

L&G Engineering

Transportation Consultants

Oct. 22, 2019

The Honorable Joe Flores
Commissioner, Pct. 3
c/o Norma Ceballos
724 N Breyfogle
PO Box 607
Mission, Texas 78574

RE: County: Hidalgo
TxDOT CSJ No. 0921-02-344
Mile 3 Road
Parcel No. 20

Dear Mr. Flores:

Attached herewith is a counter-offer as submitted by Daniel Ozuna et al, owners of Parcel 20 on Oct. 18, 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. 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 **\$10,800.00** 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,

Fernando Herrera Jr.
Right of Way Administrator

Attachments: As noted

cc: File



HIDALGO COUNTY ADMINISTRATIVE EVALUATION AND APPROVAL FORM

ROW CSJ: 0921-02-344

County: Hidalgo

Highway: Mile 3 Road

Project Limits: Tom Gill to Goodwin Road

Parcel No.: 20

Owner's Name: Daniel Ozuna et al

Approved Offer: \$7,778.00

Date Offer Sent: 07/18/19

Owner's Counteroffer: \$10,800.00

Date Counteroffer Received: 10/18/19

Factors considered in evaluation:

1. Valuation Issues

- a. Reconciliation of all available appraisals, including Owner's.
- b. Other: Property owner feels the improvements value was severely 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: 6/2020
Possession of this property is needed by: 12/2019
Projected possession date, if settled is: 11/2019
Projected possession date, if condemned is: 04/2020
Letting date: 6/2020
- 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 _____

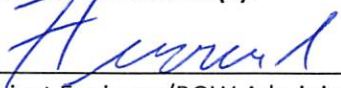
Analysis and Conclusion:

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

Parcel 20 is a taking of 587 square feet or 0.0135 of an acre of land situated in Hidalgo County, Texas out of LOT 4 Coyote Hill Subdivision being a subdivision of Lots 2 and 3, Block 8, Homeville Association Subdivision "D". L&G Engineering on 7/18/19 mailed out an initial offer package for the amount of \$7,778.00 to Mr. Daniel Ozuna et al. Mr. Ozuna has prepared and submitted a counteroffer of \$10,800.00. In his counteroffer he indicates that his improvements and the estimates he obtained the improvements are undervalued. He is also requesting monies for the replacement of his palm trees and for transplantation of the oak trees. The numbers he cites in the counteroffer do not add up to the 10,800 but rather add up to a higher value so in an effort to settle the acquisition are asking for a lower amount. Based on the information provided within the counter offer and discussion by the acquisition team it is recommended that the Administrative Settlement be approved. We believe that the proposed counter offer is within a reasonable range.

This administrative settlement of \$ 10,800.00 is / is not recommended for approval as being reasonable, justified, prudent and in the public interest.

RECOMMENDATION(S):



Project Engineer/ROW Administrator

10/22/19

Date

RPIC/Authorized Pct. Representative

Date

COUNTY APPROVAL:

County Judge

Date

County: Hidalgo

CSJ: 0921-02-344

Highway: Mile 3 North

From: Tom Gill Road

To: Goodwin Road

Re: Pict. 20

October 8¹⁸, 2019

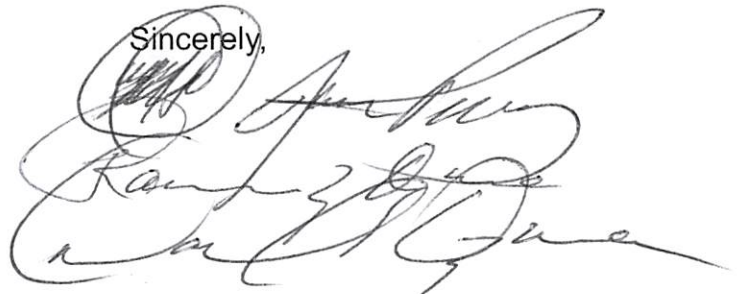
To whom it may concern:

We, Daniel Ozuna, Ramona Ozuna, Maria Leonor Rodriguez, and Juan Francisco Rodriguez, live at 3310 N Tom Gill Rd, Penitas, TX, 78576, Pict. 20. We feel the offer of \$7,778 is an unreasonable amount due to sentimental value. We know and understand that sentimental values are priceless. We reminisce my brother/son every time we walk out our front door. We remember all the hard work and dedication he put into the oak and palm trees, in which we continue to nurture and watch them grow throughout the past ten years of his passing.

When we received the news of the road expanding, we were in a state of shock, not knowing whether or not we were going to lose the oak/palm trees. After consulting with L & G Engineering, they explained our options. We decided to look for a company who would be willing to relocate our oak/palm trees. After several consultations, we concluded that the amount of \$7,778 offered to us, would not be enough to cover the relocation. The most inexpensive company, Crows Nest Tree Services, is charging \$2,500 for the oak trees to be transplanted and the palm trees were not included in this estimate. The worth of the palm trees is \$1,400 and to transplant them is \$600 for all four. The total in landscaping valued and landscaping is \$9,100.

Our counteroffer is for the amount of \$10,800, and no less, to cover expenses for the transplanting of the trees, gating, fencing, caliche, concrete, and land. We vehemently hope you approve our counteroffer.

Sincerely,

A handwritten signature in black ink, appearing to read 'Daniel Ozuna', written over a circular stamp or seal.

Crows Nest Tree Services
 P.O Box 2551
 McAllen Tx 78502
 1-956-331-7507
 crows-nest@outlook.com



Juan F Rodriguez
 3310 n Tom Gill Road
 Peñitas Texas

ESTIMATE

Estimate # 265

Estimate Date 03/19/2019

Item	Description	Unit Price	Quantity	Amount
Service	Transplanting Services Of 4 Mature Oak Trees(Sentimental Value Priceless)	2500.00	1.00	2,500.00
Service	Transplanting Services To Designated Areas As Requested By Homeowner			
Product	Value Of Oak Tree Being Transplanted			
	\$4,600.00			
<p><u>NOTES:</u> Crows Nest Palm Tree Services Strives For Customer Satisfaction, Safety And Tree Health. Crows Nest Palm Tree Services Is A Texas Certified HUB Company. Please Contact Me With Any Questions Or Concerns. Crows Nest Is Fully Insured For Your Protection. Crows Nest Tree Services "Towering Above The Rest"</p>				
				Subtotal 2,500.00
				Total 2,500.00
				Amount Paid 0.00
				Estimate \$2,500.00



July 19, 2018

**Via Certified Mail, Return Receipt Requested No.
7013 0600 0002 4176 5956**

County: Hidalgo
Federal Project No.: N/A
Highway: Mile 3 North Road

ROW CSJ: 0921-02-344
Parcel: 20
From: Tom Gill Road
To: Goodwin Road

Daniel Ozuna, Ramona Z. Ozuna
& Maria Leonor Rodriguez
3310 N. Tom Gill Road
Penitas, TX 78576

Dear Sir/Madam:

In acquiring property for the highway system of Texas, the Texas Department of Transportation (the "Department") and Hidalgo County (the "County") follow 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, Jr., a portion of your property located on Mile 3 North Road, 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 **\$ 7,778.00** for your property, which includes **\$ 7,459.00** for the property to be purchased and **\$ 319.00** 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 Department/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 Department/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 Department/County to permit owners who convey voluntarily to the State 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. Driveway – Concrete	\$ 1.00
B. Driveway – Caliche	\$ 1.00
C. Fencing – Chain Link	\$ 1.00
D. Rolling Gates (3) – Chain Link	\$ 1.00
E. Landscaping – Trees (8) Oaks & Palms	\$ 1.00

If you wish to accept the offer based upon this appraisal, please contact Fernando Herrera, Jr., 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 Department /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 the Texas Department of Transportation/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 Department/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 Department's/County's determination on any claim for reimbursement.

You may be entitled to additional payments and services under the State'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.

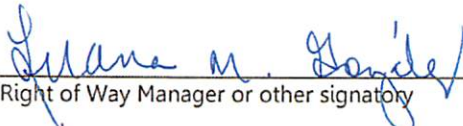
You have the right to discuss with others any offer or agreement regarding the Department's/County's acquisition of the subject property, or you may (but are not required to) keep the offer or agreement confidential from others, subject to the provisions of Chapter 552, Government Code (the Public Records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

Parcel: 20 Highway: Mile 3 Road ROW CSJ: 0921-02-344
 Taking Type: Partial District: Pharr
 Size of Remainder: 0.5343 Acres County: Hidalgo
 Type of Property: Residential Development Federal Project: N/A
 Contract Fencing: N/A
 Appraised by: Leonel Garza III
 Date Appraised: 6-1-18

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
Federal Highway Administration	80%	ROW Acquisition Expenses
Hidalgo County	20%	ROW Acquisition Expenses

Interest Owner	Acquisition Interest	Land Area	Value	Lease (Y/N)
Daniel Ozuna & Ramona Z. Ozuna	Fee Simple	0.0135 Acres 587 sf.	\$1,526.00	No

I. Appraised Values

Land Value	Improvement Value	Sign Value	Damages/Enhancements	Total Value
\$1,526.00	\$5,933.00	\$0.00	\$319.00	\$7,778.00

II. Improvements

Item No.	Improvement Type	Type Construction	Improvement Value	Retention Value	Bisection Category
A.	Driveway	Concrete	\$287.00	\$1.00	N/A
B.	Driveway	Caliche	41.00	1.00	N/A
C.	Fencing	Chain Link	657.00	1.00	N/A
.D.	Rolling Gates (3)	Chain Link	1,148.00	1.00	N/A
E.	Landscaping	Trees (8) Oaks & Palms	3,800.00	1.00	N/A

Item No.	Improvement Type	Type Construction	Improvement Value	Retention Value	Bisection Category
		Total	\$5,933.00		

TABULATION OF VALUES (continued)

Parcel: 20

Highway: Mile 3 Road

ROW CSJ: 0921-02-344

III. Damages and Enhancements

Total Non-Exempt Damages	Enhancements	Exempt Damages	Net Damages
\$0.00	\$0.00	\$319.00	\$319.00

IV. Sign Values

Item No.	Sign Owner	Type Construction	Improvement Value	Retention Value	Blsect. Cat.
N/A	N/A	N/A	N/A	N/A	N/A
Total			\$0.00	\$0.00	

V. Recapitulation

Date:	6-1-18			Recommended Value
Appraiser's Name:	Leonel Garza III			
Value of Whole Property	\$191,981.00			\$191,981.00
Parcel Area: 587 sf.				
VALUE FOR PARCEL				
Land: per sf. \$2.60	\$1,526.00			\$1,526.00
Easement	\$0.00			\$0.00
Improvements	\$5,933.00			\$5,933.00
Net Damages or (Enhancements)	\$319.00			\$319.00
OAS Value(s)	\$0.00			\$0.00
TOTAL COMPENSATION	\$7,778.00			\$7,778.00

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

TABULATION OF VALUES (continued)

Parcel: 20

Highway: Mile 3 Road

ROW CSJ: 0921-02-344

VI. Comments and Conclusions on Values in the Appraisal Report

Appraiser: Leonel Garza III
Effective Date of Report: June 1, 2018
Report Dated: June 29, 2018
Review Appraiser: Harvey L. Heerssen
Effective Date of Review: July 2, 2018

Parcel 20 is a partial taking of 0.0135 acres (587 sq. ft.) parcel of land out of Lot 4, Coyote Hill Subdivision, an addition to the City of La Joya, Hidalgo County, Texas as recorded in Volume 26, Page 179, of the Map Records, Hidalgo County, Texas, said Coyote Hill Subdivision being a subdivision of Lots 2 and 3, Block 8, Homeville Association Subdivision "D" as recorded in Volume 6, Page 36, of the Map Records, Hidalgo County, Texas, said Lot 4 conveyed by Deed of Gift Reserving Life Estate, dated August 8, 2013, from Maria Leonor Rodriguez, formerly Maria Leonor Ozuna joined proforma by her husband, Juan Francisco Rodriguez to Daniel Ozuna and wife, Ramona Z. Ozune, as described in Document No. 2438251, of the Official Records, Hidalgo County, Texas.

The whole property is located along the eastern side of Tom Gill Road, approximately 0.08 miles south of Mile 3 Road, in the City of Penitas, Texas. The subject whole property is improved with a single family residence along with related site improvements. The highest and best use of the subject is for single family residential development. The site improvements within the acquisition are appraised accordingly. The residence is not impacted by the proposed acquisition.

The appraiser Leonel Garza III has selected three (3) recent sales similar to the subject in highest and best use and location to value the whole property at \$2.60 per sf. The part taken is properly valued as a pro-rata part of the whole. There are no market damages to the remainder land. Cost to cure damages are necessary to compensate for the chain link fencing and rolling gates that were depreciated in the acquisition in order to replace the fencing and gates on the remainder to retain the same utility.

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 Leonel Garza III 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 value of \$7,778.00 be approved for negotiations and acquisition.

VII. Justification and Explanation for Credit if Retained.

Retentions of \$1.00 are applied to each site improvement within the acquisition to encourage retention.

TABULATION OF VALUES (continued)

Parcel: 20

Highway: Mile 3 Road

ROW CSJ: 0921-02-344

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

J. Henry L. Johnson

Contract Reviewing Appraiser (if applicable)

7-6-18

Date

Division Reviewing Appraiser (if applicable)

Date

X. Approval of Values

Ramon Garcia

County/City Representative

7/18/18

Date

ROW Staff Representative

Date

APPROVED BY
COMMISSIONERS' COURT
ON: *7/13/18 jms*

REAL ESTATE APPRAISAL REPORT - TEXAS DEPARTMENT OF TRANSPORTATION

Address of Property: 3310 Tom Gill Road, Peñitas, Texas	District: Pharr
Property Owner: Daniel Ozuna & Ramona Z Ozuna	Parcel: 20
Address of Property Owner: 3310 Tom Gill Road, Peñitas, Texas 78576	ROW CSJ: 0921-02-344
Occupant's Name: Daniel Ozuna & Ramona Z Ozuna	Federal Project No: N/A
Whole: <input type="checkbox"/> Partial: <input checked="" type="checkbox"/> Acquisition	Highway: 3 Mile Road
	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 \$7,778 as of June 1, 2018, based upon my independent appraisal and the exercise of my professional judgment;

That on June 1, 2018, I personally inspected in the field the property herein appraised; that I afforded Daniel Ozuna & Ramona Z Ozuna, the property owner or the representative of the property owner, the opportunity to accompany me at the time of the inspection;

That the comparables relied upon in making said appraisal were as represented by the photographs contained in the appraisal report and were inspected on June 8, 2018 (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, and/or their representatives, 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 of the parcel? No (yes or no)
2. If so, is the denial of direct access material? N/A (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.


I certify to the best of my knowledge and belief:

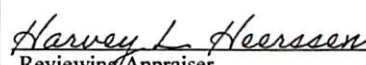
That the statements of fact contained in this report are true and correct;

That the reported analysis, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analysis, 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 analysis, 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 non-compensable 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

 Leonel Garza III
 Certification Number
 TX 1328375 – G
 Date: June 29, 2018

To the best of my knowledge, the value does not include any items which are not compensable under State law.	
	7-6-18
Reviewing Appraiser	Date

