

ORDER OF COMMISSIONERS COURT
Authorizing Settlement of a Lawsuit

The Commissioners Court of Harris County, Texas, met in regular session at its regular term at the Harris County Administration Building in the City of Houston, Texas, on _____, with all members present except _____

A quorum was present. Among other business, the following was transacted:

ORDER AUTHORIZING SETTLEMENT

Concerning Cause No. 2020-54465; 151 District Court; *Harris County Flood Control District v Clay Venture Fund #3, L.P.* ; CAO file # 20EMD0065.

Commissioner _____ introduced an order and made a motion that the same be adopted. Commissioner _____ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

	Yes	No	Abstain
Judge Lina Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Adrian Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Tom Ramsey, P.E.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. R. Jack Cagle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The adopted order follows:

IT IS ORDERED that Harris County Flood Control District will pay Clay Venture Fund #3, L.P. the total sum of \$ 1,300,000.00 of which \$ 834,087.00 has already been paid to the Defendant Landowner or deposited into the registry of the Court. Harris County Flood Control District will pay the additional \$465,913.00 as just compensation for the fee simple interest in the 12.4402 acres [541,895SqFt.] needed for the Little Cypress Creek Frontier Program in Precinct 4.

All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purposes of this order.

NOTE TO THE AUDITOR: A check of \$ \$465,913.00 should be made payable to Clay Venture Fund #3, L.P.

Eminent Domain Case Fact Sheet

The case: Cause No. 2020-54465; 151 District Court; *Harris County Flood Control District v Clay Venture Fund #3, L.P.*

Court: 151 District Court; The Honorable Mike Engelhart

Owners: Clay Venture Fund # 3 L.P.

Owner's attorney and firm:

Jeremy Baker
Warren & Baker

Project and property taken:

LITTLE CYPRESS CREEK SUB-REGIONAL FRONTIER PROGRAM located in Precinct 4 under the new precinct boundaries recently passed by Commissioners Court. Harris Flood Control District [HCFCD] is acquiring fee simple interest of 12.4402 acres 541,895SqFt.].

County's appraisal: Todd Rotholtz provided an updated appraisal for trial with an opinion of just compensation owed to the landowner of \$669,344.00 [\$3.25/SqFt including various discounts for existing easements]

Landowner's claim: \$ \$3,458,176[\$5.00/SF]

Landowner's appraiser: Matt White gave an opinion of value at 3.45 million based on a damage to remainder due to lack of access and based on \$5/Sf for land value.

Special Commissioners: 1)JoAnn Storey 2)Audrie Lawton 3) Erik Manning

Special Commissioners award: \$834,087.00. Neither the landowner nor attorney appeared at SC hearing. The commissioners awarded the amount of our appraisal at the time of the hearing which was \$834,087.00. the reason for difference in hearing and trial appraisal is explained below.

Issues and special circumstances: This partial acquisition in fee simple of 12.4402 aces involves property that is essentially being used by the landowner as their existing detention. HCFCD is in fact in the process of condemning two adjacent tracts which are part of a detention pond system that services a total of five properties. Because of we are in essence taking what would be the detention ponds for the subject property, in consultation with HCFCD they agreed to allow the Clay Venture offsite detention into HCFCD property. In addition, there was an issue of access to Zube Rd across our acquisition area which HCFCD also agreed to allow over their property after the acquisition. With these allowances for access and detention we eliminated any argument the property owner had for damage to the remaining 33 acres. In our appraisal for the SC hearing the just compensation included approximately \$220K for damage to the remainder for lack of access to Zube Rd for a total of \$834K. Once the access was allowed by the HCFCD those damages were removed from the trial appraisal which concluded a lesser value of \$669K.

The Parties were ordered to mediation. Prior to the mediation LO provided an appraisal wherein their expert gave an opinion of compensation of \$3.45M which included \$700K in damages for lack of access to Zube Rd and land value at \$5/sf. The involved appraisers are equally licensed

and qualified experts. They agreed on highest and best use and using the comparable sales approach.

The main issues of contention were the LO's asserted \$700K in damage to the remainder which were not valid after HCFCD allowed access to Zube Rd. LO also contended that their land value was much closer to \$5.00/SF based on a pending contract they had for 22 acres of the remainder for \$4.50/SF which they contended was lower because at the time the contract was signed HCFCD has not agreed to allow access to Zube Rd. They also sold an 11-acre tract one month after the SC hearing which is currently being marketed for \$5.75/sf. Finally, they disagreed with the 90% discount that was applied by our appraiser to the portion of the acquisition area which is encumbered by the detention ponds. They stated the detention ponds are encumbered for the benefit of the LO so they should be paid 100% of the value for the 207,524 SF so encumbered which would equal close to \$1M of value based on \$5/sf. We would note that the detention pond system belongs to all the property owners who have rights to detain volume in the system and based on our engineer's review, Clay Venture only had a right to 50% of the volume based the amount of land they owned. In addition, we noted that the detention system was not working due to a nonfunctioning pump which HCFCD would have to fix once it acquired the property.

After a full day mediation wherein, the Parties wrangled over these various points and contentions, we were able to agree on total just compensation of \$1.3 million. In addition, the L/O agreed to terminate a maintenance agreement related to the detention ponds and have all parties who purchased land from them sign the termination of the agreement as well. HCFCD agreed to the amount of compensation and approved the settlement, and a Rule 11 agreement was entered into by the parties.

The mediated settlement amount of \$1.3 million represents a reasonable compromise which avoids the expense of trial and the risk of a higher judgment closer to \$2.7 million which the L/O would have asserted at trial.