



AGENDA REPORT
February 26, 2019

Brevard County v Owens (Miller Cove Road)

SUBJECT:

Brevard County v Owens et al; Case Number 05-2018-CA-019771-XXXX-XX (Miller Cove Road Settlement Agreement)

FISCAL IMPACT:

Settlement has no costs associated with it.

DEPT/OFFICE:

County Attorney Office

REQUESTED ACTION:

It is requested that the Board approve and authorize the Chair to execute the attached settlement agreement to settle claims relating to Brevard County v Owens (Miller Cove Road).

SUMMARY EXPLANATION and BACKGROUND:

On December 19, 2017, the Board of County Commissioners directed the County Attorney to file a declaratory judgment action in the Brevard County Circuit Court to resolve whether or not Central Boulevard (aka Miller Cove Road) is a public or private road, and whether it is in the jurisdiction of the Town of Palm Shores or the County. Brevard County's position is that this is a private road within the boundaries of the Town of Palm Shores. This settlement does four things in successive stages: Within the next two years, Developer LTM will execute a pre-annexation and development agreement with the Town of Palm Shores to resolve access and development of LTM's two parcels of property. Once accomplished, the Town of Palm Shores and Brevard County will transfer the remaining right of ways not otherwise referred to in Count I and II of Brevard County's complaint and Count I of LTM's Counter/Cross Claims into the Town of Palm Shores. This transfer will require an interlocal agreement to be approved by the County and the Town at a subsequent date. Once accomplished, the Parties will ask the Court to enter a stipulated judgment that any right of ways in the Indian River Homesites Plat, less and except any replatted portions of the Plat, are private roads in the jurisdiction of the Town of Palm Shores. In the interim, the Parties will ask the Court to abate the applicable legal proceedings for six months, renewable if progress is moving forward. If the Parties do not reach the point of asking for a stipulated judgment within two years, the agreement is terminated unless the Town, County and LTM extend the two year period by written agreement.

CLERK TO THE BOARD INSTRUCTIONS:

If approved, please have the Chair sign the attached settlement agreement and any duplicate original provided and and return the documents to the County Attorney's Office.

ATTACHMENTS:

Description

- ▯ **Miller Cove Settlement Agreement**



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

February 27, 2019

M E M O R A N D U M

TO: Eden Bentley, County Attorney

RE: Item F.20., Brevard County v. Owens et al, Case Number 05-2018-CA-019771-XXXX-XX (Miller Cove Road Settlement Agreement)

The Board of County Commissioners, in regular session on February 16, 2019, approved and authorized the Chair to execute Settlement Agreement to settle claims relating to Brevard County v. Owens et al, Case Number 05-2018-CA-019771-XXXX-XX (Miller Cove Road Settlement Agreement). Enclosed is a fully-executed Settlement Agreement.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

Encl. (1)

MILLER COVE ROAD
SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is dated, executed, and effective when signed and is by and between LTM OF FLORIDA HOLDINGS, LLC, a Florida, limited liability company ("LTM"), BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA ("BREVARD COUNTY") and TOWN OF PALM SHORES (the "TOWN"), collectively referred to as the "Parties" and individually referred to as a "Party"), and the remaining Defendants who choose to sign this agreement (collectively referred to as the Remaining Defendant Parties and individually as a Remaining Defendant Party) include the PALM SHORES ESTATES HOMEOWNERS ASSOCIATION, FLORIDA POWER AND LIGHT, GARY AND LORI JAREK, BELL SOUTH TELECOMMUNICATIONS, LLC, NEW CINGULAR WIRELESS PCS, LLC, PATRICIA GAIL WATERMAN, AS TRUSTEE OF PATRICIA GAIL WATERMAN TRUST, HILTON SMITH, Jr. and MARGARET N. SMITH, EDWARD V. MASON, KARL G. OWENS, ALBERT AND AMPORN BENSON, KENNETH J. MYRBACK, JR. AND MARIA K. MYRBACK, ALAN J. MYER, KRISTIN E. KEISER, WILLIAM AND HEATHER POLAK, GHOLAM R. BAHARLOUI, PALM SHORES ESTATES INC (c/o DANNY WILBOURNE), KATHI D. TRUMETER, BRADFORD AND LESLIE HORN, RALPH D. MILLER, SALIM AND DAWN SIDAWI, AND BRIGHT HOUSE NETWORKS, LLC.

Recitals

WHEREAS, the Parties above have decided to enter into this Agreement with respect to all claims between them ("Claims") with respect to Brevard County's Count I and Count II complaint brought in Brevard County Case No. 05-2018-CA-01977 (the "Lawsuit"), and Count I of LTM's Counter and Cross Claims;

WHEREAS, BREVARD COUNTY filed its Complaint on March 23, 2018, and has amended the Complaint to include twenty-nine (29) Defendants;

WHEREAS, the primary issues in the Lawsuit are: which governmental entity has jurisdiction over Central Boulevard, a/k/a Kenton, a/k/a Miller Cove Road (which is referenced in the Plat, discussed below), and whether Central Boulevard is a public road;

WHEREAS, the Parties have investigated the disputes between them, including engaging in discussions of the merits of the Parties' respective positions, and seek to avoid litigation, which resulted in this Agreement; and

WHEREAS, no Party to this Agreement is relying upon any statement or representation of the other Party or any attorneys representing them as an inducement or basis for the agreements set forth herein, other than the statements and representations expressly set forth herein.

Agreement

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. RECITALS. The above recitals are true and correct and are incorporated herein by this reference.
2. LTM and the TOWN agree to negotiate in good faith a pre-annexation agreement and development agreement regarding access via Central Boulevard a/k/a Miller Cove Road and development of the two parcels currently owned by LTM, as described in Exhibit A, which is attached and incorporated to this Agreement.
3. Upon successful execution of a pre-annexation and development agreement, to resolve current jurisdictional questions, the TOWN and the COUNTY agree to adjust jurisdictional boundaries, pursuant to law, of the remaining right of ways not otherwise referred to in Count I and II of Brevard County's complaint and Count I of LTM's Counter/Cross Claim, on the Indian River Homesites Plat, originally recorded at Plat Book 3, page 37 into the TOWN of PALM SHORES, which said right of ways have not otherwise been replatted. Nothing herein shall be construed to require the Town to provide any improvement or maintenance or repair of such right of ways.
4. Upon execution of paragraph 2 and 3, the Parties will ask the Court to enter a stipulated judgment as to Count I and II of Brevard County's complaint and Count I of LTM's Counter/Cross Claim, that as of the date of the stipulated judgment, any right of ways in the Indian River Homesites Plat, recorded at Plat Book 3, page 37, less and except any replatted portions of that Plat, shall be considered private right-of-ways in the TOWN OF PALM SHORES. Upon entry of the stipulated judgment, BREVARD COUNTY will dismiss its lawsuit, and LTM will dismiss its Count I. Nothing herein shall be construed to require the Town to provide any improvement or maintenance or repair of such right of ways.
5. To provide time to execute paragraph 2 and 3, BREVARD COUNTY and LTM will ask the Court to abate or otherwise halt their applicable legal proceedings for six months, renewable by BREVARD COUNTY and LTM if the TOWN of PALM SHORES and LTM are continuing to proceed in good faith to reach resolution as to paragraph 2 and 3. LTM will not stay or halt Count II of its cross-complaint. If paragraphs 2 and 3 are not completed within two years, this Agreement may be continued by the written agreement of the BREVARD COUNTY, the TOWN of PALM SHORES, and LTM as an addendum to this settlement agreement. Otherwise, this Agreement will terminate, be deemed null and void, and have no legal effect.
6. As to the Remaining Defendant Parties signing this agreement, they agree to the terms of this agreement without waiving any legal rights or claims beyond what is expressly stated in the stipulated judgment. This agreement affects no parties or

remaining defendant parties rights regarding Count II of LTM's cross claims for a statutory way of necessity, filed in response to the Plaintiff BREVARD COUNTY's complaint.

7. JOINT TERMS. The Parties agree to execute all additional documents necessary to effectuate all terms hereof.

8. EXPENSES. All Parties and Remaining Defendant Parties signed to this agreement will bear their own attorney's fees and costs in this matter and in executing this Agreement.

9. ADDITIONAL PROVISIONS.

9.1 Merger. This Agreement embodies the entire Agreement between the Parties regarding all matters identified herein and supersedes all prior negotiations, memorandums, agreements, and understandings relating thereto which are merged herein. This Agreement may not be varied or modified except by written Agreement signed by all Parties hereto.

9.2 Waiver of Inducements. The Parties hereto waive the right to assert or claim in any action or proceeding regarding this agreement that they were induced, fraudulently or otherwise, to enter into this Agreement by any promise, fact, occurrence, representation, warranty (collectively referred to as "Representations") or other matter which is not expressly set forth in this Agreement or any schedule or exhibit attached hereto, and all such Representations, if any, are merged herein.

9.3 Law/Exclusive Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida, and the exclusive venue for all actions arising out of or based on this Agreement (including any action for declaratory relief) shall be in the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida.

9.4 Acknowledgment. The Parties hereto acknowledge that they have completely read and fully understand this Agreement and have voluntarily accepted the terms contained herein for the purposes of making a full and final compromise, adjustment and settlement of any and all claims disputed or otherwise, on account of the above-mentioned matters, and for the express purpose of precluding forever any further or additional claims arising out of all matters identified herein.

9.5 Successors. The rights and obligations of the Parties under this Agreement shall inure to the benefit of, and shall be binding upon, the heirs, estates, representatives, successors, and assigns of the Parties hereto. If LTM sells or conveys its properties involved in this settlement, LTM shall assign its obligations under this agreement to the Grantee in writing at the time of conveyance. This agreement will be recorded in the Brevard County Public Records.

9.6 Time. For all purposes of this Agreement, time is of essence.

9.7 Construction of Agreement. This Agreement has been prepared jointly by the attorneys for the Parties, and the Parties have read and negotiated all of the language used in this Agreement. The Parties acknowledge and agree that because all Parties and their counsel participated in negotiating and drafting this Agreement, no rule of construction shall apply to this Agreement that construes any language, whether ambiguous, unclear or otherwise, in favor of, or against any Party because of that Party's role in drafting this Agreement.

9.8 Authority. The undersigned individuals executing this Agreement on behalf of a corporation, partnership, trust or other entity, hereby individually represent and warrant to the other Parties that such individual has full power and authority to bind such entity to the terms and provisions of this Agreement and has obtained all necessary approvals and consents to sign this Agreement on behalf of such entity.

9.9 Counterparts/Facsimile Copies. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be an original, but all of which together shall constitute the same instrument. A facsimile or electronic copy of this Agreement and any signature hereon shall be considered for all purposes as originals.

9.10 Severability. If any provision of this Agreement is held to be invalid or unenforceable, either in whole or in part, such invalidity or unenforceability shall not cause any other provision to be invalid or unenforceable and all other provisions will remain in effect.

9.11 No Assignment of Released Claims. The Parties hereby individually agree and warrant that they have not assigned, nor will they assign or sell, to any other person or entity any claims, demands, losses, liabilities, costs, actions, causes of actions or suits of any kind whatsoever, whether in law or in equity, known or unknown, foreseen or unforeseen. If any such claims, demands, losses, liabilities, costs, actions, causes of action or suits arise, the Parties individually agree to fully indemnify all other Parties for any defense costs and attorney's fees incurred, as well as any liabilities resulting therefrom.

9.12 All parties agree that this agreement is subject to approval of the governing bodies of the TOWN OF PALM SHORES and the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA.

10. UTILITIES. All parties and remaining defendant parties recognize, acknowledge, and agree the Central Boulevard right of way is private; Brevard County and the Town of Palm Shores have no property rights in the Central Boulevard right of way. Brevard County and the Town of Palm Shores are not financially responsible in any way for utilities located in the right of way. The parties acknowledge that the existing infrastructure installed by Florida Power and Light; Bright House Networks, LLC, New Cingular Wireless PCS, LLC, and BellSouth

Telecommunications, LLC in the right-of-way of Central Boulevard has been located there for the benefit of the residents in the Indian River Homesites and Palm Shores Estates sub-divisions for an extended period of time. The non-governmental parties agree the utilities have a right to access, maintain, replace or upgrade that existing infrastructure. Should the relocation of the infrastructure, as it exists on the date of this agreement, be required, the non-governmental parties agree that the party requesting the relocation will cover the costs of the relocation. The construction, installation, and maintenance of any future additional utility infrastructure outside of the right-of-way of Central Boulevard that is the subject of this agreement shall be governed by a utility's tariff as filed with the Florida Public Service Commission and/or by way of a separate agreement between the utility and the private party (customer) requesting utility service. At all times, the party (customer) requesting the utility service will grant, without cost to the utility, all rights, easements, right of ways, and/or privileges, in the opinion of the Utility, that are necessary for the rendering of service. Neither Brevard County nor the Town of Palm Shores shall be responsible for the cost of any maintenance, replacement, relocation, upgrade, or extension to any utility that is within the areas covered by this settlement agreement.


(Signature Page Follows)

THIS AGREEMENT 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: _____
Its Authorized Representative
Dated: _____

ATTEST:



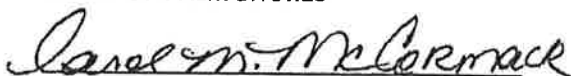
Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA


By: Kristine Isnardi, Chair
(as approved by the Board on 2/26/19)

ATTEST:

TOWN OF PALM SHORES


By: Carol M. McCormack, Mayor
(as approved by the City Council on 29th)
29 January 2019

**PALM SHORE ESTATES OWNERS'
ASSOCIATION, INC., a Florida Not For Profit
Corporation**

By: Joanne Maksym, President
Its: Authorized Representative

Dated: _____

FLORIDA POWER & LIGHT COMPANY,
a Florida Corporation

A handwritten signature in black ink, appearing to read "Casey Sheffield".

By: Casey Sheffield A.M.
Its: Authorized Representative

Dated: 1/16/2019

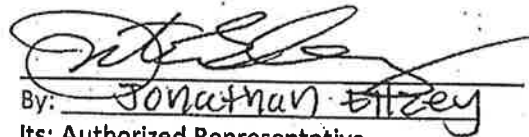
NEW CINGULAR WIRELESS PCS, LLC,
a Florida limited liability company

By: _____

Its: Authorized Representative

Dated: _____

BELLSOUTH TELECOMMUNICATIONS, LLC,
a Florida limited liability company


By: Jonathan Bitz

Its: Authorized Representative

Dated: 2-1-19

NEW CINGULAR WIRELESS PCS, LLC,
a Florida limited liability company

By: HENRY GALAN
Its: Authorized Representative AREA MANAGER
Dated: 1-30-19

BELLSOUTH TELECOMMUNICATIONS, LLC,
a Florida limited liability company

By: _____
Its: Authorized Representative
Dated: _____

PALM SHORES ESTATES, INC.,
a Florida Corporation

By: DANNY L. WILBOURNE
Its: Authorized Representative

Dated: _____

Dated: _____

DANNY L. WILBOURNE, Individually

BRIGHT HOUSE NETWORKS, LLC

a Delaware limited liability company

By: Charter Communications, Inc., Its Manager



Paul Hanson

Its: Area Vice President, Field Operations

Dated: 1/25/2019

Dated: _____

GARY JAREK
159 Palm Circle
Palm Shores, FL 32940

Dated: _____

LORI A. JAREK
159 Palm Circle
Palm Shores, FL 32940

Dated: _____

SALIM SIDAWI
5180, 5190, 5196, 5200 & 5210 N. Highway 1
Palm Shores, FL 32940

Dated: _____

DAWN M. SIDAWI
5180, 5190, 5196, 5200 & 5210 N. Highway 1
Palm Shores, FL 32940

Dated: _____

EDWARD V. MASON
2330 Miller Cove Road
Palm Shores, FL 32940

Dated: _____

RALPH D. MILLER
2360 Miller Cove Road
Palm Shores, FL 32940

Dated: _____

KATHI DAWN TRUMETER
153 & 155 Palm Circle
Palm Shores, FL 32940

Dated: _____

PATRICIA GAIL WATERMAN, as Trustee
of the Patricia Gail Waterman Trust Dated
March 12, 2009
105 Palm Circle &
2308 Miller Cove Road
Palm Shores, FL 32940

Dated: _____

KARL G. OWENS
149 Palm Tree Court
Palm Shores, FL 32940

Dated: _____

HILTON SMITH, JR.
150 Palm Tree Court
Palm Shores, FL 32940

Dated: _____

MARGARET N. SMITH
150 Palm Tree Court
Palm Shores, FL 32940

Dated: _____

BRADFORD S. HORN
153 Palm Tree Court
Palm Shores, FL 32940

Dated: _____

LESLIE M. HORN
153 Palm Tree Court
Palm Shores, FL 32940

Dated: _____

ALBERT BENSON
151 Palm Circle
Palm Shores, FL 32940

Dated: _____

AMPORN BENSON
151 Palm Circle
Palm Shores, FL 32940

Dated: _____

KENNETH J. MYRBACK, JR.
157 Palm Circle
Palm Shores, FL 32940

Dated: _____

MARIA K. MYRBACK
157 Palm Circle
Palm Shores, FL 32940

Dated: 2/8/19

Heather Polak
HEATHER POLAK
161 Palm Circle
Palm Shores, FL 32940

Dated: 2/8/19

William Polak
WILLIAM POLAK
161 Palm Circle
Palm Shores, FL 32940

Dated: _____

ALAN J. MYER
162 Palm Circle
Palm Shores, FL 32940

Dated: _____

KRISTIN E. MYER fka
KRISTIN E. KEISER
162 Palm Circle
Palm Shores, FL 32940

Dated: _____

GHOLAM R. BAHARLOUI
5250 N. Highway US 1
Palm Shores, FL 32940

Exhibit A – Legal Description of Two Parcels

The Legal Description for LTM's Southern Property at Brevard County Property Appraiser Account 2609832, Parcel ID 26-37-30-00-10, known as the West 2.5 Ac of North ½ of South ½ of Lot 2 East of Railroad and West of State Road, is further described as:

"Parcel 6: A portion of the North ½ of the South ½ of Government Lot 2, Section 30, Township 26 South, Range 37 East, Brevard County, Florida, being more particularly described as follows: Begin at the intersection of the South Line of the North ½ of the South ½ of said Government Lot 2 and the Easterly right of way line of the Florida East Coast Railroad, said intersection also being the Point of Beginning of the herein described parcel; thence run S 89 degrees 46'49"E along said South line of the North ½ of the South ½ of Government Lot 2 a distance of 330.0 feet; thence run N 0 degrees 13'11" E a distance of 326.45 feet to the North line of the said North ½ of the South ½ of Government Lot 2; thence run N 89 degrees 43'23"W along said North line a distance of 442.12 feet to the Easterly Right of Way line of Florida East Coast Railroad; thence run S 18 degrees 44'01"E along the said Easterly Right of Way line a distance of 345.20 feet to the Point of Beginning."

(The above described parcel of land being those lands described and recorded at Official Records Book 7824, page 2863, Public Records of Brevard County, Florida.)

The Legal Description for LTM's Northern Property at Brevard County Property Appraiser Account 3015242, Parcel ID 26-37-30-00-20 known as the Part of N ½ of Government Lot 2 Lying East of FEC Railway, is further described as:

"PARCEL 5: Begin at the intersection of the south line of the north 400.00 ft. (a measured perpendicular) of Government Lot 2, Section 30, Township 26 S, Range 37 E, Brevard County, Florida and the easterly Right of Way line of the Florida East Coast Railroad, said point being the Point of Beginning of the herein described parcel; thence run South 18°44'01" E. along said easterly Right of Way line of the Florida East Coast Railroad a distance of 269.21 ft.; thence run South 89°4'33"E a distance of 1439.03 ft. to the westerly Right of Way line of U.S. Highway No. 1; thence run Northwesterly along said westerly Right of Way line of U.S. Highway No 1 and along a curve concave to the southeast, having radius of 2802.93 ft. and a central angle of 5°27'33" an arc distance of 267.06 ft.; thence run North 89°35'05" W. a distance of 1435.99 ft. to the Point of Beginning. Containing 8.33 acre, more or less."

(The above described parcel of land being those lands described and recorded in Official Records Book 4285, page 4017, Public Records of Brevard County, Florida.)

Containing: 4.5568 hectares (11.260 acres) more or less.

LESS AND EXCEPT THE FOLLOWING DESCRIBED PORTION OF PARCEL 5:

From the point of beginning of the afore described parcel 5 (Official Records Book 4375, Page 0562 of the Public Records of Brevard County, Florida) run S89°43'32"E along the north line of

said parcel 5 a distance of 177.397 Meters (582.01 feet) to the point of beginning of the herein described parcel; thence departing from said north line run along a line of 0.3048 meters (1.00 feet) west of an existing fence the following courses; S02°44'16"E 31.463 meters (103.23 feet); thence S00°58'29"W 14.996 Meters (49.20 feet); thence S00°00'47"W 6.081 Meters (19.95 feet); thence S01°32'11"E 24.680 meters (80.97 feet) to the south line of afore described parcel 5; thence run S89°50'38" E along said south line 286.500 meters (939.96 feet) to the existing westerly right of way line of state road 5 (U.S. Highway 1) as shown on the Florida Department of Transportation Right of Way Map, Section 70020-2549, said right of way line also being the easterly line of afore described parcel 5; thence run northerly along said right of way line along a curve concave to the west having a radius of 854.335 meters (2802.93 feet), an arc length of 81.485 meters (267.34 feet), through a delta angle of 05°27'54" with a chord bearing of N19°39'55"W to the North line of afore described parcel 5; thence run N89°43'32"W along said North Line 260.998 Meters (856.29 feet) to the point of beginning."

(The above described parcel of land being those lands described and recorded at Official Records Book 7824, page 2866, Public Records of Brevard County, Florida.)