



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

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F.17.

5/5/2020

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### Subject:

Request Approval of Addendum 1 -Extension 1 of Paragraph 5 of Settlement Agreement - Brevard County v. K G Owens, et al Case #: 05-2018-CA-019771 (aka Miller Cove Road)

### Fiscal Impact:

None

### Dept/Office:

County Attorney's Office

### Requested Action:

Request approval of the attached Addendum 1 to Settlement Agreement granting an extension of time to fulfil requirements of paragraph 5, and authorize the Chair to sign all documentation required. Request approval for Chair to approve any future extensions to paragraph five of the settlement agreement.

### Summary Explanation and Background:

In March 2018, LTM of Florida Holdings, LLC appeared before the Board of County Commissioners claiming a strip of land (aka Miller Cove Road) was a public road. Brevard County staff indicated that based on county records, the strip of land was not a public road. To resolve the issue, on March 23, 2018, the Board directed the County Attorney's Office to file a declaratory judgment action to allow a judge to resolve the dispute. Brevard County filed suit against 29 Defendants (including LTM of Florida Holdings, LLC) asking the Circuit Court to determine that Central Boulevard, a/k/a Miller Cove Road, is not a public road (but a private road that has never been accepted by the County or the Town). In addition, the court was asked to determine that the strip of land is in the jurisdiction of the Town of Palm Shores.

On February 26, 2019, Brevard County entered into a settlement agreement with the Town of Palm Shores, LTM, several utility companies, and a few of the other defendants that conditionally resolved the situation going forward in Brevard County's favor. The lawsuit was temporarily abated to allow LTM of Florida Holdings, LLC time to meet the conditions set out in the Settlement Agreement. The abatement was contained in Paragraph 5 of the Settlement Agreement and provided a delay (abatement) of six months. LTM of Florida Holdings, LLC appears to be attempting to meet the conditions set out in the Settlement Agreement and has requested additional time to do so. The extension, or abatement, is until November 7, 2020, pursuant to the terms of the attached Addendum.

The Addendum also specifically addresses the counter claims and cross claims filed by LTM of Florida Holdings, LLC against Brevard County. Pursuant to this Addendum, the County will not be required to respond 218

to any of those claims until 30 days after the abatement expires; the new due date for a response is December 7, 2020. LTM of Florida Holdings, LLC is not prohibited from pursuing its cross claims and counterclaims against other parties during the abatement.

**Clerk to the Board Instructions:**

Return signed original and Memorandum to County Attorney's Office



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Kimberly.Powell@brevardclerk.us

May 5, 2020

**M E M O R A N D U M**

**TO:** Eden Bentley, County Attorney

**RE:** Item F.17, Request Approval of Addendum 1 – Extension 1 of Paragraph 5 of Settlement Agreement – Brevard County v. K.G. Owens, et al Case No. 05-2018-CA-019771 (aka Miller Cove Road)

The Board of County Commissioners, in regular session on May 5, 2020, approved Addendum 1 to Settlement Agreement granting an extension of time to fulfil requirements of paragraph 5; authorized the Chair to sign all documentation required; and approved Chair to approve any future extensions to paragraph five of the Settlement Agreement. Enclosed is a fully-executed copy of the Addendum.

Your continued cooperation is greatly appreciated.

Sincerely yours,

**BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK**

*Kimberly Powell*  
Kimberly Powell, Deputy Clerk

/cw


Encl. (1)




**BOARD OF COUNTY COMMISSIONERS**

**County Attorney's Office**  
2725 Judge Fran Jamieson Way  
Building C, Room 308  
Viera, Florida 32940

**TO:** Honorable Bryan Andrew Lober, Chair, Brevard County Board of  
County Commissioners

**THRU:**  Eden Bentley, County Attorney

**FROM:**  Christine M Schverak, Assistant County Attorney

**SUBJECT:** Approval of 2<sup>nd</sup> Extension to Settlement Agreement – Miller Cove Road Litigation

**DATE:** October 27, 2020

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LTM of Florida Holdings has requested a 2<sup>nd</sup> extension until February 1, 2021 to extend the conditional Settlement Agreement in the Miller Cove Road Litigation. This will give LTM additional time to request and complete a court-ordered mediation. The Board of County Commissioners gave the Chair authority to sign additional extensions when it approved the first extension. A copy of the clerk's memo is attached.

Further Background

In March 2018, LTM of Florida Holdings, LLC appeared before the Board of County Commissioners claiming a strip of land (aka Miller Cove Road) was a public road. Brevard County staff indicated that based on county records, the strip of land was not a public road. To resolve the issue, on March 23, 2018, the Board directed the County Attorney's Office to file a declaratory judgment action to allow a judge to resolve the dispute. Brevard County filed suit against 29 Defendants (including LTM of Florida Holdings, LLC) asking the Circuit Court to determine that Central Boulevard, a/k/a Miller Cove Road, is not a public road (but a private road that has never been accepted by the County or the Town). In addition, the court was asked to determine that the strip of land is in the jurisdiction of the Town of Palm Shores.

On February 26, 2019, Brevard County entered into a settlement agreement with the Town of Palm Shores, LTM, several utility companies, and a few of the other defendants that conditionally resolved the situation going forward in Brevard County's favor. The lawsuit was temporarily abated or otherwise halted to allow LTM of Florida Holdings, LLC time to meet the conditions set out in the Settlement Agreement. The litigation halt was contained in

*Subject: Approval of 2nd Extension to Settlement Agreement – Miller Cove Road Litigation*  
*Date: October 27, 2020*  
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Paragraph 5 of the Settlement Agreement and provided a delay (abatement) of six months. As LTM of Florida Holdings, LLC appeared to be attempting to meet the conditions set out in the Settlement Agreement, the Board of County Commissioners granted an extension to meet the settlement's terms until November 7, 2020. LTM is continuing to resolve the claims of other parties. LTM has requested a second extension until February 1, 2021. The 2<sup>nd</sup> Extension also specifically addresses the counter claims and cross claims filed by LTM of Florida Holdings, LLC against Brevard County. Pursuant to this Addendum, the County will not be required to respond until after March 2, 2021 and the County will be able to participate in all discovery, as well as file an amended petition to address land sales that have occurred in the area. LTM of Florida Holdings, LLC is not prohibited from pursuing its cross claims and counterclaims against other parties during the abatement.

Law Offices of  
**CANTWELL & GOLDMAN, P.A.**

www.cfglawoffice.com

**RECEIVED**

APR 20 2020

**Brevard County Attorney**

96 Willard Street, Suite #302  
Cocoa, FL 32922-7947  
Telephone: (321) 639-1320  
Facsimile: (321) 639-9950

<sup>1</sup> Also Member of Georgia Bar

Bradly Roger Bettin, Sr.  
William H. Cantwell, II (Deceased)  
Mitchell S. Goldman  
Robyn W. Hattaway <sup>1</sup>  
Matthew J. Monaghan  
Kimberly Bonder Rezanka  
Jay R. Thakkar

April 16, 2020

VIA FEDEX

Christine Schverak, Asst. County Attorney  
Brevard County Attorney's Office  
2725 Judge Fran Jamieson Way  
Viera, FL 32940

**Re: Brevard County v. K G Owens, et al Case #: 05-2018-CA-019771**  
**Our Client: LTM of Florida Holdings, LLC**

Dear Christi:

Attached please find the signature page of the Miller Cove Road Settlement Agreement Addendum 1 – Extension 1 of Paragraph 1 which has been executed by Mark Mattioli on behalf of LTM of Florida Holding, LLC.

Thank you for your cooperation in this matter.

Sincerely,



Patricia L. Clark  
Legal Assistant to Kimberly B. Rezanka

plc

Enclosure

**MILLER COVE ROAD**  
**SETTLEMENT AGREEMENT**  
**ADDENDUM 1 – EXTENSION 1 OF PARAGRAPH 5**

This Addendum is for the sole purpose of an extension of paragraph five of the Miller Cove Road Settlement Agreement and it is made and entered into by and between the following Parties: The Board of County Commissioners of Brevard County, Florida, a political sub-division of the State of Florida, (hereinafter the COUNTY) and LTM of Florida Holdings, LLC, a Florida company, (hereinafter LTM) as follows:

**WHEREAS**, BREVARD COUNTY and LTM are two of the Parties in a larger conditional settlement entitled "Miller Cove Road Settlement Agreement" (hereinafter the "Settlement") signed by Brevard County (hereinafter the "County") on February 26, 2019 and LTM of Florida Holdings, LLC (hereinafter LTM) on January 31, 2019; and

**WHEREAS**, pursuant to paragraph 5, the Settlement contemplated an abatement or otherwise halting of litigation for six months by both COUNTY and LTM as to BREVARD COUNTY's Counts I and II and LTM's Count I of its counter and cross claims; and

**WHEREAS**, the halt was to allow LTM time to work out a pre-annexation and development agreement with the TOWN OF PALM SHORES (hereinafter the TOWN); and

**WHEREAS**, pursuant to paragraph 5, the abatement or otherwise halting of the litigation is renewable by COUNTY and LTM if the TOWN and LTM are continuing to proceed in good faith to reach resolution as required by the Settlement; and

**WHEREAS**, the TOWN has requested that LTM resolve its cross-claims with several other Defendants preparatory to entering a pre-annexation and development agreement with the TOWN; and

**WHEREAS**, LTM continues to actively work to resolve those cross-claims; and

**WHEREAS**, both COUNTY and LTM have otherwise halted their proceedings from the signing of the Settlement Agreement until February 14, 2020 when LTM filed amendments to the COUNT I of its cross and counter-claim; and

**WHEREAS**, LTM has indicated that it is willing to continue to abate or otherwise halt its proceedings for an additional six months to continue to actively work to resolve those cross-claims;

**NOW, THEREFORE, LTM and BREVARD COUNTY mutually agree as follows, with regards to an extension to paragraph five of the settlement agreement:**

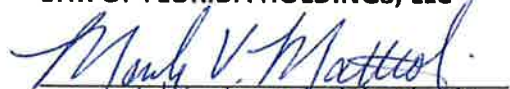
1. LTM will not further advance COUNT I of its counter/cross claims and BREVARD COUNTY will not further its COUNT I and II of its amended complaint. LTM is not required to halt COUNTS II, III, IV, V or VI of its cross-claims, but agrees not to move for a court decision in its cross-claims that would decide a legal question posed by COUNT I of its counter and cross claims, or BREVARD COUNTY's COUNT I and II of its amended complaint.
2. Further BREVARD COUNTY and LTM agree that both Parties may participate in any discovery occurring with regards to the cross-claims that bears on LTM's COUNT I or BREVARD COUNTY's COUNT I or II.
3. Further LTM agrees that it will ensure that Court orders/judgments under COUNTs II, III, IV, V and VI of its cross-claims will not include deemed admissions of paragraphs 2-10, 12-53, of LTM's Amended Counterclaim, crossclaim, and third-party complaint against Florida Department of Transportation, absent consent of COUNTY.
4. Further the Parties agree that COUNTY shall have an extension to respond to LTM's amended counter-claim until 30 days after the expiration of this Extension to Paragraph 5 of the Settlement Agreement, which is December 7, 2020.

(Signature Page Follows)



THIS AMENDMENT HAS BEEN VOLUNTARILY MADE AND IS FREE FROM ANY DURESS AND COERCION. THIS AGREEMENT HAS BEEN EXECUTED BY THE UNDERSIGNED PARTIES AFTER THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL AS TO ITS PROVISIONS, SCOPE, EFFECT, AND SUFFICIENCY OF CONSIDERATION AND THE UNDERSIGNED PARTIES REPRESENT THAT IT IS MADE WITH FULL KNOWLEDGE OF ITS PROVISIONS, SCOPE AND EFFECT, THAT THERE IS SUFFICIENT CONSIDERATION FOR THIS AGREEMENT, AND THAT IT IS ENFORCEABLE IN ACCORDANCE WITH ITS TERMS.

LTM OF FLORIDA HOLDINGS, LLC



BY: Mark V. Mathioli

Its Authorized Representative

Dated: 4/16/20

ATTEST:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS OF  
BREVARD COUNTY, FLORIDA



By: Bryan Lober, Chair

(As approved by the Board on 5/5/2020)