

L&G Engineering

Transportation Consultants

July 15, 2022

The Honorable Eduardo "Eddie" Cantu
Commissioner, Pct. 2
c/o Armando Garza Jr.
300 West Hall Acres
Pharr, Texas 78577

RE: County: Hidalgo
Hwy.: East Nolana Loop
Limits: From: N. Raul Longoria To: N. Alamo Road
ROW CSJ No. 0921-02-421
Parcel No.: 15

Dear Commissioner Cantu:

Attached herewith is a counter-offer as submitted by Villanueva Properties & Investments, LLC, owner of Parcel 15 on July 14, 2022. 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 valuation, 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 **\$55,828.00** 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: 0921-02-421

County: Hidalgo

Highway: East Nolana Loop

Project Limits: From: N. Raul Longoria To: N. Alamo Road

Parcel No.: 15

Owner's Name: Villanueva Properties & Investments, LLC

Approved Offer: \$ 50,828.00

Date Offer Sent: 6/1/2022

Owner's Counteroffer: \$ 55,828.00

Date Counteroffer Received: 7/14/2022

Factors considered in evaluation:

1. Valuation Issues

- a. Reconciliation of all available appraisals, including Owner's.
- b. Other: Property owner feels that his property is 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 \$20,000.00
- b. Approximate additional cost to litigate through jury trial \$40,000.00
- c. Other: _____

4. Timing Issues

- a. Maintain project schedule: Yes
Possession of this property is needed by: 8/2022
Projected possession date, if settled is: 8/2022
Projected possession date, if condemned is: 12/2022
Letting date: 9/2023
- b. Other: _____

5. Other Issues

- It appears that the property owner's counteroffer is within an acceptable value. Subjecting this parcel through the process of Condemnation using the County's sovereign power of Eminent Domain would be time consuming and a costly approach.

** 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 _____

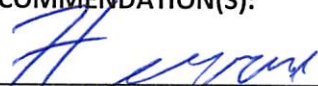
Analysis and Conclusion:

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

Parcel 15 is a partial acquisition containing a 1.047 acre (45,600 sq. ft.) parcel of land situated in Lot 13, Block 48, of the Alamo Land and Sugar Company Subdivision, recorded in Volume 1, Page 24, of the Map Records of Hidalgo, County, Texas. On June 1, 2022, Acquisition Provider, L & G Engineering, sent an initial offer letter of \$50,828.00 to Villanueva Properties & Investments, LLC (property owner: Martin Villanueva), via certified mail. I met with Mr. Rosendo Benitez (property Manager) and during our discussion and he and Mr. Villanueva believes the property is undervalued. Mr. Villanueva submitted a counter offer in the amount of \$55,828.00 and after further discussion and review by the evaluation team, it is the recommendation that the administrative settlement be approved. The difference between the approve value versus the property owner's counter offer is (a difference of \$5,000.00). Although the property owner did not provide salient information in the counter offer, it does not warrant the risk and added expenses associated with standard eminent domain proceedings. Accepting said counter offer will help avoid project time delays, and associated condemnation proceedings, thus resulting in a cost saving to the county.

This administrative settlement of \$ 55,828.00 is / is not recommended for approval as being reasonable, justified, prudent and in the public interest.

RECOMMENDATION(S):



Project Engineer/ROW Administrator

7/18/22

Date

RPIC/Authorized Pct. Representative

Date

COUNTY APPROVAL:

County Judge

Date

TABULATION OF VALUES

Parcel: 15 Update Highway: East Nolana Loop ROW CSJ: 0921-02-361
 Taking Type: Partial District: PHR
 Size of Remainder: 18.953 Acres County: Hidalgo
 Type of Property: Land-Other Federal Project: N/A
 Contract Fencing: N/A
 Appraised by: Leonel Garza III
 Effective Date of Updated Appraisal :3/10/2022
 Date Updated Appraisal Signed: 3/14/2022

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
State of Texas	80%	ROW Acquisition Expenses
Hidalgo County	20%	ROW Acquisition Expenses

Interest Owner	Acquisition Interest	Land Area	Value	Lease (Y/N)
Villanueva Properties & Investments LLC. South Texas Electric Cooperative	Fee Simple	0.0474 Acres	\$15,828.00	No
	Easement	0.6966 Acres	13,932.00	No
	Existing ROW	0.3030 Acres	\$0.00	No

I. Appraised Values

Land Value	Improvement Value	Sign Value	Damages/Enhancements	Total Value
\$29,760.00	\$35,000.00	\$0.00	\$0.00	\$64,760.00

II. Improvements

Item No.	Improvement Type	Type Construction	Improvement Value	Retention Value	Bisection Category
A.	Landscaping	Palm Trees - 35 EA.	\$35,000.00	\$1.00	N/A

Item No.	Improvement Type	Type Construction	Improvement Value	Retention Value	Bisection Category
		Total	\$35,000.00	\$1.00	

TABULATION OF VALUES (continued)

Parcel: 15 Update

Highway: East Nolana Loop

ROW CSJ: 0921-02-361

III. Damages and Enhancements

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

IV. Sign Values

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

V. Recapitulation

Date:	3/10/2022 Updated Appraisal	12/29/2020 Original Appraiser		Recommended Value
Appraiser's Name:	Leonel Garza III	Leonel Garza III		
Value of Whole Property	\$822,880.00	\$606,213.00		\$822,880.00
Parcel Area: 0.744 Ac. Net				
VALUE FOR PARCEL				
Land: 0.0474 Acres Unencumbered @\$40,000/ac. and 0.6966 ac Encumbered @ 20,000/acre	Fee -\$1,896.00 Fee- 13,932.00	\$21,576.00		Fee -\$1,896.00 Fee 13,932.00
Easement 0.6966 ac @ \$20,000/acre	\$13,932.00	\$0.00		\$13,932.00
Improvements	\$35,000.00	\$35,000.00		\$35,000.00
Net Damages or (Enhancements)	0.00	\$0.00		0.00
OAS Value(s)	\$0.00	\$0.00		\$0.00
TOTAL COMPENSATION	\$64,760.00	\$56,576.00		\$64,760.00

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

TABULATION OF VALUES (continued)

Parcel: 15 Update

Highway: East Nolana Loop

ROW CSJ: 0921-02-361

VI. Comments and Conclusions on Values in the Appraisal Report

Appraiser: Leonel Garza III

Effective Date of Updated Report: March 10, 2022

Updated Report Dated: March 14, 2022

Review Appraiser: Harvey L. Heerssen

Effective Date of Updated Review: April 3, 2022

Parcel 15 has been updated to reflect current market value of the land. New sales have been used to value the fee taking at \$40,000 per acre. Additionally, the easement owned by South Texas Electric Cooperative has been separated from the land value to indicate a value for the unencumbered portion, the encumbered portion and the value for the easement owner. Therefore, the total updated value of 64,760.00 represents an increase from the value of \$56,576.00 as shown in the original report.

Parcel 15 is a partial taking of 1.047 gross acres (45,600 gross sf.) situated in Lot 13, Block 48, of the Alamo Land and Sugar Company, recorded in Volume 1, Page 24, of the Hidalgo County Map Records, and being out of a called 20.00 acre tract of land described in an instrument to Villanueva Properties and Investments from Marin Villanueva Construction, recorded in Document Number 2852545, dated September 26, 2017, Official Records of Hidalgo County, Texas.

The whole property of 20.00 gross acres is located along the north line of East Nolana Loop approximately 0.1 mile east of Alamo Road, San Juan, Texas. The whole tract is vacant land except for thirty five (35) palm trees all within the proposed acquisition and are appraised accordingly. The acquisition of 1.047 gross acres includes an amount of 0.303 acres within the existing right of way having no value leaving a net taking of 0.744 acres. The acreage within the existing right of way is shown in the field notes for this parcel.

In this update, the appraiser has selected three (3) recent sales to value the whole tract at \$40,000 per acre. The highest and best use is for residential development purposes. There are no market damages to the remainder 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 updated 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' updated opinion and conclusions appear to be well supported by information contained within this updated appraisal report. It is recommended that the total updated value of \$64,760.00 be approved for continued negotiations and acquisition.

VII. Justification and Explanation for Credit if Retained.

A retention of \$1.00 is applied to the 35 palm trees in the acquisition to encourage retention and removal.

TABULATION OF VALUES (continued)

Parcel: 15 Update

Highway: East Nolana Loop

ROW CSJ: 0921-02-361

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. Newman
Contract Reviewing Appraiser (if applicable)

4/20/2022

Date

Division Reviewing Appraiser (if applicable)

Date

X. Approval of Values

County/City Representative

Date

Richard J. LWB2 *5-11-22*

ROW Staff Representative

Date

APPROVED BY
COMMISSIONERS COURT
ON: *3/30/22 BMS*

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REAL ESTATE APPRAISAL REPORT - TEXAS DEPARTMENT OF TRANSPORTATION

Address of Property: North side of Nolana, Approximately 0.1 of a mile East of Alamo Road, San Juan, Texas District: 21
 Property Owner: Villanueva Properties & Investments LLC Parcel: 15
 Address of Property Owner: 3528 Buddy Owens Boulevard, Mcallen, Texas 78504 ROW CSJ: 0921-02-361
 Occupant's Name: Villanueva Properties & Investments LLC Federal Project No: N/A
 Whole: Partial: Acquisition Highway: East Nolana Loop 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 \$64,760 as of March 10, 2022, based upon my independent appraisal and the exercise of my professional judgment;

That on March 10, 2022, I personally inspected in the field the property herein appraised; that I afforded Villanueva Properties & Investments LLC, 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 March 10, 2022;

That I have not revealed and will not reveal the findings and results of such appraisal to anyone other than L&G Consulting Engineers, Inc. and or the proper officials of Hidalgo County, 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 SB-18 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? No (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 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: March 14, 2022

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

Harvey L. Heerssen 4/20/2022
 Reviewing Appraiser Date





L&G Engineering

Transportation Consultants

May 26, 2021

County: Hidalgo
Federal Project No.: N/A
Highway: East Nolana Loop

ROW CSJ: 0921-02-421
Parcel ID: 15
From: FM 1426 (Raul Longoria Road)
To: FM 907 (Alamo Road)

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED NO. 7020 0090 0001 6884 2449

Villanueva Properties & Investments, LLC, a Texas limited liability company
3528 Buddy Owens Boulevard
McAllen, Texas 78504

Dear Property Owners,

In acquiring property for the highway system of Texas, the Texas Department of Transportation (the "Department") and Hidalgo County ("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, Robert A. Casarez, a portion of your property located East Earling 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 **\$50,828.00** for your property, which includes **\$50,828.00** 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 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 Department/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>Type</u>	<u>Amount to be Subtracted if Retained</u>
A. Landscaping	Palm Trees – 35 EA.	\$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 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 to the Department/County.

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 Fernando Herrera, Jr. 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*")

Form ROW-N-IOLPT (Rev.11/20) Page 2 of 2

July 1, 2022

Villanueva Properties & Investments, LLC
3528 Buddy Owens Boulevard
McAllen, Texas 78504
956-686-7636 or 956-212-4132

RE: E. Nolana Loop Parcel 15

Mr. Casarez:

We appreciate the offer provided of \$50,828.00 and while we are certainly grateful, we would like this opportunity to negotiate the offer. Although the County's offer has been generous, we would like to counter offer in the amount of \$55,828.00. It is in our best interest and believe that this counter offer is justifiable due to the current market and investment value. I am willing to accept a total of \$55,828.00 which is a difference of \$5,000.00 from the original offer. I will transfer the required property for the expansion of the road and in order to avoid any litigation, I would appreciate the approval of my counter offer so that we can continue moving forward. If you have any questions please call me at the above phone number.

Sincerely,



Villanueva Properties & Investments, LLC

RECEIVED
7-14-2022

RECEIVED