

L&G Engineering

Transportation Consultants

October 8, 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. 70

Dear Mr. Pena:

Attached herewith is a counter-offer as submitted by Sergio Pena, owner of Parcel 70 on October 1, 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 **\$12,500.00** 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

ROW CSJ: 0921-02-356

County: Hidalgo

Highway: Mile 6W

Project Limits: From Mile 9 North to Mile 11

Parcel No.: 70

Owner's Name: Sergio Pena

Approved Offer: \$3,354.00

Date Offer Sent: 07/23/2019

Owner's Counteroffer: \$12,500.00

Date Counteroffer Received: 10/8/2019

Factors considered in evaluation:

1. Valuation Issues

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

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: 10/2019
Possession of this property is needed by: 10/2019
Projected possession date, if settled is: 12/2019
Projected possession date, if condemned is: 12/2019
Letting date: 10/2019
- 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 _____

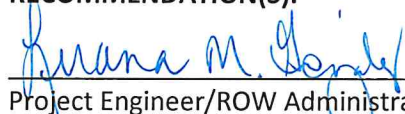
Analysis and Conclusion:

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

Parcel 70 Being a 3,535 square foot or 0.0812 of an acre tract of land situated in the City of Weslaco, Hidalgo County, Texas, and being out of the East 10.00 acres of the West 20.0 acres of Farm Tract 237, West and Adams Tract Subdivision, out of the Llano Grande Grant of lands, Hidalgo County, Texas. On 07/23/2019, Acquisition Provider (L&G Engineering) made an offer of \$3,354.00 to purchase the property to Sergio Pena. On 10/1/2019, the property owner submitted a counter offer requesting an additional \$9,146.00 for the total of \$12,500.00. Property owner's counteroffer indicated an improvement value issue on his cement driveway which consist of (18x24x18), and black top which consist of (18x22 with 12 inch caliche base). Property owner has submitted estimates for both entrances to his property. He would like for the county to consider his counteroffer based off his estimates provided to L&G Engineering. Based on the information provided within 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 counteroffer. We believe that the proposed counter offer is within a reasonable range.

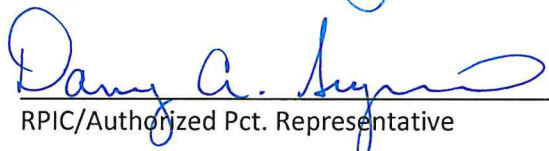
This administrative settlement of \$ 12,500.00 is / is not recommended for approval as being reasonable, justified, prudent and in the public interest.

RECOMMENDATION(S):



Project Engineer/ROW Administrator

10/10/19
Date



RPIC/Authorized Pct. Representative

10-16-19
Date

COUNTY APPROVAL:

County Judge

Date

TABULATION OF VALUES

Parcel: 70 Highway: Mile 6 West Road ROW CSJ: 0921-02-356
 Taking Type: Partial District: Pharr
 Size of Remainder: 9.9188 Acres.(Survey Sketch) County: Hidalgo
 Type of Property: Improved/Residential Development
 Contract Fencing: N/A
 Appraised by: John H. Malcom, Jr.
 Date Appraised: 3-21-19

Access will be provided or denied to the new facility. If access will be partially provided or denied, explain in comments.

Agency	Participating Percentage	Expense Description
Hidalgo County Precinct No. 1	20%	ROW Acquisition Expenses

Interest Owner	Acquisition Interest	Land Area	Value	Lease (Y/N)
Sergio Pena	Fee Simple	0.0812 Acres	\$1,786.00	No

I. Appraised Values

Land Value	Improvement Value	Sign Value	Damages/Enhancements	Total Value
\$1,786.00	\$1,568.00	\$0.00	\$0.00	\$3,354.00

II. Improvements

Item No.	Improvement Type	Type Construction	Improvement Value	Retention Value	Bisection Category
A.	Drive	Concrete	\$1,420.00	\$1.00	N/A
B.	Drive	Caliche	148.00	1.00	N/A

Item No.	Improvement Type	Type Construction	Improvement Value	Retention Value	Bisection Category
		Total	\$1,568.00		

TABULATION OF VALUES (continued)

Parcel: 70

Highway: Mile 6 West Road

ROW CSI: 0921-02-356

VI. Comments and Conclusions on Values in the Appraisal Report

Appraiser: John H. Malcom, Jr.
Effective Date of Report: March 21, 2019
Report Dated: April 10, 2019
Review Appraiser: Harvey L. Heerssen
Effective Date of Review: April 11, 2019

Parcel 70 is a partial taking of 0.0812 acres situated in the ETJ of the City of Weslaco, Hidalgo County, Texas, out of the East 10.00 acres of the West 20.00 acres of Farm Tract 237, West and Adams Tract Subdivision as recorded in Volume 2, Page 34 of the Map Records, Hidalgo County Texas. Said 10.00 acre tract of land conveyed by a Special Warranty Deed dated May 15, 2015, from Clarence F. Crosby and wife Agustina Crosby to Sergio Pena, as recorded in Document No. 2618669, Official Records, Hidalgo County, Texas.

This parcel is located along the northern line of Mile 11 North Road, just east of Mile 6 Road in the ETJ of Weslaco, Texas. The whole property is improved land containing 10 acres according to the survey sketch and the deed. However, the appraiser has determined the whole tract size is 9.820 net acres as it appears there could be acreage in the existing road right of way. The highest and best use is for residential developmental purposes.

The subject whole property unit value of \$22,000 per acre is adequately supported by five (5) recent residential sales. The whole property is improved with a single family residence that is not impacted by the proposed right of way acquisition. There are no market damages to the remaining land.

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 82nd Regular Legislative Session. The result of the findings is that there is no denial of direct access nor material impairment of direct access on or off the remaining property that affects the market value of the remaining property. Therefore, there are no access damages to the remainder property.

The report prepared by the appraiser John H. Malcom, Jr. is an Appraisal Report presented on TxDOT form ROW-A-5 and appears to comply with USPAP and the Texas Department of Transportation's Appraisal and Review Manual. The appraisers' opinion and conclusions appear to be well supported by information contained within this appraisal report. It is recommended that the total value of \$3,354.00 be approved for negotiations and acquisition.

VII. Justification and Explanation for Credit if Retained.

Retentions of \$1.00 are applied to each site improvement on this parcel in order to encourage retention and removal.

TABULATION OF VALUES (continued)

Parcel: 70

Highway: Mile 6 West Road

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

Henry L. Herman
Contract Reviewing Appraiser (if applicable)

4-11-19
Date

Division Reviewing Appraiser (if applicable)

Date

X. Approval of Values

Deborah F. Currier
County/City Representative

5/1/19
Date

ROW Staff Representative

Date

APPROVED BY
COMMISSIONERS' COURT
ON: 11/15/16 ms



Form ROW-A-5
(Rev. 08/11)

1 REAL ESTATE APPRAISAL REPORT - TEXAS DEPARTMENT OF TRANSPORTATION

Address of Property: 1516 West Mile 11 North Road
Property Owner: Sergio Pena
Address of Property Owner: 1516 W. Mile 11 North Road, Weslaco, TX
Occupant's Name: Sergio Pena
Whole: Partial: Acquisition

ROW CSJ: RCSJ: 0921-02-356
District: Pharr
Parcel: 70
Federal Project No: --
Highway: Mile 6 West County: Hidalgo

Purpose of the Appraisal

The purpose of this appraisal is to estimate the market value of the fee simple title to the real property to be acquired, encumbered by any easements not to be extinguished, less oil, gas and sulphur. If this acquisition is of less than the whole property, then any special benefits and/or damages to the remainder property must be included in accordance with the laws of Texas.

Market Value

Market value is defined as follows: "Market Value is the price which the property would bring when it is offered for sale by one who desires, but is not obliged to sell, and is bought by one who is under no necessity of buying it, taking into consideration all of the uses to which it is reasonably adaptable and for which it either is or in all reasonable probability will become available within the reasonable future."

Certificate of Appraiser

I hereby certify:

That it is my opinion the total compensation for the acquisition of the herein described property is \$3,354 as of, March 21, 2019 based upon my independent appraisal and the exercise of my professional judgment;

That on March 21, 2019 (date)(s), I personally inspected in the field the property herein appraised; that I afforded, Sergio Pena the property owner or the representative of the property owner, the opportunity to accompany me at the time of the inspection; The property owner was contacted by certified mail and was present during the site visit.

That the comparables relied upon in making said appraisal were as represented by the photographs contained in the appraisal report and were inspected on or before January 25, 2019 (date)(s);

That I have not revealed and will not reveal the findings and results of such appraisal to anyone other than the proper officials of the Texas Department of Transportation or officials of the Federal Highway Administration until authorized by State officials to do so, or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified to such findings;

That my compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.

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 82nd Regular Legislative Session and finds as follows:

1. Is there a denial of direct access on this parcel? no denial of access for a highway improvement project (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

I certify to the best of my knowledge and belief:

That the statements of fact contained in this report are true and correct;

That the reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions;

That I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved;

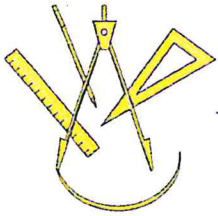
That my analyses, opinions and conclusions were developed, and this report has been prepared in conformity with the appropriate State laws, regulations, and policies and procedures applicable to the appraisal of right of way for such purposes, and that to the best of my knowledge no portion of the value assigned to such property consists of items which are noncompensable under the established law of said State, and any decrease or increase in the fair market value of subject real property prior to the date of valuation caused by the public improvement for which such property is to be acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to the physical deterioration within the reasonable control of the owner, has been disregarded in estimating the compensation for the property.

Appraiser Signature
John H. Malcom, Jr., MAI, AI-GRS, SR/WA
Certification Number 1320239-G
April 10, 2019
Date

To the best of my knowledge, the value does not include any items which are not compensable under State law.

Harvey L. Heersson
Reviewing Appraiser

04/11/2019
Date



L&G Engineering

Transportation Consultants

June 14, 2019

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

ROW CSJ: 0921-02-356
Parcel No.: 70
From: Mile 9 North
To: Mile 11 North

***Certified Mail, Return Receipt Requested
No.: 7018 1130 0002 1336 2730***

Sergio Pena
1516 W. Mile 11 N
Weslaco, Texas 78599

Dear Mr. Pena:

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 \$ **3,354.00** for your property, which includes \$ **3,354.00** for the property to be purchased and \$ **0.00** 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>
A. Drive - Concrete	\$ 1.00
B. Drive - Caliche	\$ 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.

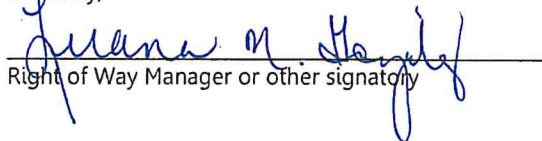
You have the right to discuss with others any offer or agreement regarding the County's acquisition of the subject property, or you may (but are not required to) keep the offer or agreement confidential from others, subject to the provisions of Chapter 552, Government Code (the Public Records Act) as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

Sergio Pena
1516 W. Mile 11 Nth
Weslaco, TX 78599
Hidalgo County
Mile 6 Road
Parcel 70

RE: Counteroffer

Dear Mr. Salinas

I am writing to inform you that I have received your initial offer of \$3,354.00 and I have reviewed the appraisal report that was dated 4/10/2019 by John H. Malcom, Jr. and have to respectfully decline this offer and counteroffer \$12,500.00 for the reasons being as follows. In the recent months I have been under construction building my new home and other improvements around my property. One of the newest additions recently done that is part of the take and not on the appraisal report is an 18x22 with a 12 inch caliche base black top entrance to my property. Unfortunately, this project was done after the appraisal was completed. Furthermore, the amount of value that was estimated by the appraiser for my concrete entrance is also incorrect. Reason being is that I own and operate a Construction Company and run heavy machinery on my property so the cost to build differed from a normal entrance. The black top and concrete entrance were built to with stand heavy machinery. Attached, you will find the estimates for the cement driveway and black top driveway that was done to the entrance of my property.



10-8-2019

