

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT  
IN AND FOR POLK COUNTY, FLORIDA

FILED

2005 AUG 11 A 11: 24

CIRCUIT COURT CIVIL DEPT.  
POLK COUNTY CLERK

STATE OF FLORIDA DEPARTMENT  
OF TRANSPORTATION,

Petitioner,

v.

Case No.: 2004CA-2057-0138-00

Section: 08

Parcel No.: 138, 139, 800

PAUL RICHARD YAGER, AS  
CO-PERSONAL REPRESENTATIVE AND  
HENRY MARTIN YAGER, AS CO PERSONAL  
REPRESENTATIVE, ET AL.


Defendants.

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**ORDER OF TAKING FOR  
PARCELS 138, 139 AND 800**

THIS CAUSE coming on to be heard by the Court, it appearing that proper notice was first given to all Defendants, and to all persons having or claiming any equity, lien, title, or other interest in or to the real property described in the Petition, that the Petitioner would apply to this Court or an Order of Taking of Parcels 138, 139 and 800 and the Court being full advised in the premises, upon consideration, it is, therefore,

**ORDERED AND ADJUDGED:**

1. That the Court has jurisdiction of the subject matter of and the parties to this cause.
  2. That the pleadings in this cause are sufficient.
  3. That the Petitioner is properly exercising its delegated authority.
  4. That the property is being acquired for a public purpose.
  5. That the taking of this property is reasonably necessary to serve the public purpose for which the property is being acquired.
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The Florida Department of Transportation provided some evidence of reasonable necessity. The Florida Supreme Court

“...when the legislature delegates or grants the right to exercise the power of eminent domain to a(n) ...agency of government, for a public purpose, it may also, if there be no constitutional restrictions, delegate to such grantee (of that authority) the power to determine whether it is necessary to make any particular proposed work or improvement for such public purpose, and the general rule is that such determination by the grantee of the power will not be disturbed by the courts, in the absence of fraud, or bad faith, or gross abuse of discretion...And this rule usually applies also to the route, or line, or location of the proposed work of improvement” Wilton v. County of St. Johns, 123 So 527, 534-35 (Fla. 1928).

The Florida Department of Transportation only has to prove reasonable necessity by some evidence. City of Jacksonville v. Griffin, 346 So.22d 988, 990 (Fla. 1977). The Court does not find a legal basis to disturb the exercise of the Department’s discretion in determining the route of the proposed roadway.

6. That the Estimate of Value filed in this cause by the Petitioner was made in good faith and based upon a good faith appraisal.

The Court has concerns about the adequacy of the severance damages reflected in the FDOT appraisal. The Court finds the discounted cash flow method was not used to establish the value of Defendant’s land. Certain conclusions of the appraiser, such as, his opinion that the property could not be used as a golf course were unconvincing.

The Florida Supreme Court is Florida DOT v. Armadilla Partners, 849 So.2d 279 adopted the reasoning that an appraiser’s evaluation method “...is not a matter that relates to the competency of his testimony unless the method used by the witness is so totally inadequate or

improper that adoption of the method would require departing from all common sense and reason or would require adoption of an entirely new and totally unauthenticated formula in the field of appraising” and “...the failure of an otherwise contempt expert witness to consider one or numerous factors involved in assessing compensation goes not to his competency or the competency of his testimony but only to the weight of the testimony.”

7. That upon the payment of the deposit hereinafter specified into the Registry of this Court, the right, title or interest specified in the Petition as described herein shall vest in the Petitioner, to-wit:

F.P. NO. 1973941

SECTION 16003-2514

STATE ROAD 563

POLK COUNTY

DESCRIPTION

PARCEL 138

ESTATE OR INTEREST TO BE OBTAINED: FEE-SIMPLE

That portion of the southeast  $\frac{1}{4}$  of Section 2, Township 29 South, Range 23 East, Polk County, Florida.

More particularly described as follows:

Commence at the northeast corner of said southeast  $\frac{1}{4}$  of Section 2; thence along the north line of said southeast  $\frac{1}{4}$ , South  $89^{\circ}54'58''$  West a distance of 365.025 meters (1,197.59 feet) to the survey base line of State Road 563; thence along said survey base line, South  $10^{\circ}41'52''$  West a distance of 87.506 meters (287.09 feet) for a POINT OF BEGINNING; thence South  $82^{\circ}06'04''$  East a distance of 15.373 meters (50.44 feet) to the beginning of a curve concave southwesterly and having a radius of 61.826 meters (202.84 feet); thence along the arc of said curve to the right a distance of 81.510 meters (267.42 feet) through a central angle of  $75^{\circ}32'15''$  with a chord bearing of South  $44^{\circ}19'49''$  East to the end of said curve; thence South  $74^{\circ}18'46''04^{\circ}05'17''$  East a distance of 22.594 meters (74.13 feet); thence South  $86^{\circ}17'53''$  West a distance of 79.481 meters (260.76 feet) to the beginning of a curve concave westerly and having a radius of 912.189 meters (2,992.74 feet); thence along the arc of said curve to the right a distance of 102.247 meters (335.45 feet) through a central angle of  $06^{\circ}25'20''$  with a chord bearing of South  $18^{\circ}30'38''$  West to the end of said curve; thence South  $21^{\circ}43'18''$  West a distance of 34.156 meters (112.06 feet); thence South  $00^{\circ}37'51''$  West a distance of 504.933 meters (1,656.60 feet) to the south line of said Section 2; thence along said south line, South  $89^{\circ}54'26''$  West a distance of 279.729 meters (917.74 feet); thence North  $21^{\circ}43'18''$  East a distance of 92.664 meters (304.02 feet); thence North  $68^{\circ}16'42''$  West a distance of 6.023 meters (19.76 feet); thence North  $21^{\circ}43'18''$  East a distance of 80.000 meters (262.47 feet); thence South  $68^{\circ}16'42''$  East a distance of 6.023 meters (19.76 feet); thence North  $21^{\circ}43'18''$  East a distance of 436.548 meters (1,432.24 feet) to the beginning of a curve concave westerly and having a radius of

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SECTION 16003-2514 STATE ROAD 563 POLK COUNTY DESCRIPTION

PARCEL 138 CONT'D

834.189 meters (2,736.84 feet); thence along the arc of said curve to the left a distance of 160.501 meters (526.58 feet) through a central angle of  $11^{\circ}01'26''$  with a chord bearing of North  $16^{\circ}12'35''$  East to the end of said curve; thence North  $10^{\circ}41'52''$  East a distance of 6.278 meters (20.60 feet) to the beginning of a curve concave southerly and having a radius of 59.695 meters (195.85 feet); thence along the arc of said curve to the right a distance of 25.837 meters (84.77 feet) through a central angle of  $24^{\circ}47'53''$  with a chord bearing of North  $85^{\circ}29'59''$  East to the end of said curve; thence South  $82^{\circ}06'04''$  East a distance of 14.278 meters (46.84 feet) to the POINT OF BEGINNING.

Containing 11.3762 hectares (28.111 acres).

Together with all rights of egress, ingress, light, air and view between the grantor's remaining property and any facility constructed on the above described property.

GOOD FAITH ESTIMATE OF VALUE \$1,571,600.00  
 REQUIRED TO DEPOSIT \$2,000,000.00

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SECTION 16003-2514

STATE ROAD 563

POLK COUNTY

DESCRIPTION

PARCEL 139

ESTATE OR INTEREST TO BE OBTAINED: FEE SIMPLE

That part of the east 1/2 of Section 2, Township 29 South, Range 23 East, Polk County, Florida.

More particularly described as follows:

Commence at the southeast corner of the northeast 1/4 of said Section 2; thence along the south line of said northeast 1/4, South 89°54'58" West a distance of 365.025 meters (1,197.59 feet) to the survey base line of State Road 563; thence along said survey base line, South 10°41'52" West a distance of 87.506 meters (287.09 feet) for a POINT OF BEGINNING; thence North 82°06'04" West a distance of 14.278 meters (46.84 feet) to the beginning of a curve concave southerly and having a radius of 59.695 meters (195.85 feet); thence along the arc of said curve to the left a distance of 25.837 meters (84.77 feet) through a central angle of 24°47'53" with a chord bearing of South 85°29'59" West to the end of said curve; thence North 10°41'52" East a distance of 419.893 meters (1,377.60 feet) to the westerly right of way line of the C.S.X. Transportation Railroad (per Deed Book 117, Page 121 and Deed Book 986, Page 135, Public Records of Polk County, Florida) and to the beginning of a curve concave southwesterly and having a radius of 340.243 meters (1,116.28 feet); thence along said westerly right of way line the arc of said curve to the right a distance of 100.363 meters (329.27 feet) through a central angle of 16°54'03" with a chord bearing of South 40°33'48" East to the end of said curve; thence South 10°41'52" West a distance of 136.488 meters (447.79 feet); thence South 04°05'17" East a distance of 116.672 meters (382.78 feet) to the south line of said northeast 1/4; thence continue South 04°05'17" East a distance of 150.864 meters (494.96 feet); thence North 74°18'46" West a distance of 29.977 meters (98.35 feet) to the beginning of a curve concave southwesterly and having a

F.P. NO. 1973941

SECTION 16003-2514

STATE ROAD 563

POLK COUNTY

DESCRIPTION

PARCEL 139

CONT'D

radius of 61.826 meters (202.84 feet); thence along the arc of said curve to the left a distance of 81.510 meters (267.42 feet) through a central angle of 75°32'15" with a chord bearing of North 44°19'49" West to the end of said curve; thence North 82°06'04" West a distance of 15.373 meters (50.44 feet) to the POINT OF BEGINNING.

Containing 3.7739 hectares (9.326 acres).

Together with all rights of egress, ingress, light, air and view between the grantor's remaining property and any facility constructed on the above described property.

GOOD FAITH ESTIMATE OF VALUE \$694,500.00  
 REQUIRED TO DEPOSIT \$997,500.00

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SECTION 16003-2514

STATE ROAD 563

POLK COUNTY

DESCRIPTION

PARCEL 800

ESTATE OR INTEREST TO BE OBTAINED: PERPETUAL EASEMENT

That portion of the south  $\frac{1}{4}$  of Section 2, Township 29 South,  
Range 23 East, Polk County, Florida.

More, particularly described as follows:

Commence at the southeast corner of said Section 2; thence along  
the south line of said Section 2, South  $89^{\circ}54'26''$  West a  
distance of 752.890 meters (2,470.11 feet) for a POINT OF  
BEGINNING; thence continue along said south line South  $89^{\circ}54'26''$   
West a distance of 12.206 meters (40.05 feet); thence North  
 $01^{\circ}11'59''$  West a distance of 37.713 meters (123.73 feet); thence  
North  $88^{\circ}48'46''$  East a distance of 12.202 meters (40.03 feet);  
thence South  $01^{\circ}12'05''$  East a distance of 37.946 meters (124.49  
feet) to the POINT OF BEGINNING.

Containing 461.6 square meters (4,969 square feet).

THE PURPOSE OF THIS PERPETUAL EASEMENT WILL BE FOR THE INSTALLATION, AND  
MAINTENANCE OF A PIPE FOR STORMWATER DRAINAGE.

GOOD FAITH ESTIMATE OF VALUE \$2,700.00  
REQUIRED TO DEPOSIT 2,700.00

8. That the deposit of money will secure the persons lawfully entitled to the compensation which will be ultimately determined by the final judgment of this Court.

9. That the sum of money to be deposited in the registry of this Court within twenty (20) days of the date of this Order shall be in the amount of Three Million Two Hundred (\$3,000,200.00) DOLLARS, for Parcels 138, 139 and 800.

10. That on deposit as set forth above and without further notice or Order of this Court the Petitioner shall be entitled to possession of the property described in the Petition.

11. That upon proper notice and hearing, pursuant to Section 74.071, Florida Statutes, the deposit may be distributed to the Defendants in accordance with the Court's order.

DONE AND ORDERED in Chambers this 10 day of August, 2005, in the State of Florida, County of Polk.

  
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John F. Laurent  
Circuit Judge

Copies to:  
Roger A. Mallory, Esquire  
Deborah A. Ruster, Esquire  
All parties on attached Service List

ADDRESS LIST

Henry Martin Yager and Paul Richard Yager  
 as Co-Personal Representatives  
 C/O Deborah A. Ruster, Esquire  
 Peterson & Myers, P.A.  
 130 East Central Avenue  
 Lake Wales, FL 33853  
 Parcel(s) 138, 139, 800

Paul Richard Yager, as Trustee  
 Henry Martin Yager, as Trustee and  
 ATP Holdings, L.L.C., a Massachusettes  
 Limited Liability Comp  
 C/O Deborah A. Ruster, Esquire  
 Peterson & Myers, P.A.  
 130 East Central Avenue  
 Lake Wales, FL 33853  
 Parcel 139

Polk County Property Appraiser  
 C/O Marsha Faux or her designee  
 255 N. Wilson Avenue  
 Bartow, FL 33830

Polk County Tax Collector  
 C/O Joe Tedder or his designed  
 430 East Main Street  
 Bartow, FL 33830

SouthTrust Bank, an Alabama Corporation  
 C/O Bank President  
 420 N. 20<sup>th</sup> Street  
 Birmingham, AL 35203-3204  
 Parcel 139

SouthTrust Bank F/K/A SouthTrust Bank  
 National Association  
 C/O: Bank President  
 420 N. 20<sup>th</sup> Street  
 Birmingham, AL 35203-3204  
 Parcel 139

Eric Rahenkamp  
 C/O Rahenkamp Design Group, Inc.  
 2816 S. MacDill Avenue  
 Tampa, Florida 33629

MCA Cattle Company  
 C/O Eduardo F. Morrell, Esquire  
 187 Lake Morton Drive  
 Lakeland, Florida 33801

Ridge Riders Mountain Bike Association,  
 Inc.  
 C/O Kent Hickman, President  
 6735 Lemon Tree Drive  
 Lakeland, Florida 33813