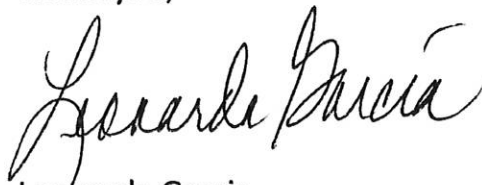
We would instead be asking for an amount totaling \$14,898.39.

An estimate of \$7,898.39 was given to us from the Homeowner's Association President, Mr. Roel Carreon, to rebuild a replica of the subdivision entrance wall that will be impacted from the road widening.

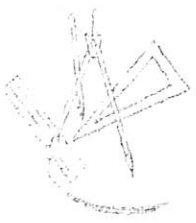
Taking into consideration the loss of land which would put us closer to the road, the loss of privacy due to the expansion of this road, and the high probability of accidents due to the widening of the road and our property's proximity to it, a total amount of \$14,898.39 is what we would be asking for.

If you need anything from us, please feel free to call me at (956) 778-8993.

Thank you,

A handwritten signature in cursive script that reads "Leonarda Garcia". The signature is written in black ink and is positioned above the printed name.

Leonarda Garcia



# L&G Engineering

Transportation Consultants

Date: July 24, 2018

County: Hidalgo  
Federal Project No.: N/A  
Highway: Mile 6 West

ROW CSJ: 0921-02-356  
Parcel: 62  
From: Mile 9 N  
To: Mile 11 N

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED NO. 7017 0530 0000 5620 8035

Esequiel Garcia, Jr. & Leonarda Garcia  
816 Kiester LN  
La Feria, Texas 78599-5161

Dear Mr. and Mrs. Garcia:

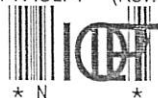
In acquiring property for the highway system of Hidalgo County (the "County") follows a definite procedure for appraising the land needed and for handling personal negotiations with each owner. As has been or will be explained by the County's negotiator, Fernando Herrera, a portion of your property located on Mile 6 West, as described in the enclosed property description, is to be acquired for the construction or improvement of the above-referenced highway project.

We believe at this stage of the purchase process it is mutually beneficial to confirm that, based on an appraisal, the County is authorized to offer you **\$2,034.00** for your property, which includes **\$1,832.00** for the property to be purchased and **\$202.00** for damages to your remaining property. This amount is the total amount of just compensation for all interests in the portion of your property to be acquired, as determined in accordance with State law, less oil, gas and sulphur, subject to clear title being conveyed to the County. In accordance with State law, it is the policy of the County to negotiate with the fee owner(s) of the real property with the understanding that you will, in turn, negotiate with any lessee or other party who may own any interest in the land or improvements, with the exception of public utility easements, which will be handled separately by the County.

This offer to purchase includes the contributory values of the improvement(s) listed below, which are considered to be part of the real property. Since the improvement(s) must be removed, it is the policy of the County to permit owners who convey voluntarily to the County to thereafter retain the improvement(s), if they wish to do so. The retention values shown below are the estimated amounts the improvement(s) would bring if sold on public bids. If you wish to retain title to any of the following improvement(s) and remove it (them) from the right of way, the amount of the above offer must be reduced by the appropriate retention amount(s). This option to retain the improvement(s) does NOT apply should it become necessary for the County to acquire the real property by eminent domain.

<u>Improvement</u>	<u>Amount to be Subtracted if Retained</u>
Masonry Wall	\$1.00
Wrought Iron Fencing	\$1.00
Landscaping (sod)	\$1.00

If you wish to accept the offer based upon this appraisal, please contact Mr. Herrera as soon as possible at (956) 585-1909, so that the process of issuing your payment may be started. If you are not willing to accept this offer, you may submit a written request for administrative settlement/counteroffer, setting forth a counteroffer amount and the basis for such amount, provided such settlement request is received in writing within 30 days from the date of this letter. Please note that your opportunity to submit an administrative settlement shall be forfeited if such a settlement request is not received by the County within the 30 day time deadline. In the event the condition of the property changes for any reason, the County shall have the right to withdraw or modify this offer.



After the date of payment of the purchase price, or the date of deposit in court of funds to satisfy the award of compensation as determined through eminent domain proceedings to acquire real property, you will be reimbursed for any fair and reasonable incidental expenses necessarily incurred in transferring title to the property for use by Hidalgo County. Expenses eligible for reimbursement may include (1) recording fees, transfer taxes and similar expenses incidental to conveying the real property to the County and (2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property. Voluntary unnecessary expenses or expenses incurred in clearing questionable title will not be eligible for reimbursement. Eligible incidental expenses will be reimbursed upon submission of a claim supported by receipted bills or other evidence of actual expenses incurred. You may file a written request for review if you believe that the County failed to properly determine the eligibility for, or the amount of, incidental expenses to be reimbursed. There is no standard form on which to request a review of a claim; however, the claim must be filed with this office within six months after you are notified of the County's determination on any claim for reimbursement.

You may be entitled to additional payments and services under the County's Relocation Assistance Program. It is emphasized, however, that any benefits to which you may be entitled under this program will be handled entirely separate from and in addition to this transaction. You will receive a brochure entitled "*Relocation Assistance*" which will inform you of eligibility requirements, payments and services which are available.

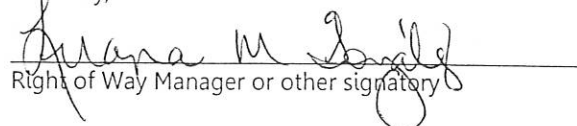
You have the right to discuss with others any offer or agreement regarding the County's acquisition of the subject property, or you may (but are not required to) keep the offer or agreement confidential from others, subject to the provisions of Chapter 552, Government Code (the Public Records Act) as it may apply.

Attached is a copy of the Texas Department of Transportation brochure entitled "*Right of Way Purchase*" which we trust will give you a better understanding of the procedures followed by the County in purchasing property. We respectfully request the opportunity to meet with you or to otherwise discuss and answer any questions you may have regarding the details of the type of facility to be built, or concerning the County's offer or proposed purchase transaction. Also, please do not hesitate to contact Mr. Herrera at the telephone number provided above regarding any question you may have.

Please see the enclosed copy of the Texas Landowner Bill of Rights.

Finally, we enclose copies of all appraisal reports relating to your property being acquired which were prepared in the ten (10) years preceding the date of this offer and produced or acquired by the County, including the appraisal on which this offer is based.

Sincerely,

  
\_\_\_\_\_  
Right of Way Manager or other signatory

ENCLOSURES:  
Appraisal Report(s)  
Landowner Bill of Rights  
Brochure ("*Right of Way Purchase*")



**TABULATION OF VALUES (continued)**

Parcel: 62

Highway: Mile 6 West

ROW CSI: 0921-02-356

**III. Damages and Enhancements**

Non-Exempt Damages	Enhancements	Exempt Damages	Net Damages
\$0.00	\$0.00	\$202.00	\$202.00

**IV. Sign Values**

Item No.	Sign Owner	Type Construction	Improvement Value	Retention Value	Bisect. Cat.
		<b>Total</b>	\$0.00	\$0.00	

**V. Recapitulation**

Date	October 17, 2016			Recommended Value
Appraiser's Name:	Matthew C. Whitney, MAI			
Value of Whole Property	\$47,147.00			\$47,147.00
Parcel Area: 0.008 Ac.				
VALUE FOR PARCEL	\$760.00			\$760.00
Land: per <u>Ac.</u>	\$95,000			\$95,000
Easement	\$0.00			\$0.00
Improvements	\$1,072.00			\$1,072.00
Net Damages or (Enhancements)	\$202.00			\$202.00
OAS Value(s)	\$0.00			\$0.00
<b>TOTAL COMPENSATION</b>	<b>\$2,034.00</b>			<b>\$2,034.00</b>

Calculations for Net Damages or (Enhancements) consider Direct Access Denial damages.

**TABULATION OF VALUES (continued)**

Parcel: 62

Highway: Mile 6 West

ROW CSJ: 0921-02-356

**VI. Comments and Conclusions on Values in the Appraisal Report**

<b>Effective Date of Review:</b>	December 4, 2016
<b>Date of Review Report:</b>	December 4, 2016
<b>Purpose of Review Appraisal:</b>	The purpose of this appraisal review is to verify that the referenced appraisal report is prepared in compliance with the Texas Department of Transportation Appraisal and Review Manual, the Uniform Standards of Professional Appraisal Practice (USPAP), and 49 CFR 24.103.
<b>Client:</b>	Hidalgo County and TXDOT – Pharr District
<b>Intended User:</b>	Hidalgo County, TXDOT – Pharr District, and their assigns
<b>Intended Use:</b>	Provide a recommended compensation for the acquisition
<b>Scope of the Review:</b>	I personally inspected the subject property from the existing road right of way and the comparable sales utilized in the appraisal report. The property owner was not present at the time of my inspection. I have read the report in its entirety and provided comments for the consideration of the appraiser. I did perform additional sales research. I have not personally confirmed the sales price for each of the comparable sales.

This Appraisal Review is of the Appraisal Report dated December 4, 2016 prepared by Matthew C. Whitney, MAI. The property under review is commonly referred to as Parcel 62 on the Mile 6 West Highway Project in Hidalgo County, Texas. The effective date of value is October 17, 2016 which is the date of Mr. Whitney's most recent inspection of the property.

The Parent Tract contains 0.485 acre of land located on the northwest corner of Mile 6 West and Westhaven Drive. The subject property is not subject to zoning. However, it is deed restricted for single family residential use. The highest and best use of the subject, land only, is determined to be for residential use. The subject property consists of vacant land with minor site improvements. Thus, the highest and best use, as improved, is not applicable.

The land was valued via the Sales Comparison Approach to Value through the utilization of five similar land sales that range in date of sale from February 2014 through July 2016 and have an adjusted sales price range from \$87,808 to \$98,951 per acre. The appraiser concludes a value of \$95,000 per acre for the whole property, or \$46,075.00. Adjustments were applied for market conditions (time), size, and utilities. All adjustments appear to be reasonable.

The subject property consists of vacant land with minor site improvements. Vacant land is not typically purchased based on an anticipated income stream. Thus, the Income Approach and the Sales Comparison Approach, as Improved, were not developed. The Cost Approach indicated a value for the land and improvements acquired to be \$47,147.00. Thus, the appraiser concludes a value for the land and improvements acquired to be \$47,147.00. All valuation appears to comply with typical appraisal practices.

The acquisition consists of a fee simple interest in 0.008 acre (337 sq. ft.) of land and site improvements to include a masonry wall, wrought iron fencing, and sod. Improvements in the acquisition were valued at \$1,072.00 and the land was valued at \$760.00. The land was valued on a pro rata basis of the whole property.

**TABULATION OF VALUES (continued)**

Parcel: 62

Highway: Mile 6 West

ROW CSJ: 0921-02-356

**VI. Comments and Conclusions on Values in the Appraisal Report (Continued)**

The remainder after the acquisition contains 0.477 acre of land that maintains essentially the same physical characteristics as the whole property. There is no denial of access to the remainder. The appraiser concludes there are no permanent damages (Non-Exempt Damages) to the remainder. However, the appraiser concludes there are Exempt Damages (Cost to Cure) to the remainder which includes the cost to replace the masonry wall and this amount was determined to be \$202.00. The value of the improvements acquired was subtracted from the corresponding replacement cost to avoid double compensation. Total damages were calculated to be \$202.00. Damages have been addressed in a manner consistent with TXDOT policy.

The appraisal is prepared on the ROW A-5, TXDOT Long Form, and the format is properly applied and adequately documented to provide a basis for compensation. The appraisal report appears to comply with USPAP. The data contained in the appraisal report is adequate and the adjustments to the sales are adequately supported and reasonable.

Based on my analysis of the appraisal report, I believe the analyses, opinions, and conclusions set forth in the appraisal are appropriate and reasonable. Mr. Whitney's compensation of \$2,034.00 is approved by the contracted review appraiser (Todd L. Bland, MAI; TX-1323490-G), and recommended for approval by Hidalgo County.

**VII. Justification and Explanation for Credit if Retained.**

Salvage and minimal retention values are applied to the improvements being acquired.

The appraiser has considered access damages in accordance with Section 21.042(d) of the Texas Property Code, as amended by SB18 of the Texas 82<sup>nd</sup> Regular Legislative Session and finds as follows:

1. Is there a denial of direct access on this parcel? No (yes or no)
2. If so, is the denial of direct access material? Not Applicable (yes, no, or not applicable)
3. The lack of any access denial or the material impairment of direct access on or off the remaining property affects the market value of the remaining property in the sum of \$0.00.

**TABULATION OF VALUES (continued)**

Parcel: 62

Highway: Mile 6 West

ROW CSJ: 0921-02-356

**VIII. Conditions**

Values for signs, if any, are applicable only if sign owner has compensable interest.  
Fencing is applicable only to actual cost or lump sum fencing on 90-10 Right of Way projects and State cost participation in fences to be in accordance with State's Right of Way Manual.  
The values indicated hereon have been approved on the basis that all improvements within the taking will be acquired in the name of the State through negotiation.

**IX. Reviewing Appraisers' Statements**

**Reviewing Appraiser's Statement**

It is my opinion that the appraiser's report for this parcel appears adequately supported and in compliance with all appropriate appraisal standards, laws, and regulations, and I recommend this appraisal for use by the appropriate Agency Official and his/her assigns. I have no direct or indirect present or contemplated future personal interest in such property or in any benefit from the acquisition of the parcel. To the best of my knowledge, the value does not include any items that are not compensable under State law.

\_\_\_\_\_  
Reviewing Appraiser

\_\_\_\_\_  
Date

*Todd Blair*

December 4, 2016

\_\_\_\_\_  
Contract Reviewing Appraiser (if applicable)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Division Reviewing Appraiser (if applicable)

\_\_\_\_\_  
Date

**X. Approval of Values**

*Ramon Garcia*  
\_\_\_\_\_  
County/City Representative

*12/13/16*  
\_\_\_\_\_  
Date

\_\_\_\_\_  
ROW Staff Representative

\_\_\_\_\_  
Date

APPROVED BY  
COMMISSIONERS' COURT  
AR *11/15/16 jms*

## CERTIFICATION OF REVIEW APPRAISER

I Certify that to the best of my knowledge and belief:

- the facts and data reported by the review appraiser and used in the review process are true and correct.
- the analyses, opinions, and conclusions expressed in this review report are limited only by the reported assumptions and limiting conditions stated in this review report, and are my personal, impartial, and unbiased professional analysis, opinions, and conclusions;
- I have no present or prospective interest in the property that is the subject of work under review and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of the work under review or to the parties involved with this assignment.
- my engagement in this assignment was not contingent upon developing or reporting predetermined results.
- my compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this review.
- my analyses, opinions, and conclusions were developed, and this review was prepared in conformity with the Uniform Standards of Professional Appraisal Practice; the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute;
- I personally inspect the subject property of the report under review.
- no one provided significant professional assistance to the person signing this Appraisal Review Report;
- the use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives;
- I have performed no appraisal services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- as of the date of this report, Todd L. Bland, MAI has completed the requirements of the continuing education program of the Appraisal Institute and the Texas Appraiser Licensing and Certification Board;

As of the date of this review, I am currently certified under the requirements of the State of Texas as a general real estate appraiser.



**Todd L. Bland, MAI**  
**State Certified General RE Appraiser**  
**Certificate No. TX-1323490-G**

December 4, 2016

**Date**

## ASSUMPTIONS AND LIMITING CONDITIONS

The Appraisal Review Report is subject to the following limiting conditions:

1. Possession of this Appraisal Review Report or copy thereof does not carry with it the right of publication.
2. This Appraisal Review Report is intended solely for the internal use of the Texas Department of Transportation. Neither all nor any part of the contents of this Appraisal Review shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent and approval of the reviewer.
3. The Review Appraiser, by reason of this Appraisal Review Report, is not required to give further consultation or testimony, or to be in attendance in court with reference to the property that is the subject of this Appraisal Review Report, unless arrangements have been previously made.
4. The Appraisal Review Report constitutes a limited assignment and should not be construed as an appraisal of the subject property.
5. Unless otherwise stated, the analyses, opinions and conclusions in this Appraisal Review Report are based solely on the data, analyses and conclusions contained in the appraisal report under review. It is assumed that these data are representative of existing market conditions.
6. All analyses, opinions and conclusions expressed by the Review Appraiser are limited by the scope of the review process as identified under the section titled "Scope of the Review."

## **QUALIFICATIONS OF TODD L. BLAND, MAI**

Todd L. Bland is a certified general real estate appraiser in the State of Texas. Mr. Bland also holds the MAI designation from the Appraisal Institute. He has been appraising real estate since February 1990. Mr. Bland's responsibilities include appraisal and appraisal review of all types of right of way and commercial properties. He has testified as an expert witness regarding real property value on numerous occasions in various courts of law.

### **BIOGRAPHICAL DATA**

Mr. Bland was born in Austin, Texas in 1966. He graduated from public schools in Austin, Texas prior to attending the University of Texas at Austin.

### **EDUCATION**

Bachelor of Business Administration Degree (Real Estate/Risk Management and Insurance):

University of Texas at Austin (1989)

Appraisal Institute:

Standards of Professional Practice

Uniform Standards of Professional Appraisal Practices

Basic Valuation Procedures

Real Estate Appraisal Principles

Capitalization Theory and Techniques, Part A

Capitalization Theory and Techniques, Part B

Case Studies in Real Estate Valuation

Valuation Analysis and Report Writing

Highest and Best Use and Market Analysis

Analyzing Operating Expenses

Uniform Appraisal Standards for Federal Land Acquisitions

Attacking and Defending Appraisals in Litigation

International Right of Way Association:

Easement Valuation

Ethics and the Right of Way Profession

Reviewing Appraisals in Eminent Domain

### **PROFESSIONAL AFFILIATIONS**

Appraisal Institute (MAI No. 11439)

State Certified General Real Estate Appraiser

Texas Certificate No. TX-1323490-G

International Right of Way Association (Member)

### **ACTIVITIES**

Mr. Bland is active in Austin Chapter of the Appraisal Institute and Gulf Coast Chapter 8 of the International Right of Way Association.