

L & G Consulting Engineers, Inc.

January 25, 2023

The Honorable David Fuentes
Commissioner, Pct. 1
c/o Jorge Pena RPIC
1902 Joe Stephens Avenue
Weslaco, Texas 78599

RE: County: Hidalgo
RCSJ No. 0921-02-355
Parcel No. 6
MILE 6W: From :SH 107 To: Mile 14.5


Dear Commissioner Fuentes:

Attached herewith is a counter-offer as submitted by Francisco Javier Nacienceno owner of Parcel 6 on January 10, 2023. L & G Engineering has reviewed the aforementioned and hereby recommends that counter-offer **be approved**. Also attached is the N-9, Administrative Settlement Evaluation and Approval Form.

L & G Engineering believes the counter offer is within an acceptable range of value and we recommend that the counteroffer of **\$22,055.00** 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,


Fred Herrera
Right of Way Administrator

Attachments: As noted.
cc: File



HIDALGO COUNTY ADMINISTRATIVE EVALUATION AND APPROVAL FORM

ROW CSJ: 0921-02-355

County: Hidalgo

Highway: Mile 6W

Project Limits: From SH 1077 to Mile 14.5

Parcel No.: 6

Owner's Name: Francisco Javier Nacienceno

Approved Offer: \$16,649.00

Date Offer Sent: 05/31/2022

Owner's Counteroffer: \$22,055.00

Date Counteroffer Received: 1/10/2023

Factors considered in evaluation:

1. Valuation Issues

- a. Reconciliation of all available appraisals, including Owner's.
- b. Other: Property Owner feels his land and improvements were 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 \$15,000.00
- b. Approximate additional cost to litigate through jury trial \$20,000.00
- c. Other: _____

4. Timing Issues

- a. Maintain project schedule: 12/2023
Possession of this property is needed by: 04/2023
Projected possession date, if settled is: 04/2023
Projected possession date, if condemned is: 06/2023
Letting date: 3/2026
- 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 _____

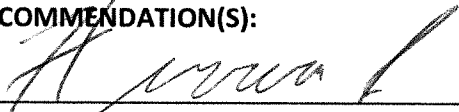
Analysis and Conclusion:

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

Parcel 6 is a partial acquisition containing 7,895 sq. ft., parcel of land situated in Hidalgo County, Texas and also being a part or portion of a 5.0 acre tract of land out of Farm Tract 515 West and Adams Tract Subdivision. On May 31, 2022, Acquisition Provider (L&G) mailed an offer of \$16,649.00 to purchase the property to Francisco Javier Naicanceno. On October 26, 2022, the property owner submitted a counter offer in the amount of \$22,055.00. In his counter offer he stated that his land was undervalued and that his u shaped caliche driveway was being impacted by the "taking". 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. The difference between the approved value versus the property owner's counter offer (a difference of \$5,406.00) 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 \$ 22,055.00 is / is not recommended for approval as being reasonable, justified, prudent and in the public interest.

RECOMMENDATION(S):



Project Engineer/ROW Administrator

1/26/2023

Date

RPIC/Authorized Pct. Representative

Date

COUNTY APPROVAL:

County Judge

Date

October 26, 2022

Francisco Javier Nacienceno
P.O. Box 1299
Edcouch, Texas 78538

Hidalgo County
Mile 6 West Road
RCSJ: 0921-02-355
Parcel No. 6

RE: Offer Letter dated May 31, 2022

L&G Engineering
Attn.: Bob Garcia
Right of Way Agent

In your offer letter dated May 31, 2022, the Texas Department of Transportation and Hidalgo County are offering me **\$16,649.00** for my land and improvements. I have reviewed the enclosed appraisal report and have determined to reject the County's offer. However, I am not contesting the value of the utility pole, wood signpost, or the cost-to-cure damages.

The basis and reasoning for the rejection of the total amount of compensation is due to the following:

- My land has been undervalued at \$2.15 PSF when the present real estate market suggests that it should be at \$2.70 PSF.
- The appraisal report does not indicate that there is a 12' caliche "U" drive within the proposed ROW taking. This value has been calculated accordingly and should be considered as an over-looked improvement.

In consideration to the above information, I have determined that the following calculations better address and indicate the valuation of my land and improvement.

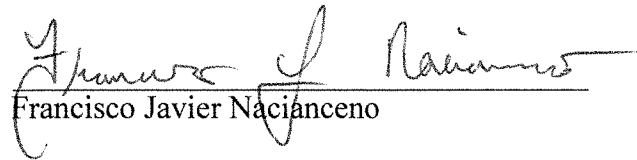
1. Fee Simple – 6,302 sq. ft. at \$2.70 PSF -----\$17,015.00
2. Utility Pole – As in Appraisal -----\$2,000.00
3. Wood Sign Posts – As in Appraisal -----\$50.00
4. Cost-to-Cure Damages – As in Appraisal-----\$1,050.00
5. Over-Looked Improvement – Caliche "U" Drive – 1,940 sq. ft.
1,940 sq. ft. x \$2.00 PSF = \$3,880.00, less a 50% depreciation by time,
use, and weather -----\$1,940.00

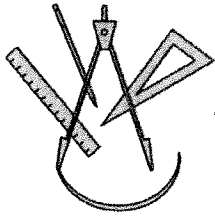
The total compensation Amount and Counteroffer is for **\$22,055.00**

In view of the above calculations, my counteroffer is for \$22,055.00. If this amount is considered and approved, I am willing to execute the necessary documentation to finalize the acquisition of Parcel No. 6.

Thank you for your consideration of this important Right of Way matter.

Sincerely,


Francisco Javier Nacienceno



L&G Engineering

Transportation Consultants

May 31, 2022

Hidalgo County
Mile 6 West
Limits: (SH107 to Mile 14.5)
RCSJ: 0921-02-355
Parcel No. 06

RE: The purchase of a 0.181 of an acre (7,895 square feet) parcel of land situated in Hidalgo County, Texas and also being a part or portion of a 5.0 acre Tract of land out of Farm Tract 515, WEST AND ADAMS TRACT SUBDIVISION, according to the plat or map thereof recorded in Volume 2, Pages 34-37, of the map records of Hidalgo County, Texas.

Francisco Javier Naicanceno
P.O. Box 1299
Edcouch, Texas 78538-1299

Dear Mr. Naicanceno:

Enclosed for your review and further processing are the following:

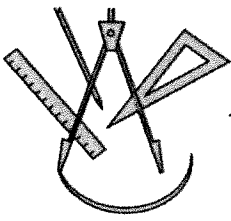
- Initial Offer Letter
- Metes and Bounds and Plat
- Appraisal Report prepared by: John Malcom, Jr. dated 03/30/2022
- Acknowledgement of Receipt of Appraisal Report
- Land Owner Bill of Rights w/Supplement
- Title Commitment
- Sample Deed
- Brochures ("State Purchase of Right of Way")

Please return the signed Acknowledgement of Receipt to our office at L&G Engineering, 900 S. Stewart Road, Suite 10, Mission, Texas 78572.

Should you have any questions or need additional information, please do not hesitate to contact me at (956) 585-1909.

Sincerely,

Fernando Herrera,
Right of Way Administrator



L&G Engineering

Transportation Consultants

May 31, 2022

**Via Certified Mail, Return Receipt Requested
No. 7021 0350 0002 1531 1605**

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

ROW CSJ: 0921-02-355
Parcel: 06
From: SH107
To: Mile 14.5

Francisco Javier Nacianceno
P.O. Box 1299
Edcouch, Texas 78538-1299

Dear Mr. Nacianceno:

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 Right of way Manager, 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 **\$ 16,649.00** for your property, which includes **\$ 15,599.00** for the property to be purchased and **\$1,050.00** 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>Type</u>	<u>Amount to be Subtracted if Retained</u>
A. Pole	Utility – 40 LF.	\$ 1.00
B. Posts	Wood – 2 EA.	\$ 1.00

If you wish to accept the offer based upon this appraisal, please contact Project Manager Robert "Bob" Garcia or Fernando Herrera Right of Way Manager, 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 Project Manager Robert "Bob" Garcia or Fernando Herrera Right of Way Manager 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

Parcel: 6 Highway: **Mile 6 West Road** ROW CSJ: **0921-02-355**
 Taking Type: Partial District: PHR
 Size of Remainder: 4.819 Acres County: Hidalgo
 Type of Property: Res-SFR
 Contract Fencing: N/A
 Appraised by: John H. Malcom, Jr.
 Effective Date of Appraisal Report: 2/22/2022
 Date Appraised Report Signed: 3/30/2022

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
Hidalgo County Precinct No. 1	20%	ROW Acquisition Expenses

Interest Owner	Acquisition Interest	Land Area	Value	Lease (Y/N)
Francisco Javier Nacianceno	Fee Simple	0.145 Ac. -6,032 sf. .Net	\$13,549.00	No
	In El. Triunfo Rd. ROW	0.03657 Ac. 1,593 sf.	\$0.00	No

I. Appraised Values

Land Value	Improvement Value	Sign Value	Damages/Enhancements	Total Value
\$13,549.00	\$2,050.00	\$0.00	\$1,050.00	\$16,649.00

II. Improvements

Item No.	Improvement Type	Type Construction	Improvement Value	Retention Value	Bisection Category
A.	Pole	Utility- 40 LF.	\$2,000.00	\$1.00	N/A
B.	Posts	Wood- 2 EA.	50.00	1.00	N/A

TABULATION OF VALUES (continued)

Parcel: 6

Highway: Mile 6 West Road

ROW CSJ: 0921-02-355

III. Damages and Enhancements

Total Non-Exempt Damages	Enhancements	Exempt Damages	Net Damages
\$0.00	\$0.00	\$1,050.00	\$1,050.00

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:	2/22/2022	Effective Date		Recommended Value	
Appraiser's Name:	John H. Malcom, Jr.				
Value of Whole Property (Economic Unit-0.753 Net Acres)	\$72,544.00			\$72,544.00	
Parcel Area: 6,302 sf. -Net					
VALUE FOR PARCEL					
Land: per sf. \$2.15	\$13,549.00			\$13,549.00	
Easement	\$0.00			\$0.00	
Improvements	\$2,050.00			\$2,050.00	
Net Damages or (Enhancements)	\$1,050.00			\$1,050.00	
OAS Value(s)	\$0.00			\$0.00	
TOTAL COMPENSATION	\$16,649.00			\$16,649.00	

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

TABULATION OF VALUES (continued)

Parcel: 6

Highway: Mile 6 West Road

ROW CSJ: 0921-02-355

VI. Comments and Conclusions on Values in the Appraisal Report

Appraiser: John H. Malcom, Jr.
Effective Date of Report: February 22, 2022
Report Dated: March 30 2022
Review Appraiser: Harvey L. Heerssen
Effective Date of Review: May 3, 2022

Parcel 6 is a partial taking of 0.181 gross acres (7,895 gross sf.) parcel of land situated in Hidalgo County, Texas and also being a part or portion of a 5.00 acre tract of land out of Farm Tract 515, West and Adams Tract Subdivision, according to the plat or map thereof recorded in Volume 2, Pages 34-37, of the Map Records of Hidalgo County, described in a deed dated March 15, 2016 to Francisco Javier Nacianceno and recorded in Document Number 2703044, of the Official Records of Hidalgo County, Texas.

The whole property of 5.00 acres is located along the west line of Mile 6 West Road in the Elsa Extraterritorial Jurisdiction zoning area of Hidalgo County, Texas, and actually being the southwest corner of Mile 6 West and El Triunfo Road. The whole tract is improved with a single family residence and related site improvements. The residence is not impacted by the proposed right of way. The whole property and part taken contain land within the existing right of way with 1,593 square feet excluded from the part taken.

For valuation purposes, the appraiser has established an economic unit of 0.753 net acres based on market trends in this immediate area. The appraiser has selected four (4) residential sales to value the economic unit at \$2.15 per sf. The part taken is properly valued as a pro-rata part of the economic unit value.

Site improvements within the part taken are appraised accordingly. There are no market damages to the remainder land. Cost to cure is necessary to compensate for the utility pole and sign posts to replace these items 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 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 \$16,649.00 be approved for negotiations and acquisition.

VII. Justification and Explanation for Credit if Retained.

Retentions of \$1.00 are applied to each site improvement to encourage retention and removal.

TABULATION OF VALUES (continued)

Parcel: 6

Highway: Mile 6 West Road

ROW CSJ: 0921-02-355

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



Contract Reviewing Appraiser (if applicable)

5/4/2022
Date

Division Reviewing Appraiser (if applicable)

Date

X. Approval of Values




County/City Representative

5/3/22
Date

ROW Staff Representative

Date

APPROVED BY
COMMISSIONERS COURT
ON: 



1 REAL ESTATE APPRAISAL REPORT - TEXAS DEPARTMENT OF TRANSPORTATION

Address of Property: Mile 6 W. Rd, Elsa ETJ, Hidalgo County, TX
Property Owner: Francisco Javier Nacienceno
Address of Property Owner: PO Box 1299
Occupant's Name: Unknown
Whole: Partial: Acquisition

District: Pharr
Parcel: 6
ROW CSJ: 0921-02-355
Federal Project No: NA
Highway: Mile 6 West 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 \$16,649 as of February 22, 2022, based upon my independent appraisal and the exercise of my professional judgment;

That on February 22, 2022, I personally inspected in the field the property herein appraised; that I afforded Francisco Javier Nacienceno the opportunity to accompany me at the time of the inspection. A certified letter was mailed on February 11, 2022. At the time of the inspection, the owner was not present.

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 March 15, 2022;

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 L&G Engineering 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
2. If so, is the denial of direct access material? 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 Malcom, Jr., MAI, AI-GRS, CCIM, SR/WA
Certification Number: 1320239-G
Appraisal Report Date: March 30, 2022

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


Reviewing Appraiser
5/4/2022
Date