

Meeting Date
October 24, 2017



AGENDA	
Section	New Business
Item No.	VII.F.2

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	1923 Indian River Home Sites Plat, PB 3/PG 37: Acceptance of Common Law Dedication
DEPT/OFFICE:	Citizen Request: LTM of Florida Holdings, LLC

Requested Action:

The Applicant is requesting that the County Commission acknowledge the Common Law Dedication and accept the 1923 Indian River Home Sites Plat

Summary Explanation & Background:

LTM Holdings of Florida, LLC ("LTM") requires access to its Property, and the only access is from U.S.1 to Miller Cove Road to Old Dixie Highway (an unpaved County Road). **(The Property detail for LTM's Property and map are enclosed)**. Miller Cove Road (formerly Central Boulevard) is a platted right-of-way on the Indian River Home Sites Plat, recorded September 15, 1923 (the "1923 Plat". **(A copy of the Plat is enclosed)**). This 1923 Plat was recorded, but was never formally dedicated to the County. Both Miller Cove Road and Old Dixie Highway are currently passable as unpaved "public ways", "private ways"¹ or "streets"². **(See photos taken July 5, 2017)**.

Miller Cove Road is the sole road off U.S. 1 into the Indian River Homes Subdivision (the "Subdivision"). The lots in the Subdivision were all deeded out with reference to the Plat. The lots were annexed into the Town of Palm Shores, but the roads were not. The Town of Palm Shores disclaims ownership of or responsibility for the roads in the Subdivision.

LTM has created a **Public Rights Map**, enclosed herein. This Map shows the public's use of Miller Cove Road, all of which support that the County has already accepted the 1923 Plat.

- Three (3) addresses have been assigned by Brevard County on Miller Cove Road; 2340 Miller Cove Road has assigned itself that address and receives mail at a mailbox on Miller Cove Road. Mail is delivered to mailboxes by use of Miller Cove Road.

(continued next page)

Contact: Kimberly Bonder Rezanka, Esq., Cantwell & Goldman, P.A.
Phone/e-mail: 321-639-1320, ext. 123; kim@cflawoffice.com

Clerk to the Board Instructions:

Exhibits Attached:

Contract /Agreement (If attached):		Reviewed by County Attorney	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager	Assistant County Manager	Department Director / Extension						
✓ Frank Abbate	✓ John Denninghoff							
	Interim Assistant County Manager							
	Jim Liesenfelt							

Citizen Agenda Report, LTM of Florida Holdings, LLC, page 2 of 3

- FDOT has built 150 feet of road, as well as drains and swales on Miller Cove Road. (We believe Florida Statutes requires Brevard County to maintain the road because of this construction, but the explanation is extremely long.)
- AT&T has installed fiber optics in the ROW of Miller Cove Road. We have been in contact with AT&T and the legal department is searching for records. The local contact at AT&T believes AT&T was given verbal permission from Palm Shores to install the fiber optics "in the ROW".
- FPL has installed and maintained four (4) power poles and overhead lines in the Miller Cove ROW. FPL has been unable to locate any permits, and believes that the County provided a ROW map and advised FPL it could use any ROW; Miller Cove Road was identified on the map as a ROW.
- Per a local resident, Brevard County public works has removed debris from the swale on Miller Cove Road.
- Waste Pro utilizes Miller Cove Road for trash pickup.
- Brevard County Mosquito Control utilizes Miller Cove Road to spray to control mosquitoes.
- Brevard County Code Enforcement has utilized Miller Cove Road to investigate LTM's actions.
- 1st Avenue, south of Central Blvd. (now Miller Cove Road), of the Indian River Home Sites Subdivision was vacated by Brevard County by the June 20, 1963 Resolution, ORB 503, Pg. 583.
- 3rd Avenue and 4th Avenue of the Indian River Home Sites Subdivision was vacated by Brevard County by Resolution 2001-414, ORB 4494, Pg. 1706.
- The roads in the Indian River Home Sites Subdivision are within the jurisdiction of the County (as opposed to any municipality).
- No "holder of any interest in any reversionary rights in streets" of the Indian River Home Sites Subdivision made any claim for those rights by July 1, 1973, as required by F.S. 177.085(2).

Assuming the County agrees to accept the 1923 Plat and Miller Cove Road, LTM will pave Miller Cove Road and Old Dixie Highway by County standards. A Development Agreement or right-of-way use agreement would be appropriate to allow LTM to construct the road.³ The paved Miller Cove Road will allow access to other residents and owners along Miller Cove Road and will provide a proper roadway for public vehicles. LTM has retained M.E.Construction, Inc. ("MEC") to prepare roadway design and construction plans for the roadway, and for LTM's proposed use of its Property at the end of Old Dixie Highway. MEC has stated that there is sufficient area to construct county roadways in the ROW of Miller Cove Road and Old Dixie Highway, with certain waivers. (**MEC's letter is enclosed**).

Despite the apparent dedication intended by the owners of the property depicted in the 1923 Plat, the former County Transportation Director has stated that it never accepted the dedication of the 1923 Plat or the roads contained therein, *solely* because the County has never maintained Miller Cove Road. By letter dated May 22, 2017 from legal counsel for LTM to Assistant County Attorney Eden Bentley, counsel discussed in detail the reasons for the County to accept the 1923 Plat and Miller Cove Road. (**A complete copy of the letter is enclosed**). No response to the legal arguments presented has ever been received by LTM, despite numerous requests for a response.

Ironically, the County has previously taken a position contrary to the one involving Miller Cove Road in its Motion for Summary Judgment in *Merritt Island Industrial Park, II v. Brevard County*. (**The Motion is enclosed**). Starting at page 12 – 16 of the Motion, the County cited the same case law that LTM cited regarding Common Law Dedication. Most importantly, the County, in paragraph 49, stated, "there have been multiple occasions where the County vacated the public interest portions of

Citizen Agenda Report, LTM of Florida Holdings, LLC, page 3 of 3

rights of way . . . located within the Recorded Plat Map. Why would the County take these actions if it didn't believe it had an interest in the platted rights of way or park parcel?"

Indeed, why would Brevard County vacate 1st, 3rd and 4th Avenue of the 1923 Plat, containing Miller Cove Road, if the County didn't believe it had an interest in the platted rights of way? Pursuant to Sec. 86-36, Brevard County Code, the County may only vacate a county road that is within its jurisdiction. Because of this, we believe that the County had accepted the dedication of the Indian River Home Sites Plat sometime before June 20, 1963, when it vacated 1st Avenue of the 1923 Plat.

Without the acceptance by the County of Miller Cove Road, LTM is unable to obtain an address for its property. Without an address, LTM cannot construct a fence to protect its property from trespassers along the railroad track on its western border. LTM did submit for an address assignment, and was denied an address. (***Email dated May 22, 2017 and response enclosed***). Pursuant to Sec. 22-314(b), it does not appear that Brevard County Address Assignment has any discretion as to whether it will assign an address.⁴

Despite the County's contention that it has not accepted the dedication of the roads in the Subdivision, at least one County Ordinance's definition of "county public road" applies to Miller Cove Road. Sec. 246-2, Brevard County Code, defines "county public road" to include "platted or dedicated public rights-of-way and streets whether or not the same are paved, graded, improved or used by the public for travel; . . . and streets and alleys dedicated as rights-of-way upon recorded subdivision plats." Miller Cove Road appears to be utilized for drainage purposes by the neighboring subdivision to the south. Additionally, as stated above, there are other utilities - power lines and fiber optic cables - that have been installed in the right-of-way of and under Miller Cove Road. Unfortunately, no permits for any utilities have been located.⁵

There exist substantial reasons that the County should accept the dedication of the 1923 Plat, or at least Miller Cove Road, as explained herein. Most importantly, it would provide sufficient and legal access to LTM as well as many other property owners and residents along Miller Cove Road.

¹ Sec. 22-312, Brevard County Code, defines "private way" as any officially named thoroughfare used for vehicular traffic that is not included in the definition of "public way" and which is not maintained by the County.

² Under the same Code section, "street" is defined as "a right-of-way which has been dedicated to and accepted by the county, or that is a private access not dedicated to the county, but affords the principal means of access by vehicles to abutting property.

³ Sec. 86-66(a), Brevard County Code, defines "right-of-way" use agreement.

⁴ Sec. 22-318(b), Brevard County Code, provides for the appeal of the denial to the County Manager, but this address assignment issue can be resolved by the County accepting the dedication of the roads identified in 1923 Plat.

⁵ Sec. 86-72, Brevard County Code, requires permits for utilities, but this Ordinance was not adopted until 2006. It is believed the utilities were installed prior to that time.



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

October 25, 2017

MEMORANDUM

TO: Frank Abbate, County Manager

RE: Item VI.F.2., Citizen Request by LTM of Florida Holdings, LLC for 1923 Indian River Home Sites Plat, PB 3/PG 37: Acceptance of Common Law Dedication

The Board of County Commissioners, in regular session on October 24, 2017, tabled consideration of the citizen request by LTM of Florida Holdings, LLC for the 1923 Indian River Homes Sites Plat, PB 3/PG 37: Acceptance of Common Law Dedication, to the November 7, 2017, meeting.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/ds

cc: Deputy County Attorney Bentley



BOARD OF COUNTY COMMISSIONERS

Planning & Development Department
2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940

Inter-Office Memo

TO: Board of County Commissioners

FROM: Andrew J. Holmes, PE, Public Works Director 
Tad Calkins, Planning and Development Director 

DATE: October 20, 2017

SUBJECT: Staff Report
Board of County Commissioner October 24, 2017 Meeting, Agenda Item:
VI.F.2, Citizen Request by LTM of Florida Holdings, LLC, Re: 1923 Indian
River Home Site Plat, PB 3/PG 37, Acceptance of Common Law
Dedication

The purpose of this report is to communicate the staff response to the submitted agenda item referenced above. The following comments are pertinent to the submitted item. Should the Board desire to accept the Miller Cove Road right of way, the following items should be considered.

1. The County Attorney's Office has identified several legal issues for the Board to consider. Those comments are contained in a separate memo from their office.
2. The existing right of way width shown on the plat is 30'-40' wide. The Brevard County Code requires a 50' wide right of way to construct a public road. A waiver of the minimum right of way width would be required in order to construct a public street within the right of way. Note that construction of a county standard roadway within a substandard width right of way is often much more expensive proposition than if the right of way was of standard width.
Maintenance is also often much more expensive due to a lack of separation distances between the constructed improvements and utilities, drainage facilities and the like.

No roadway design has been submitted by the developer that demonstrates that a road meeting County Code requirements could be constructed to fit within the existing right of way width.

3. Brevard County Public Works has no record of maintenance activities being performed within this right of way by Brevard County in the past.
4. There has not been a public street constructed within the right of way in the past.
5. Construction of a public street requires drainage improvements, typically consisting of both a storm water collection system (inlets and pipes, and/or ditches), a storm water treatment system (typically a retention area and/or some sort of biometric filtering or water quality enhancement feature), and a storm water feature to mitigate the increased flow rates due to the increase in impervious areas (typically a detention pond).

With the limited area available within a right of way, the pond elements of these storm water features are typically constructed outside of the normal road right of way. **Construction of the pond areas underground is sometimes possible, given sufficient land area, depending upon soil conditions and the existing ground water elevation, however these features are very costly to construct and maintain. Long term maintenance often requires a complete reconstruction of large portions of the roadway when these systems fail due to siltation.**

6. It is unknown exactly how many miles of unaccepted, substandard width rights of way exist in Brevard County, but the length potentially totals many hundreds of miles. **The Board may want to consider the impact of the decision in this instance potentially creating a precedent that may have far reaching consequences if many of these other unaccepted rights of way are brought to the Board with similar requests.**
7. Currently, the Brevard County Code requires that a lot front on a County Maintained Road or an approved private road, in order to have an address assigned as part of obtaining a building permit for the property. Additionally, the code requires commercial developments have direct access to a paved public or private road.



BOARD OF COUNTY COMMISSIONERS

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

To: John Denninghoff, Assistant County Manager

CC: Tad Calkins, Planning and Development Director
Andrew Holmes, Public Works Director

From:  Eden Bentley, Deputy County Attorney

Through: Scott Knox, County Attorney 

Subj.: LTM of Florida Holdings, LLC request to accept plat Item VI F (2)

Date: October 20, 2017

Question 1. Can the County accept the 1923 plat as requested?

Short Answer: Probably not due to jurisdictional issues involving the Town of Palm Shores.

Question 2. Is the area known as Miller Cove "road" owned and maintained by the County?

Short Answer: No. Case law indicates the actions listed by the applicant are not deemed to be acceptance of ownership and maintenance by the County.

Question 3. This question was not specifically presented by the agenda item, but is a logical question for the Board. Can the road areas alone be accepted by the County at this time?

Short Answer: There are numerous title issues in this area and at least one person has received a deed to a portion of the area referred to as Miller Cove Road. Questions regarding the exact location of improvements have also arisen which may create claims due to occupation as well as claims via deeds.

Recommendation: Request that the applicant provide a survey and appropriate title work for the area in question before proceeding further.

Lewis, Sally A

From: Kimberly Rezanka <kim@cfglawoffice.com>
Sent: Monday, October 23, 2017 2:30 PM
To: Lewis, Sally A; Advanced Agenda; CGroup; CNTYATY_Staff; CNTYMGR_Staff
Cc: Hart, Jessica; 'Christine Mulligan'; 'Deborah Thomas'; 'Donna Scott'; 'Kimberly Powell'; 'Tammy Rowe'
Subject: RE: Staff Report and Atty Memo for VI F 2 - response
Attachments: Plat of Indian River Home Sites.pdf; Letter to Eden Bentley re status request.pdf; Letter to Eden Bentley re status request.pdf

Dear County Attorney Knox and Director Holmes,

As you can imagine, we were quite surprised to receive your memoranda today – less than 24 hours prior to the Public Hearing tomorrow. We respond as follows.

A. Staff Report.

1. The legal issues raised are conclusory and cite no case law. We have asked for a legal opinion and have only received the one page memo provided today.
2. The Plat shows 40' of ROW for Central Blvd. and Old Dixie Highway. Plat is attached. This statement is in incorrect. Regardless, the issue is whether the County has or will accept the common law dedication – not whether a road can be built or the cost of the road. The Roadway design is irrelevant at this point.
3. While Brevard County has no records, it is without question that FDOT built a road apron and approximately 100 feet of road on Miller Cove Road. There are also drainage swales and structures that were installed by FDOT. We believe Brevard County HAS cleaned the swales, despite no records being available.
4. Agreed – no public road has been constructed.
5. The issue is not whether a road can be or should be built (which we believe is yes to both), but whether the County has or will accept the common law dedication.
6. This Plat should not impact any other substandard un-built road in the County unless the facts are identical. This is not precedent setting.
7. Exactly why our client is seeking to have the County acknowledge the common law dedication and accept/acknowledge acceptance (as of at least the 1963 vacation of First Avenue) of the Plat. The public access is onto Old Dixie Highway – an 1895 County Road. The issue is whether Miller Cove Road is a county roadway.

B. Legal Report.

1. We have no idea what “jurisdictional issues” exist. This is the first we have heard. In fact, despite an attempt to charge Mark Mattioli (client’s representative) with a code violation, the Town dropped the code violation because it had no jurisdiction. Please explain the jurisdictional issues.
2. What case law? Please provide. An intent to dedicate can be implied by the acts of the landowner, including the filing of a map or plat of the property designating the roadway, or platting the land and selling lots pursuant to the land. *Bonifay v. Dickson*, 458 So. 2d 1089. Acceptance of dedication is implied from actual use of the property by the public. *Hughes v. Town of Mexico Beach*, 455 So. 2d 566. The public has clearly used this road, as has AT&T, FPL, FDOT, the homeowner at the end of Miller Cove Road (2360 Miller Cove Road) and the commercial nursery

with an address of 2340 Miller Cove Road. Additional legal argument can be found in the attached letter to Eden Bentley – to which we have never received a legal response (dated May 22, 2017).

3. We are unaware of any “title issues”. We believe this is another red herring brought forth by opponents of our client. Please explain.

Recommendation. What is the “area in question” for which the survey and title work is requested? All of the Plat? Miller Cove Road/Central Blvd.?

While our client likely will comply with this request, we need to understand the justification for the request as it does NOT go to the question of whether there has been a common law dedication and acceptance. The Plat shows the right-of-way in question, and the surveyor will use that Plat. Moreover, we have the “title work” (deeds) from the grantor of the Plat. Is that what is being sought. We have continually advised the County Attorney’s office that we have these deeds, but it takes a legal opinion to come to the conclusion that there has been a common law dedication and acceptance. We have provided you the Motion for Summary Judgment in the *Merritt Industrial Park II, LLC* case – if “title work” can resolve a road issue, that would have been done in that case. As stated in that case, why would the County vacate a road if the County had not interest in it?

Our client may be willing to continue this for a week or two, as that is how long it will take to survey Miller Cove Road and provide a title search for the road, there is an upcoming P&Z/LPA meeting on November 6th. Will the County agree to continue that again?

Finally, would the County staff accept a ROW Use Agreement and Permit for our client to build a private road to access the Property at the end of Old Dixie Highway?

Thank you,
Kim Rezanka



*96 Willard Street, Suite 302
Cocoa, FL 32922
321-639-1320 ext. 123
Fax 321-639-9950*

Sent: Monday, October 23, 2017 10:23 AM

To: Advanced Agenda; CGroup; CNTYATY_Staff; CNTYMGR_Staff

Cc: Hart, Jessica; Kimberly Rezanka (kim@cfglawoffice.com); Christine Mulligan; Deborah Thomas (deborah.thomas@brevardclerk.us); Donna Scott; Kimberly Powell (kimberly.powell@brevardclerk.us); Tammy Rowe (Tammy.Rowe@brevardclerk.us)

Subject: Staff Report and Atty Memo for VI F 2

Attached are two attachments for Agenda Item VI F 2.

Thank you,
Sally

*Sally Lewis
2725 Judge Fran Jamieson Way*

Viera, Fl. 32940

321-633-2010

Sally.lewis@brevardfl.gov

Under Florida law, all correspondence sent to the County Manager's Office, which is not exempt or confidential pursuant to Chapter 119 of the Florida Statutes, is public record. If you do not want the public record contents of your e-mail or your e-mail address to be provided to the public in response to a public records request, please do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

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BOARD OF COUNTY COMMISSIONERS

Planning & Development Department
2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940

Inter-Office Memo

TO: Board of County Commissioners

FROM: Andrew J. Holmes, PE, Public Works Director *AJH*
Tad Calkins, Planning and Development Director *TC*

DATE: October 20, 2017

SUBJECT: Staff Report
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Deborah Thomas

From: Tammy Rowe
Sent: Monday, October 23, 2017 2:32 PM
To: Deborah Thomas
Subject: FW: Staff Report and Atty Memo for VI F 2 - response
Attachments: Plat of Indian River Home Sites.pdf; Letter to Eden Bentley re status request.pdf; Letter to Eden Bentley re status request.pdf

Deborah:

Please print this email and the attachments for item VI.F.2. for the 10/24/17 Board meeting.

Thank you,
Tammy

From: Kimberly Rezanka [mailto:kim@cflawoffice.com]
Sent: Monday, October 23, 2017 2:30 PM
To: 'Lewis, Sally A'; 'Advanced Agenda'; 'CGroup'; 'CNTYATY_Staff'; 'CNTYMGR_Staff'
Cc: 'Hart, Jessica'; Christine Mulligan-Willey; Deborah Thomas; Donna Scott; Kimberly Powell; Tammy Rowe
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Cocoa, FL 32922
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Fax 321-639-9950

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To: Advanced Agenda; CGroup; CNTYATY_Staff; CNTYMGR_Staff

Cc: Hart, Jessica; Kimberly Rezanka (kim@cflawoffice.com); Christine Mulligan; Deborah Thomas (deborah.thomas@brevardclerk.us); Donna Scott; Kimberly Powell (kimberly.powell@brevardclerk.us); Tammy Rowe (Tammy.Rowe@brevardclerk.us)

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Thank you,

Sally

Sally Lewis

2725 Judge Fran Jamieson Way

Viera, Fl. 32940

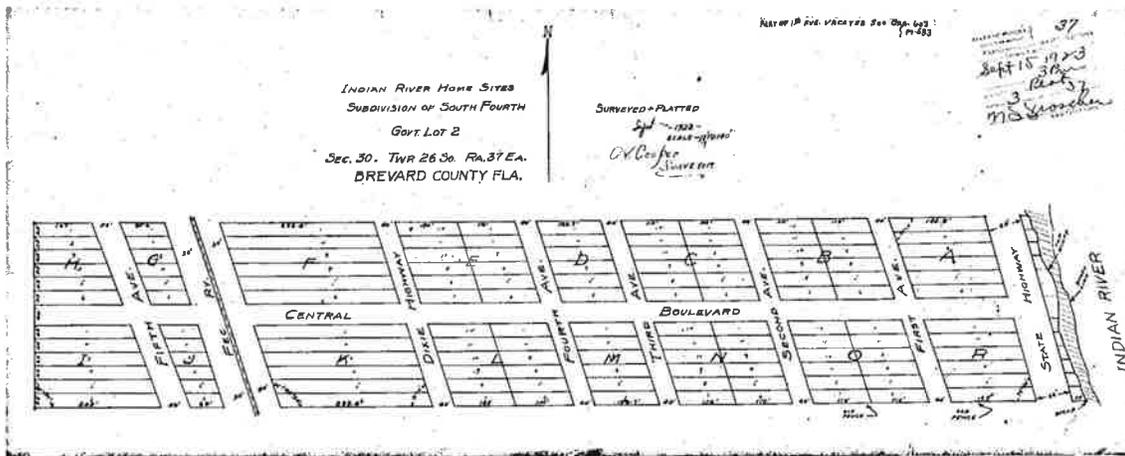
321-633-2010

Sally.lewis@brevardfl.gov

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M.F. 2.



Law Offices of
CANTWELL & GOLDMAN, P.A.

www.cfglawoffice.com

Bradly Roger Bettin, Sr.
William H. Cantwell, II^{1,2}
Mitchell S. Goldman
J. Wesley Howze
Matthew J. Monaghan
Nina V. Rawal
Kimberly Bonder Rezanka
Michael Sjuggerud³
Jay R. Thakkar

¹ Board Certified Construction Lawyer and
Board Certified Business Litigation Lawyer

² Also Member of West Virginia Bar

³ Also Member of District of Columbia
Bar, New York Bar, and Washington Bar

96 Willard Street, Suite # 302
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Facsimile: (321) 639-9950

474 N. Harbor City Blvd., Suite # 1
Melbourne, FL 32935
(by appointment only)

May 22, 2017

Via email: Eden.Bentley@brevardfl.gov

Ms. Eden Bentley
Assistant County Attorney
Brevard County Attorney's Office
2725 Judge Fran Jamison Way, Bldg. C
Viera, FL 32940

RE: Address and Access – Miller Cove Road, Palm Shores

Dear Eden:

We represent LTM of Florida Holdings, LLC ("LTM") regarding the land development permits and related issues for the Property identified as Parcel Id. 26-37-30-00-10, located in Brevard County but adjacent to lands in the Town of Palm Shores. ***The Property Appraiser's information and map are enclosed.***

On April 28, 2017, Karl Bohne, the Town of Palm Shores' Attorney, sent you an email requesting the County Attorney's opinion on several matters related to the 1923 Indian River Homes Sites Plat, including whether the County had accepted the dedication of the roads in the Plat or whether the County believed the roads to be private roads. On May 1, 2017, my client and I met with you, John Denninghoff, Tad Caulkins, Cindy Thurman and several other County staff members to discuss my client's access to his Property by Miller Cove Road and Old Dixie Highway. You – understandably – believed the meeting was about the denial of an address assignment and had just received Mr. Bohne's lengthy email and attachments.

To date, we have heard nothing from the County in response to Mr. Bohne's email or our meeting of May 1st. LTM asserts that Miller Cove Road has been dedicated by the 1923 Plat, that the County accepted the dedication, and that LTM is entitled to access via Miller Cove Road and Old Dixie Highway. With this letter, we have provided additional information supporting these assertions.

As to the dedication, Mr. Bohne provided sufficient information to show the intent of the owner of the land that recorded the Plat, W. E. G. Harris, to dedicate the Plat to the County. As further evidence, we have all the deeds from Mr. Harris to subsequent owners that reference the Plat.

Mr. Harris left all the remaining property to his wife, Hettie Harris. We have copies of the probate of Mrs. Harris; the streets of Indian River Homes Sites Plat were not included in the Probate Estate.

I. Acceptance of the dedication of the 1923 Plat by Brevard County

Regarding the County's acceptance of the dedication, we provide the following facts which support acceptance. First, several properties along Miller Cove Road have been provided addresses on Miller Cove Road, including: 2360 Miller Cove Road (existing residence); 2340 Miller Cove Road (former plant nursery); and 2308 Miller Cove Road (cell tower and related structure). Additionally, there is a single-family residence on the south side of Miller Cove Road – accessible only by Miller Cove Road – with no assigned address, Parcel Id. 26-37-30-01-O-7.

Second, there are FPL power poles and lines, as well as AT&T fiber optic cable along and traversing Miller Cove Road. When FPL and AT&T were contacted about permits or easements, neither has permits or easements for their utilities. Both were told by the County that they could install the utilities on the County's right-of-way without permits. The Town of Palm Shores has no permits on file for the poles or cable, either. Furthermore, Waste Pro collects trash by way of Miller Cove Road, as evidenced by several green trash containers along Miller Cove Road. Right-of-ways for public road use include use for public utilities such as electric power poles. *See Nerbonne, N.V. v. Florida Power Corp.*, 692 So. 2d 929 (Fla. 5th DCA 1997).

Third, there is fifty feet (50') of paved road from U.S. 1 to the west, on what is known as Miller Cove Road. We are in the process of researching the as-builts and permits from 2003-2004 to determine who exactly paved this area and who has responsibility for its maintenance. FDOT does own a portion of this area, by virtue of a deed to it in 2001. *A copy of the Deed is enclosed.*

Fourth, the County vacated Third Avenue and Fourth Avenue of the 1923 Plat, by Resolution 2001-414, filed in ORB 4494, Page 1707, Public Records of Brevard County. According to the Resolution, this was done pursuant to County Code Section 86-36, which states that the Board of County Commissioners "is hereby authorized and empowered to close, vacate and abandon any county road, right of way, alley way, place of travel or easement (of any type) or any portion thereof within its jurisdiction." While you indicted that the vacating was akin to a quit claim deed, we dispute that characterization as it contradicts the plain and clear language of the County Code. The County can only vacate that over which it has jurisdiction. *A copy of the Resolution is enclosed.*

Acceptance of dedication may be implied from acts showing an intention to accept, including, among other things, use by the public or maintenance and improvement by proper authorities of part of the land dedicated. *Bonifay v. Dickson*, 459 So. 2d 1089, 1094 (Fla. 1st DCA 1089). Based upon the foregoing reasons and case law, we believe the acceptance is clear, unequivocal and with satisfactory proof of acceptance.

II. County-owned Miller Cove Road

Once ownership of Miller Cove Road is agreed upon, LTM has several challenges, as were discussed in far too much depth at our meeting of May 1, 2017. However, LTM requests consideration of several items.

First, an address must be assigned to LTM's Property, off of Old Dixie Highway. The Address Request Form (*copy enclosed*) does not appear to provide for any discretion and is a ministerial function. Moreover, the Form includes a bold disclaimer that "receiving an address does not guarantee a property is buildable or that any permits can be issued". LTM will be submitting this Form to address assignment today.

Second, LTM will be requesting waivers to the requirements of a 50' ROW, a full size paved roadway and sidewalks. As analyzed by Mr. Denninghoff, Miller Cove Road has insufficient width for all County Code requirements. There are many examples in the County of waivers of these requirements, including Sun Pointe Place, Morningside Drive and Furman Road. We understand from County staff there are many more examples.

Third, if the County is unwilling to work with LTM on these waivers, LTM will be requesting the County to pave the road under a proportionate share agreement per Sec. 163.3180, Fla. Stat. or a public-private partnership agreement under Sec. 255.065, Fla. Stat. LTM has been prepared to pave the roadway at its sole cost, but anticipated that the County would be enthusiastic about the improvement; enthusiasm appeared lacking at the May 1, 2017 meeting.

Fourth, Old Dixie Highway will also need to be improved as Miller Cove Road terminates into Old Dixie. Please confirm that the County agrees that the portion of Old Dixie Highway, from Miller Cove Road/Central Boulevard, is a county-owned road.

Fifth, LTM will need to apply for a permit, or obtain a waiver from a permit, to clear both Miller Cove Road and Old Dixie Highway. There are palm trees and other trees in the road right-of-way of both roads. A clearing permit will allow LTM to remove the remaining trees from the right-of-ways of Miller Cove Road and Old Dixie Highway.

III. Moving Forward

LTM needs to move forward on its project. It has a pending comprehensive plan amendment and rezoning scheduled before P & Z in July. Despite the contentions of Palm Shores' Mayor, LTM's neighbors are not opposed to the roadway or the use of LTM's Property as proposed. *The rendering of the proposed use is enclosed.* The Mayor's letter to the County opposing the rezoning will be addressed in more detail, but this is not the proper place to do so.

On behalf of LTM, we request a status update on these matters. Thank you for your assistance. We look forward to hearing from you in the near future.

Sincerely,



Kimberly Bonder Rezanka

KBR/bms
enclosures

cc: John Denninghoff
Commissioner Curt Smith
Cindy Thurman
Karl Bohne, Esq.



Brevard County Property Appraiser

Titusville • Merritt Island • Viera • Melbourne • Palm Bay

PROPERTY DETAILS

Phone: (321) 264-6700

<https://www.bcpao.us>

Account	2609832
Owners	Ltm Of Florida Holding LLC
Mailing Address	4113 Quando Dr Belle Isle FL 32812
Site Address	Brevard County Fl
Parcel ID	26-37-30-00-10
Property Use	8060 - State Owned Land - Vacant
Exemptions	EXSF - State Owned
Taxing District	4200 - Unincorp District 4
Total Acres	2.42
Subdivision	N/A
Site Code	0001 - No Other Code Appl.
Plat Book/Page	N/A
Land Description	W 2.5 Ac Of N 1/2 Of S 1/2 Of Lot 2 E Of Rr & W Of St Rd

VALUE SUMMARY

Category	2016	2015	2014
Total Market Value	\$26,620	\$26,620	\$26,620
Agricultural Market Value	\$0	\$0	\$0
Assessed Value Non-School	\$26,620	\$26,620	\$26,620
Assessed Value School	\$26,620	\$26,620	\$26,620
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$26,620	\$26,620	\$26,620
Taxable Value Non-School	\$0	\$0	\$0
Taxable Value School	\$0	\$0	\$0

SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
02/10/2017	\$69,700	QC	Improved	7824/2863
06/27/2001	--	WD	Vacant	4375/0562
01/29/2001	--	QC	Vacant	4285/4017
12/01/1988	\$50,000	WD	--	2971/2409
12/01/1986	--	QC	--	2752/2856
04/01/1980	\$17,400	--	--	2231/0644

BUILDINGS

No Data Found

Property Search

Brevard County Property Appraiser
Dana Blickey, CFA

Map Subject Property [] [] [] Open Map in New Window []

BCPAO []

Picto []

Google []

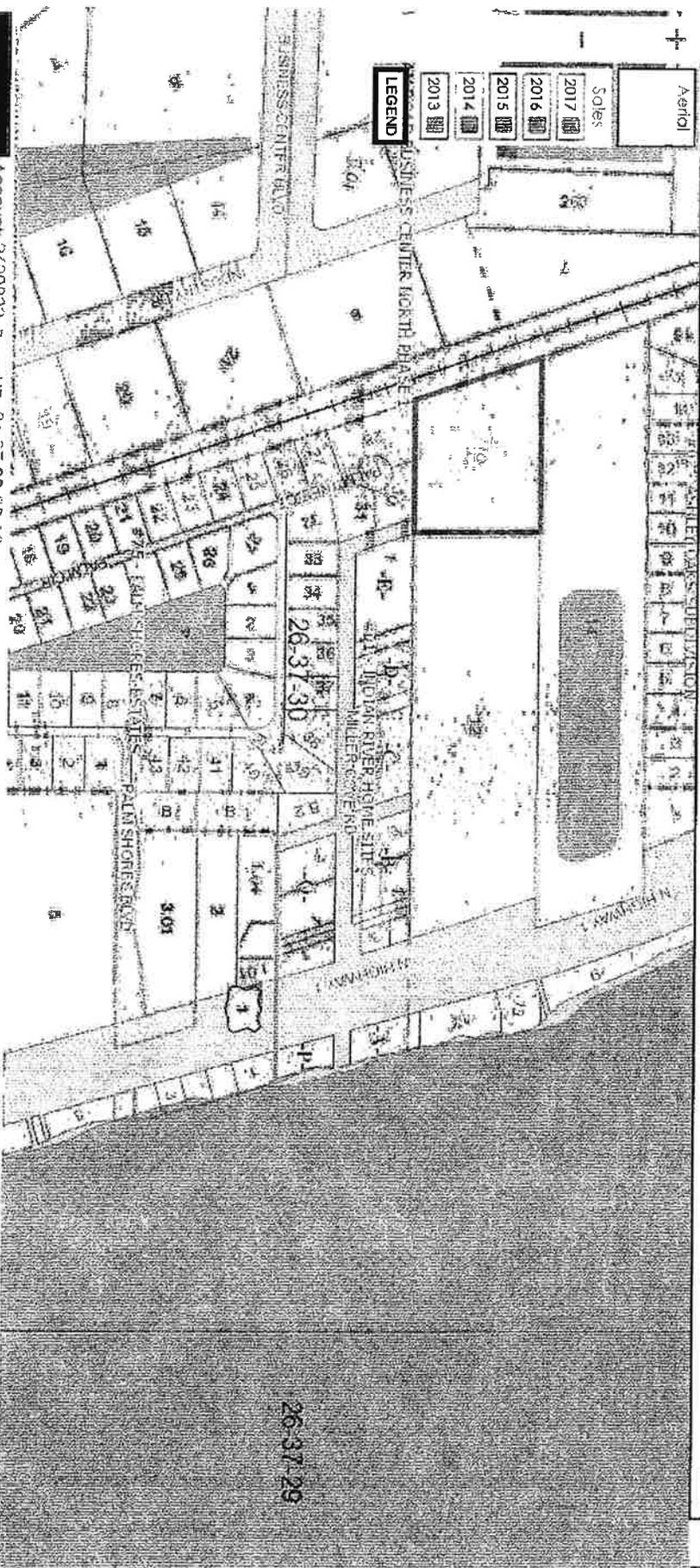
Bing []

Search by Account Number (Ex. 1234567 - More search options available soon.)

Go!

- Aerial
- Sat
- 2017
- 2016
- 2015
- 2014
- 2013

LEGEND



Account: 2609832 Parcel ID: 26-37-30-00-10
 Sale: 2/10/2017 \$69,700 - Improved
 BCPAO Market Value: \$26,620
 Owners: Ltm Of Florida Holding LLC
 Address: Brevard County Fl

Details | Zoom | Clear | Hide

Notice

INSTRUCTIONS (/Docs/misc/Instructions_MapSearch.pdf#20170405)

01-GWD.09-02/99
August 14, 2000
This instrument prepared by
ALICIA CREW
under the direction of
GEORGE S. LOVETT, ATTORNEY
Department of Transportation
719 South Woodland Boulevard
DeLand, Florida 32720



CFN:2001224279 10-16-2001 11:14 am
OR Book/Page: 4441 / 0189

Scott Ellis
Clerk Of Courts, Brevard County
#Pgs: 3 #Names: 4
Trust: 2.00 Rec: 13.00 Serv: 0.00
Excise: 0.00
Mfg: 0.00 Int Tax: 0.00

PARCEL NO. 137.1R
SECTION 70020-2549
P.P. NO. 237550 1
STATE ROAD 5
COUNTY: BREVARD

PLEASE RETURN TO
FLA. DEPT OF TRANSPORTATION
R/W RECORDS MGM MSI-S51
719 S. WOODLAND BOULEVARD
DELAND, FL 32720-6834
ATTN: M. BUSCHER

WARRANTY DEED

THIS WARRANTY DEED Made the 22 day of August, 2001, by
CORINNE K. RABENSTEINER, individually and as Trustee of the "Chiefet"
Revocable Trust, (ADDRESS PRINT/TYPE): 5240 N. HARBOR CITY BLVD,
PALM SHORES, FL 32940 grantor(s), to the STATE OF FLORIDA DEPARTMENT OF
TRANSPORTATION, grantee: (wherever used herein the terms "grantor" and
"grantee" include all the parties to this instrument and the heirs,
legal representatives and assigns of individuals and the successors, and
assigns of organizations).

WITNESSETH: That the grantor, for and in consideration of the sum
of \$1.00 and other valuable considerations, receipt and sufficiency
being hereby acknowledged, hereby grants, bargains, sells, aliens,
remises, releases, conveys and confirms unto the grantee, all that
certain land situate in Brevard County, Florida, viz:

PARCEL NO. 137

SECTION NO. 70020-2549

F.P. NO. 237550 1

THAT PART OF:

"Lots Three (3), Four (4), Five (5) and Six (6), Block A, except Highway
Right-of-Way, INDIAN RIVER HOME SITES, according to the plat thereof, as
recorded in Plat Book 3, Page 37, Public Records of Brevard County,
Florida."

(The above described parcel of land being those lands described and
recorded in Official Records Book 4088, Page 3541, Public Records of
Brevard County, Florida.)

DESCRIBED AS FOLLOWS:

From an old 4" X 4" coquina monument at the Southwest corner of Lot 4 of
the plat of HONEYBROOK PLANTATION, as recorded in Plat Book 9, Page 75,
Public Records of Brevard County, Florida, run North 89 degrees 39
minutes 08 seconds East 195.365 meters (640.96 feet) along the North
boundary of Lot 5 of said HONEYBROOK PLANTATION to a point on the
existing West right of way-line of State Road 5, said existing West
right of way line being parallel with and 18.898 meters (62.00 feet)
West of, when measured at right angles to, the centerline of survey for
said State Road 5 as shown on the Florida Department Transportation
Right of Way Map, Section 70020-2549; thence North 15 degrees 31 minutes
10 seconds West 184.303 meters (604.67 feet) along said existing West
right of way line to a point on the South boundary of that certain
parcel of land as described and recorded in Official Records Book 1573,
Page 355, Public Records of Brevard County, Florida for the POINT OF
BEGINNING; thence North 89 degrees 57 minutes 03 seconds West 38.541
meters (126.45 feet) along said South boundary to the Southwest corner
of Lot 6, Block "A" of INDIAN RIVER HOMESITES, as recorded in Plat Book

PARCEL NO. 137.1R
SECTION 70020-2549
F.P. NO. 237550 1
PAGE 2

3, Page 37, Public Records of Brevard County, Florida; thence North 18 degrees 54 minutes 22 seconds West 7.652 meters (25.10 feet) to the Northwest corner of said Lot 6; thence South 89 degrees 57 minutes 08 seconds East 18.769 meters (61.58 feet) along the North boundary of said Lot 6 to the beginning of a nontangent curve concave Southwesterly and having a radius of 2022.500 meters (6635.49 feet); thence from a tangent bearing of North 17 degrees 12 minutes 24 seconds West, run Northwesterly 22.778 meters (74.73 feet) along the arc of said curve with a chord bearing of North 17 degrees 31 minutes 46 seconds West through a central angle of 00 degrees 38 minutes 43 seconds to a point on the North boundary of Lot 3 of the aforesaid Block "A"; thence South 89 degrees 57 minutes 21 seconds East 21.069 meters (69.12 feet) along said North boundary to the aforesaid existing West right of way line; thence South 15 degrees 31 minutes 10 seconds East 30.054 meters (98.60 feet) along said West right of way line to the Point of Beginning.

CONTAINING: 728.6 Square meters (7,843 Square feet), more or less.

This legal description prepared
under the direction of:
Michael N. Crozier, PLS #3186
Jones, Wood & Gentry, Inc.
136 East Robinson Street
Orlando, Florida 32801



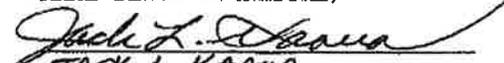
TOGETHER with all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

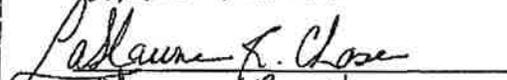
TO HAVE AND TO HOLD, the same in fee simple forever.

AND the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances.

IN WITNESS WHEREOF, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in
the presence of: (Two witnesses
required by Florida Law, PRINT/TYPE
NAME BELOW SIGNATURE)


JACK L. KAMA


LaShaune R. Chase

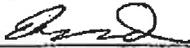

CORINNE K. RABENSTEINER,
Individually, and as Trustee
5246 N. Harbor City Blvd
P.O. Box 360324
Melbourne, FL 32936

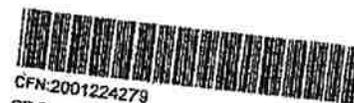
PARCEL NO. 137.1R
SECTION 70020-2549
F.P. NO. 237550 1
PAGE 3

STATE OF FLORIDA

COUNTY OF BOENARD

The foregoing instrument was acknowledged before me this 22ND
day of AUGUST, 2001, by CORINNE K. RABENSTEIN
individually, and as Trustee, who is personally known to me or who has
produced F.D./ R/S 2-111-19-821 as identification.


PRINT/TYPE NAME: EROL REID
Notary Public in and for the
County and State last aforesaid.
My Commission Expires: 5-26-2003
Serial No., if any: CC 840779



CFN:2001224279
OR Book/Page: 4441 / 0191

ACQUISITION OF THIS LAND IS
NECESSARY FOR R/W PURPOSES
UNDER THREAT OF CONDEMNATION
PURSUANT TO SEC. 337, 27 F.S.

"L. D.O.T."

RESOLUTION 2001 - 414

VACATING RIGHTS-OF-WAY IN PLAT OF INDIAN RIVER HOME SITES IN
SECTION 30, TOWNSHIP 26 SOUTH, RANGE 37 EAST

WHEREAS, pursuant to Article II, Section 86-36, Brevard County Code, a petition has been filed by **RALPH D. MILLER** with the Board of County Commissioners to vacate rights-of-way in Brevard County, Florida, described as follows:

That portion of Third Avenue and Fourth Avenue lying north of the north right-of-way line of Central Boulevard as shown in the **PLAT OF INDIAN RIVER HOME SITES** as recorded in Plat Book 3, Page 37, of the Public Records of Brevard County, Florida. Legal description prepared by AAL Land Surveying Services, Inc.

WHEREAS, the vacating action will in no way affect any private easements which may also be present in the existing public easement or public right-of-way.

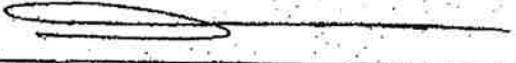
WHEREAS, notice of the public hearing before the Board of County Commissioners was published one time in the TODAY Newspaper, a newspaper of general circulation in Brevard County, Florida, prior to the public hearing; and

WHEREAS, the Board finds that vacating the rights-of-way will not be detrimental to Brevard County or the public.

THEREFORE BE IT RESOLVED, BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, that the rights-of-way are hereby vacated; and Brevard County renounces and disclaims any rights in and to said rights-of-way.

DONE, ORDERED AND ADOPTED, in regular session, this 4th day of December A.D., 2001.

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA


Truman Scarborough, Chairman

As approved by the Board on:
December 4, 2001



CFN:2001287857

OR Book/Page: 4494 / 1707

RETURN: Clerk to the Board #27

ATTEST

SCOTT ELLIS, CLERK

* ASSESSORS MAP *

SECTION: 30 TOWNSHIP: 26 South RANGE: 37 East DISTRICT: 4

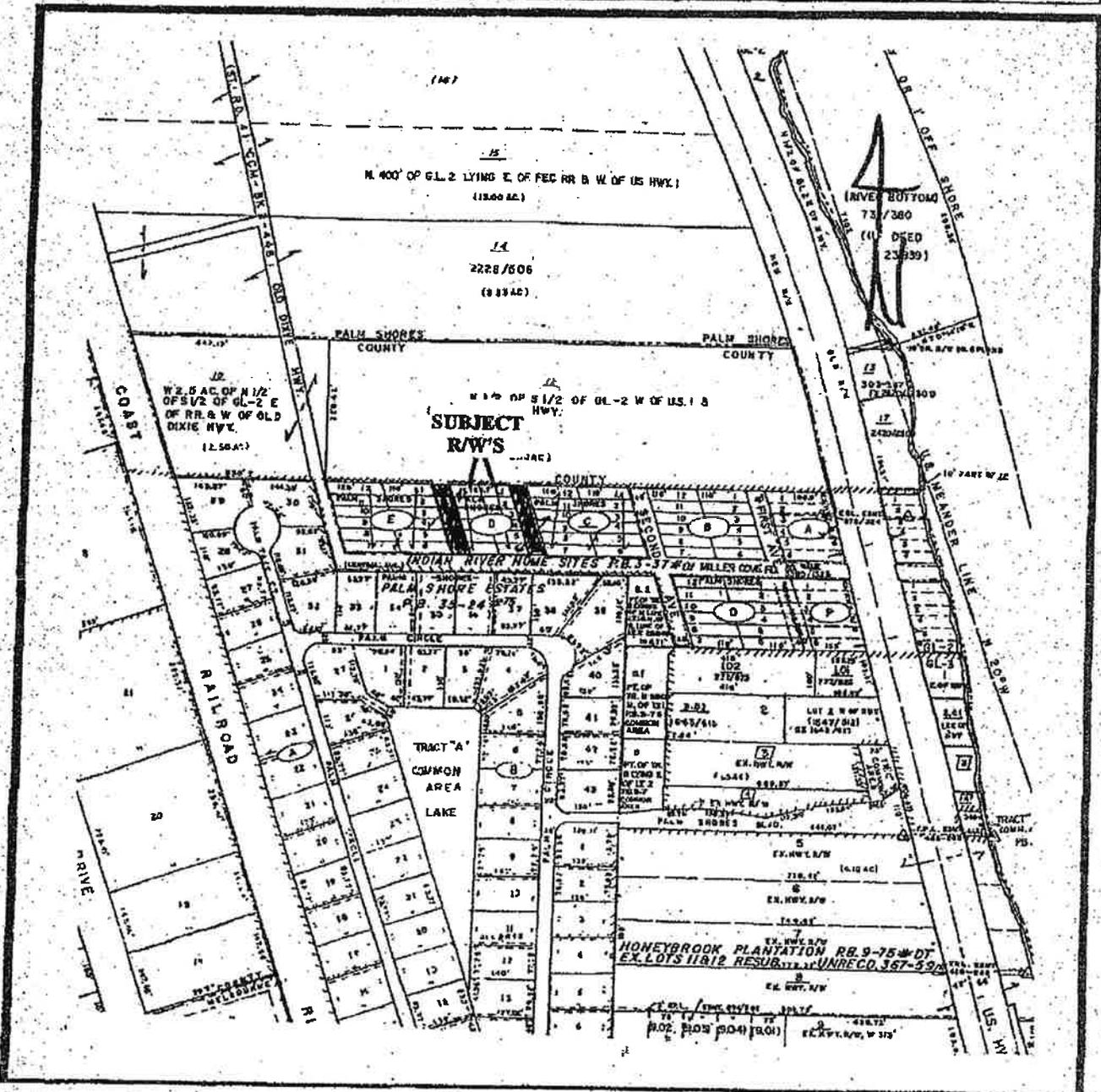
STREET NAME OF SUBDIVISION **INDIAN RIVER HOME SITES**



PETITIONER'S NAME **RALPH D. MILLER**

CFN:2001287857
OR Book/Page: 4494 / 1708

RETURN: Clerk to the Board #27



2 of 3

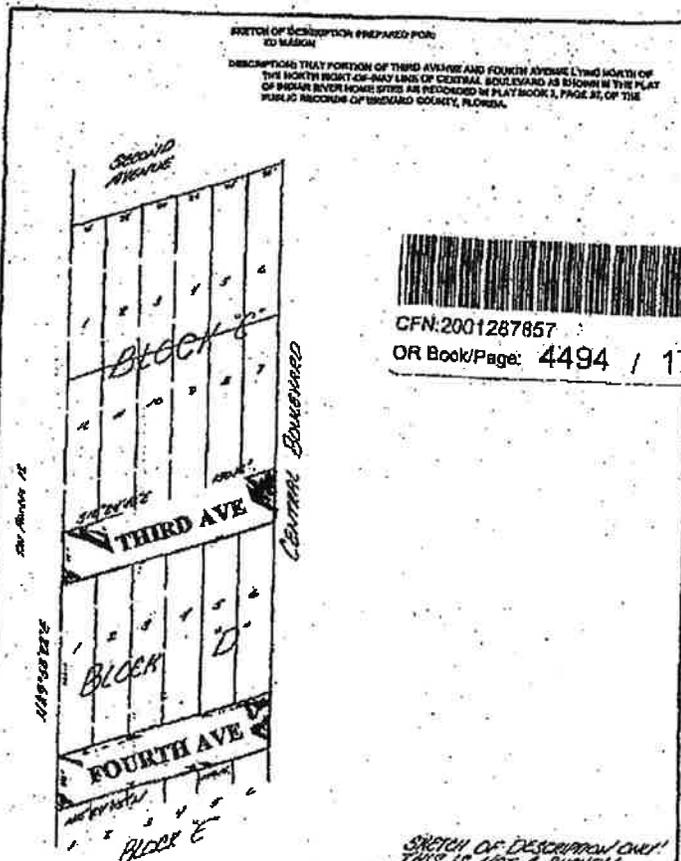
* SURVEY MAP *

SECTION: 30 TOWNSHIP: 26 South RANGE: 37 East DISTRICT: 4

STREET NAME or SUBDIVISION INDIAN RIVER HOME SITES

PETITIONER'S NAME RALPH D. MILLER

RETURN: Clerk to the Board #27




 CFN: 2001287857
 OR Book/Page: 4494 / 1709

*SKETCH OF DESCRIPTION ONLY!
THIS IS NOT A SURVEY!*

AAL LAND SURVEYING SERVICES, INC.

<p> <small> AAL Land Surveying Services, Inc. 110 W. Ruggles Blvd. Suite 203 West Melbourne, Florida 32908 (321) 748-4118 L.R. #6023 </small> </p>	<p> <small> 1. THIS SURVEY AND ALL OTHER SURVEYS PREPARED BY AAL LAND SURVEYING SERVICES, INC. ARE SUBJECT TO THE FLORIDA PROFESSIONAL LAND SURVEYING ACT, CHAPTER 473, F.S. AND THE FLORIDA PROFESSIONAL LAND SURVEYING BOARD, CHAPTER 473.001, F.S. </small> </p> <p> <small> 2. THE SURVEY IS FOR THE PURPOSE OF RECORDING THE SURVEY IN THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA. </small> </p> <p> <small> 3. THE SURVEY IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF AAL LAND SURVEYING SERVICES, INC. </small> </p> <p> <small> 4. THE SURVEY IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF AAL LAND SURVEYING SERVICES, INC. </small> </p> <p> <small> 5. THE SURVEY IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF AAL LAND SURVEYING SERVICES, INC. </small> </p> <p> <small> 6. THE SURVEY IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF AAL LAND SURVEYING SERVICES, INC. </small> </p> <p> <small> 7. THE SURVEY IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF AAL LAND SURVEYING SERVICES, INC. </small> </p> <p> <small> 8. THE SURVEY IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF AAL LAND SURVEYING SERVICES, INC. </small> </p>	<p> <small> 110 W. RUGGLES BLVD. SUITE 203 WEST MELBOURNE, FLORIDA 32908 (321) 748-4118 </small> </p>
---	--	--



Published Daily

CO. VACATING OF 3000 AVE & 4TH AVE
N. OF CENTRAL BLVD.



CFN:2001287857 12-28-2001 08:01 am
OR Book/Page: 4494 / 1706

Scott Ellis

Clerk Of Courts, Brevard County

#Pgs: 5 ✓ #Names: 2
Trust: 3.00 Rec: 21.00 Serv: 0.00
Excise: 0.00
Mfg: 0.00 Int Tax: 0.00

STATE OF FLORIDA
COUNTY OF BREVARD

Before the undersigned authority personally appeared MAUREEN FARR who on
oath says that she is LEGAL ADVERTISING CLERK
of the FLORIDA TODAY, a newspaper published in Brevard County, Florida; that
the attached copy of advertising being a LEGAL NOTICE

(AD#769500-S103.25) the matter of

BREVARD COUNTY PUBLIC WORKS

in the _____ Court

RE: RALPH D. MILLER

was published in the FLORIDA TODAY NEWSPAPER
in the issues of NOVEMBER 15, 2001

Affiant further says that the said FLORIDA TODAY NEWSPAPER
is a newspaper in said Brevard County, Florida, and that the said newspaper has
heretofore been continuously published in said Brevard County, Florida, regularly as
stated above, and has been entered as periodicals matter at the post office in
MELBOURNE in said Brevard County, Florida, for a period of one year next preceding
the first publication of the attached copy of advertisement; and affiant further says that
she has neither paid nor promised any person, firm or corporation any discount, rebate,
commission or refund for the purpose of securing this advertisement for publication in
said newspaper.

Maureen Farr
(Signature of Affiant)

Sworn to and subscribed before this this 15TH DAY OF NOVEMBER, 2001

OFFICIAL NOTARY SEAL
JODI L. KILPATRICK
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. DD052028
MY COMMISSION EXPI. AUG. 21, 2005

Jodi L Kilpatrick
(Signature of Notary Public)

JODI L. KILPATRICK
(Name of Notary Typed, Printed or Stamped)

Personally Known _____ or Produced Identification _____

Type Identification Produced _____

ACW#769500-11/15/2001
LEGAL NOTICE
LEGAL NOTICE TO VACATE
RIGHTS-OF-WAY IN INDIAN
RIVER HOME SITES IN SEC-
TION: 28, TOWNSHIP: 24
SOUTH RANGE 17 EAST
NOTICE IS HEREBY GIVEN
that pursuant to Chapter
356.07, Florida Statutes, and
Chapter 185, Florida Statutes,
Section 185.04, Florida Statutes,
the Board of County Commis-
sioners of Brevard County, Flor-
ida, is ordered vacating the
following described property,
to wit:
That portion of Third Ave-
nue and Fourth Avenue ly-
ing north of the centerline
of-way line of Central Bou-
levard, as shown in the
PLAT OF INDIAN RIVER
HOME SITES as recorded
in Platbook 31896, 27, of
the Public Records of
Brevard County, Florida,
a legal description prepared
by AAL Land Surveying
Services, Inc.
The Board of County Com-
missioners will hold a public
hearing to determine the ad-
visability of such vacating of
the above described rights-
of-way at 2:00 p.m. on De-
cember 4, 2001, at the Brevard
County Government Center
Board Room, Bldg. 2725
4899 1/2th Jamieson Way,
Viera, Florida 32980. The
and place and the order of
against the same may be
heard before final action is
taken.
Pursuant to Section 286.015,
Florida Statutes, if a person
desires to appeal any deci-
sion made by the Board,
Agency or Commission with
jurisdiction over the vacating
of the above described prop-
erty, the person must file
a petition for review with the
Agency or Commission within
the time specified in the
order of the Agency or Com-
mission.
Persons seeking to preserve a
verbal transcript of the re-
cord must make those ar-
rangements at their own
expense.
The needs of hearing or visu-
ally impaired persons shall be
met if the department spon-
soring the meeting/hearing is
contacted at least 48 hours
prior to the public hearing/
hearing by any person wish-
ing assistance.

RETURN: Clerk to the Board #27



Published Daily



CFN:2001287857

OR Book/Page: 4494 / 1710

RETURN: Clerk to the Board #27

STATE OF FLORIDA
COUNTY OF BREVARD

Before the undersigned authority personally appeared MAUREEN FARR who on oath says that she is LEGAL ADVERTISING CLERK of the FLORIDA TODAY, a newspaper published in Brevard County, Florida; that the attached copy of advertising being a LEGAL NOTICE

(AD#780640-\$56.00) the matter of

BREVARD COUNTY CLERK TO THE BOARD

in the _____ Court

RE: RALPH D. MILLER

was published in the FLORIDA TODAY NEWSPAPER

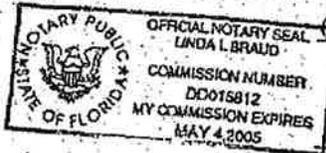
in the issues of DECEMBER 13, 2001

Affiant further says that the said FLORIDA TODAY NEWSPAPER

is a newspaper in said Brevard County, Florida, and that the said newspaper has heretofore been continuously published in said Brevard County, Florida, regularly as stated above, and has been entered as periodicals matter at the post office in MELBOURNE in said Brevard County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in said newspaper.

Maureen Farr
(Signature of Affiant)

Sworn to and subscribed before this this 13TH DAY OF DECEMBER, 2001



Linda L. Braud
(Signature of Notary Public)

LINDA L. BRAUD
(Name of Notary Typed, Printed or Stamped)

Personally Known _____ or Produced Identification _____

Type Identification Produced _____

ADM780640-12/13/2001
LEGAL NOTICE
RESOLUTION VACATING
RIGHTS-OF-WAY IN TRACT OF
INDIAN RIVER HOME SITES
IN SECTION 20
NOTICE IS HEREBY GIVEN
that on the 4th day of Decem-
ber, 2001, the Board of County
Commissioners of Brevard
County, Florida, by Resolution
vacating the following de-
scribed rights-of-way as
pertained to RALPH D. MILLER
MILLER to wit: "The portion of
Third Avenue and Fourth Avenue
lying north of the north right-of-
way line of Central Boulevard as
shown in the PLAT OF INDIAN RIVER
HOME SITES, as proposed in
Plat Book 3, Page 27 of the
Public Records of Brevard
County, Florida, Legal descrip-
tion prepared by AAL Land
Survey Services, Inc."
The Board further announced
and disclaimed any right of the
County in and to said rights-of-
way.
All persons take notice and gov-
ern yourselves accordingly.
BY ORDER OF THE BOARD
OF COUNTY COMMISSIONERS
OF BREVARD COUNTY,
FLORIDA
SCOTT ELLIS, CLERK
By: Bernadette Tabert, Deputy
Clerk

RECEIVED
DEC 19 2001

Board of County Commissioners

*****ADDRESS & INFORMATION REQUEST FORM*****

(REQUEST SECTION)

(To be completed by Requestor)

DATE: _____

REQUESTOR: _____

COMPANY: _____

ADDRESS: _____

PHONE/FAX: _____

EMAIL: _____

COMMENTS: JOB # _____

IF REQUESTING ADDRESS (fill out information below)

IF REQUESTING INFO. (provide address): _____

TAX ACCOUNT # _____ (Indicated on property tax bill)

LEGAL DESCRIPTION: Township _____ Range _____ Section _____
Subdivision Code _____ Block/Parcel _____ Lot _____

Note: A recorded deed may be necessary to obtain an address.

PLAT BOOK _____ PAGE _____ SUBDIVISION _____

PURPOSE: AT&T SFR IRRIG.PUMP ELECT SOIL TEST SEPTIC
LIFT STATION UNPAVED ROAD OTHER _____
(agreement required)

NOTE: A certified metes & bounds survey is required for all parcel split-outs.

SURVEY PROVIDED: YES NO PLOT PLAN PROVIDED: YES NO
(required for parcel split-outs) (required for corner lots)

NOTE: RECEIVING AN ADDRESS DOES NOT GUARANTEE A PROPERTY IS BUILDABLE OR THAT ANY PERMITS CAN BE ISSUED!

SUBMIT TO

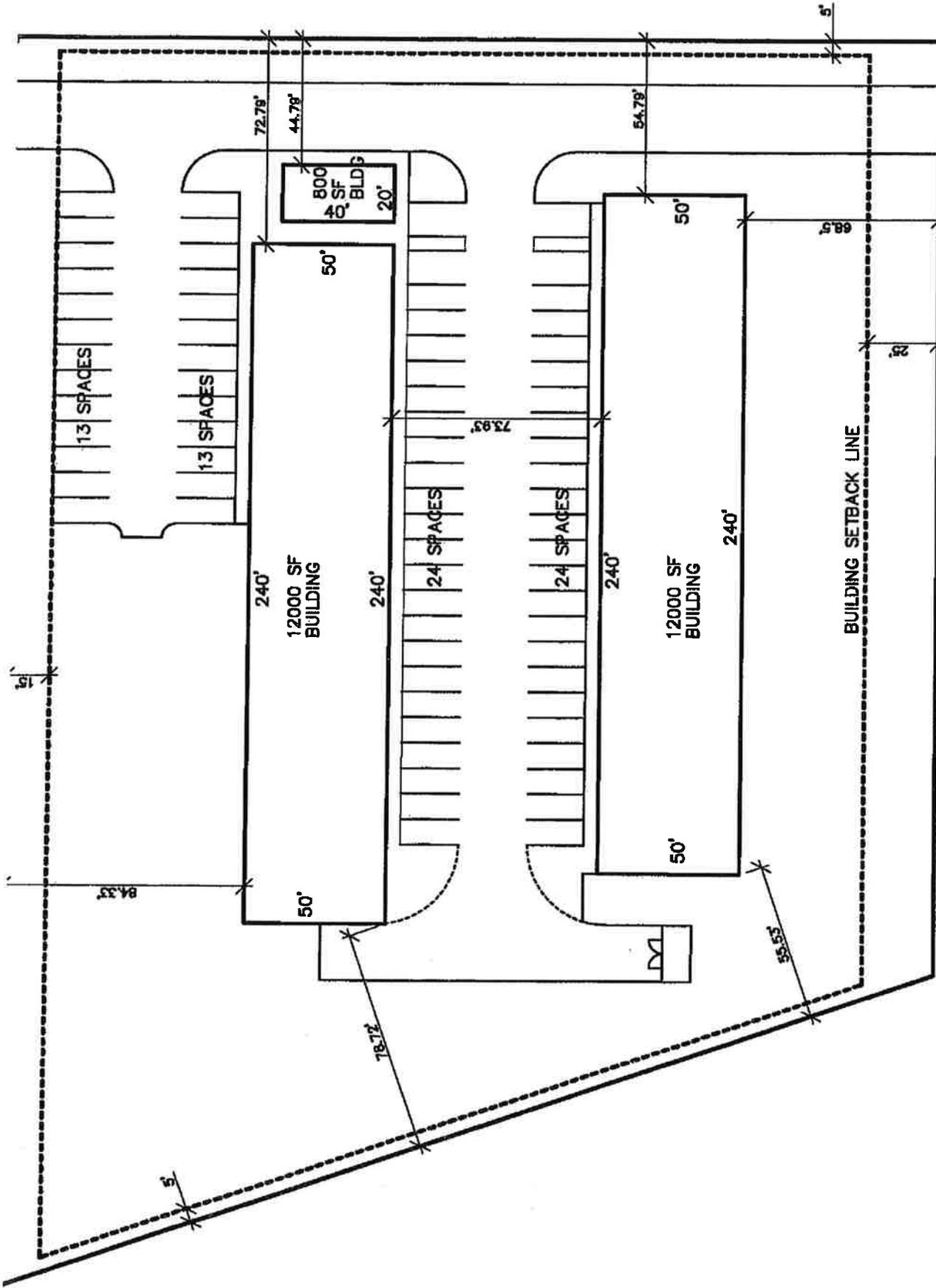
address.assign@brevardfl.gov OR Fax: (321) 690-6842

E9-1-1 Administration/Address Assignment
2725 Judge Fran Jamieson Way, Bldg. A120
Viera, FL 32940

If you have any questions, our office may be reached at (321) 690-6846.

Address Assignment Response Section (Page 2) will be emailed or faxed once processed.

Page 1 of 2



LTM of Florida Holdings LLC.
 CONCEPT PLAN, SITE LAYOUT
 PARCEL ID 26-37-30-00-10
 BREVARD COUNTY, FL

M.E.C.
 CONTRACTORS - ENGINEERS
 M.A.E. CONSTRUCTION, INC.
 7807 Coral Drive, West Melbourne, FL 32904
 (321) 734-6661 Fax (321) 581-1892 Reg'd Eng'r 7289 Gen. Contr.# 2372
 www.mecconline.com/cep CDC 015526

01/06/17

Law Offices of
CANTWELL & GOLDMAN, P.A.

www.cfglawoffice.com

Bradly Roger Bettin, Sr.
William H. Cantwell, II^{1,2}
Mitchell S. Goldman
J. Wesley Howze
Matthew J. Monaghan
Nina V. Rawal
Kimberly Bonder Rezanka
Michael Sjuggerud³
Jay R. Thakkar

¹ Board Certified Construction Lawyer and
Board Certified Business Litigation Lawyer

² Also Member of West Virginia Bar

³ Also Member of District of Columbia
Bar, New York Bar, and Washington Bar

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

474 N. Harbor City Blvd., Suite # 1
Melbourne, FL 32935
(by appointment only)

May 22, 2017

Via email: Eden.Bentley@brevardfl.gov

Ms. Eden Bentley
Assistant County Attorney
Brevard County Attorney's Office
2725 Judge Fran Jamison Way, Bldg. C
Viera, FL 32940

RE: Address and Access – Miller Cove Road, Palm Shores

Dear Eden:

We represent LTM of Florida Holdings, LLC ("LTM") regarding the land development permits and related issues for the Property identified as Parcel Id. 26-37-30-00-10, located in Brevard County but adjacent to lands in the Town of Palm Shores. ***The Property Appraiser's information and map are enclosed.***

On April 28, 2017, Karl Bohne, the Town of Palm Shores' Attorney, sent you an email requesting the County Attorney's opinion on several matters related to the 1923 Indian River Homes Sites Plat, including whether the County had accepted the dedication of the roads in the Plat or whether the County believed the roads to be private roads. On May 1, 2017, my client and I met with you, John Denninghoff, Tad Caulkins, Cindy Thurman and several other County staff members to discuss my client's access to his Property by Miller Cove Road and Old Dixie Highway. You – understandably – believed the meeting was about the denial of an address assignment and had just received Mr. Bohne's lengthy email and attachments.

To date, we have heard nothing from the County in response to Mr. Bohne's email or our meeting of May 1st. LTM asserts that Miller Cove Road has been dedicated by the 1923 Plat, that the County accepted the dedication, and that LTM is entitled to access via Miller Cove Road and Old Dixie Highway. With this letter, we have provided additional information supporting these assertions.

As to the dedication, Mr. Bohne provided sufficient information to show the intent of the owner of the land that recorded the Plat, W. E. G. Harris, to dedicate the Plat to the County. As further evidence, we have all the deeds from Mr. Harris to subsequent owners that reference the Plat.

Mr. Harris left all the remaining property to his wife, Hettie Harris. We have copies of the probate of Mrs. Harris; the streets of Indian River Homes Sites Plat were not included in the Probate Estate.

I. Acceptance of the dedication of the 1923 Plat by Brevard County

Regarding the County's acceptance of the dedication, we provide the following facts which support acceptance. First, several properties along Miller Cove Road have been provided addresses on Miller Cove Road, including: 2360 Miller Cove Road (existing residence); 2340 Miller Cove Road (former plant nursery); and 2308 Miller Cove Road (cell tower and related structure). Additionally, there is a single-family residence on the south side of Miller Cove Road – accessible only by Miller Cove Road – with no assigned address, Parcel Id. 26-37-30-01-O-7.

Second, there are FPL power poles and lines, as well as AT&T fiber optic cable along and traversing Miller Cove Road. When FPL and AT&T were contacted about permits or easements, neither has permits or easements for their utilities. Both were told by the County that they could install the utilities on the County's right-of-way without permits. The Town of Palm Shores has no permits on file for the poles or cable, either. Furthermore, Waste Pro collects trash by way of Miller Cove Road, as evidenced by several green trash containers along Miller Cove Road. Right-of-ways for public road use include use for public utilities such as electric power poles. *See Nerbonne, N.V. v. Florida Power Corp.*, 692 So. 2d 929 (Fla. 5th DCA 1997).

Third, there is fifty feet (50') of paved road from U.S. 1 to the west, on what is known as Miller Cove Road. We are in the process of researching the as-builts and permits from 2003-2004 to determine who exactly paved this area and who has responsibility for its maintenance. FDOT does own a portion of this area, by virtue of a deed to it in 2001. *A copy of the Deed is enclosed.*

Fourth, the County vacated Third Avenue and Fourth Avenue of the 1923 Plat, by Resolution 2001-414, filed in ORB 4494, Page 1707, Public Records of Brevard County. According to the Resolution, this was done pursuant to County Code Section 86-36, which states that the Board of County Commissioners "is hereby authorized and empowered to close, vacate and abandon any county road, right of way, alley way, place of travel or easement (of any type) or any portion thereof within its jurisdiction." While you indicated that the vacating was akin to a quit claim deed, we dispute that characterization as it contradicts the plain and clear language of the County Code. The County can only vacate that over which it has jurisdiction. *A copy of the Resolution is enclosed.*

Acceptance of dedication may be implied from acts showing an intention to accept, including, among other things, use by the public or maintenance and improvement by proper authorities of part of the land dedicated. *Bonifay v. Dickson*, 459 So. 2d 1089, 1094 (Fla. 1st DCA 1089). Based upon the foregoing reasons and case law, we believe the acceptance is clear, unequivocal and with satisfactory proof of acceptance.

II. County-owned Miller Cove Road

Once ownership of Miller Cove Road is agreed upon, LTM has several challenges, as were discussed in far too much depth at our meeting of May 1, 2017. However, LTM requests consideration of several items.

First, an address must be assigned to LTM's Property, off of Old Dixie Highway. The Address Request Form (*copy enclosed*) does not appear to provide for any discretion and is a ministerial function. Moreover, the Form includes a bold disclaimer that "receiving an address does not guarantee a property is buildable or that any permits can be issued". LTM will be submitting this Form to address assignment today.

Second, LTM will be requesting waivers to the requirements of a 50' ROW, a full size paved roadway and sidewalks. As analyzed by Mr. Denninghoff, Miller Cove Road has insufficient width for all County Code requirements. There are many examples in the County of waivers of these requirements, including Sun Pointe Place, Morningside Drive and Furman Road. We understand from County staff there are many more examples.

Third, if the County is unwilling to work with LTM on these waivers, LTM will be requesting the County to pave the road under a proportionate share agreement per Sec. 163.3180, Fla. Stat. or a public-private partnership agreement under Sec. 255.065, Fla. Stat. LTM has been prepared to pave the roadway at its sole cost, but anticipated that the County would be enthusiastic about the improvement; enthusiasm appeared lacking at the May 1, 2017 meeting.

Fourth, Old Dixie Highway will also need to be improved as Miller Cove Road terminates into Old Dixie. Please confirm that the County agrees that the portion of Old Dixie Highway, from Miller Cove Road/Central Boulevard, is a county-owned road.

Fifth, LTM will need to apply for a permit, or obtain a waiver from a permit, to clear both Miller Cove Road and Old Dixie Highway. There are palm trees and other trees in the road right-of-way of both roads. A clearing permit will allow LTM to remove the remaining trees from the right-of-ways of Miller Cove Road and Old Dixie Highway.

III. Moving Forward

LTM needs to move forward on its project. It has a pending comprehensive plan amendment and rezoning scheduled before P & Z in July. Despite the contentions of Palm Shores' Mayor, LTM's neighbors are not opposed to the roadway or the use of LTM's Property as proposed. *The rendering of the proposed use is enclosed.* The Mayor's letter to the County opposing the rezoning will be addressed in more detail, but this is not the proper place to do so.

On behalf of LTM, we request a status update on these matters. Thank you for your assistance. We look forward to hearing from you in the near future.

Sincerely,



Kimberly Bonder Rezanka

KBR/bms
enclosures

cc: John Denninghoff
Commissioner Curt Smith
Cindy Thurman
Karl Bohne, Esq.



Brevard County Property Appraiser

Titusville • Merritt Island • Viera • Melbourne • Palm Bay

Phone: (321) 264-6700

<https://www.bcpao.us>

PROPERTY DETAILS

Account 2609832
 Owners Ltm Of Florida Holding LLC
 Mailing Address 4113 Quando Dr Belle Isle FL 32812
 Site Address Brevard County Fl
 Parcel ID 26-37-30-00-10
 Property Use 8060 - State Owned Land - Vacant
 Exemptions EXSF - State Owned
 Taxing District 4200 - Unincorp District 4
 Total Acres 2.42
 Subdivision N/A
 Site Code 0001 - No Other Code Appl.
 Plat Book/Page N/A
 Land Description W 2.5 Ac Of N 1/2 Of S 1/2 Of Lot 2 E Of Rr & W Of St Rd

VALUE SUMMARY

Category	2016	2015	2014
Total Market Value	\$26,620	\$26,620	\$26,620
Agricultural Market Value	\$0	\$0	\$0
Assessed Value Non-School	\$26,620	\$26,620	\$26,620
Assessed Value School	\$26,620	\$26,620	\$26,620
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$26,620	\$26,620	\$26,620
Taxable Value Non-School	\$0	\$0	\$0
Taxable Value School	\$0	\$0	\$0

SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
02/10/2017	\$69,700	QC	Improved	7824/2863
06/27/2001	--	WD	Vacant	4375/0562
01/29/2001	--	QC	Vacant	4285/4017
12/01/1988	\$50,000	WD	--	2971/2409
12/01/1986	--	QC	--	2752/2856
04/01/1980	\$17,400	--	--	2231/0644

BUILDINGS

No Data Found

Property Search

Brevard County Property Appraiser
Dana Blickey, CFA

Map Subject Property [Open Map in New Window](#)

BCPAO

Picto

Google

Bing

Search by Account Number (Ex. 1234567 - More search options available soon.)

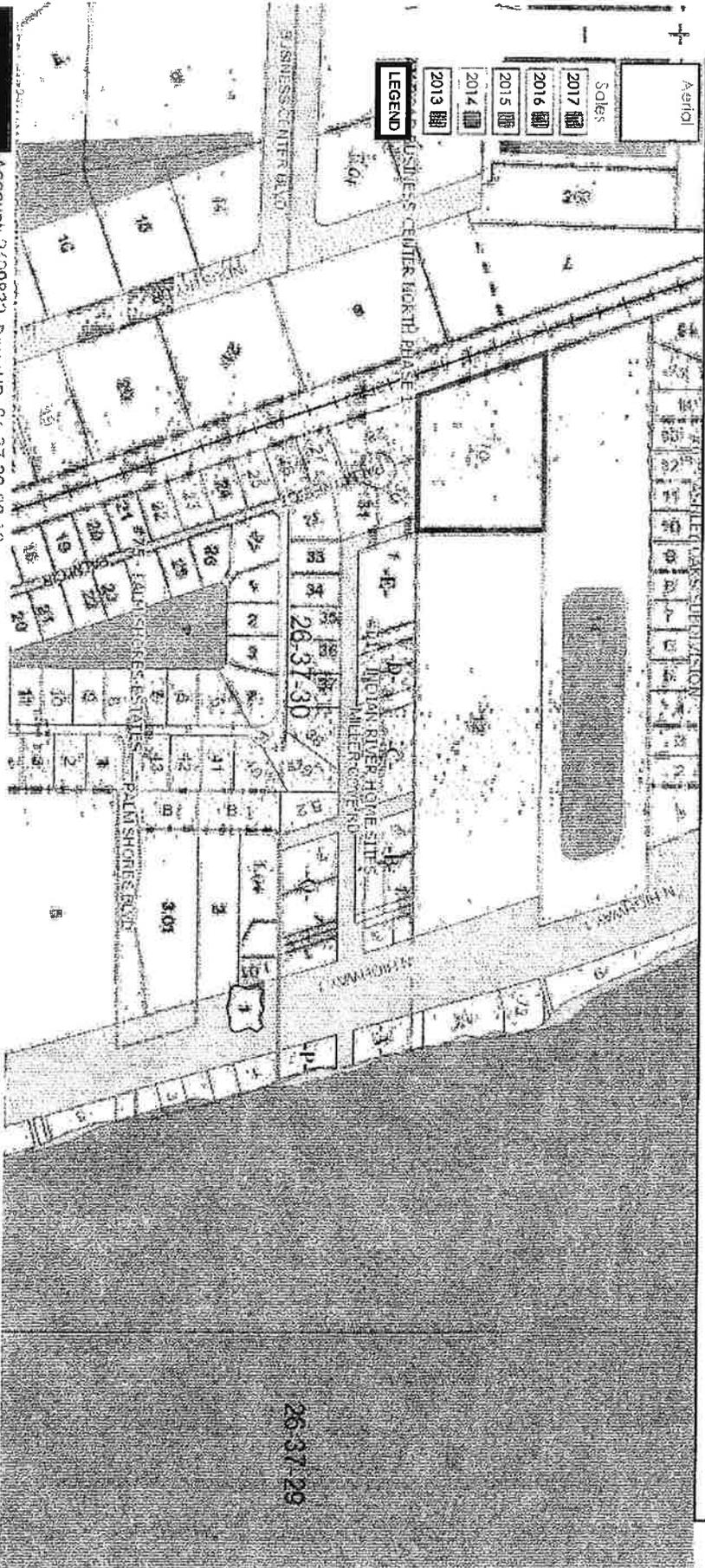
Go!

Aerial

Sales

- 2017
- 2016
- 2015
- 2014
- 2013

LEGEND



Account: 2609832 ParcelID: 26-37-30-00-10
 Sde: 2/10/2017 \$69,700 - Improved
 BCPAO Market Value: \$26,620
 Owners: Lim Of Florida Holding LLC
 Address: Brevard County Fl

Details | Zoom | Clear | Hide

Notice

[INSTRUCTIONS \(Docs/misc/Instructions_MapSearch.pdf#20170405\)](#)

01-GWD.09-02/99
August 14, 2000
This instrument prepared by
ALICIA CREW
under the direction of
GEORGE S. LOVETT, ATTORNEY
Department of Transportation
719 South Woodland Boulevard
DeLand, Florida 32720



CFN:2001224279 10-16-2001 11:14 am
OR Book/Page: 4441 / 0189

Scott Ellis
Clerk Of Courts, Brevard County
#Pgs: 3
Trust: 2.00
Dut: 0.00
Mfg: 0.00
#Names: 4
Rec: 13.00
Serv: 0.00
Excise: 0.00
Int Tax: 0.00

PARCEL NO. 137.1R
SECTION 70020-2549
P.P. NO. 237550 1
STATE ROAD 5
COUNTY: BREVARD

PLEASE RETURN TO
FLA. DEPT OF TRANSPORTATION
R/W RECORDS MGM MSI-S51
719 S. WOODLAND BOULEVARD
DELAND, FL 32720-6834
ATTN: M. BUSCHER

WARRANTY DEED

THIS WARRANTY DEED Made the 22 day of August, 2001, by
CORINNE K. RABENSTEINER, individually and as Trustee of the "Chiefet"
Revocable Trust, (ADDRESS PRINT/TYPE): 5240 N. HARBOR CITY BLVD,
PALM SHORES, FL 32940 grantor(s), to the STATE OF FLORIDA DEPARTMENT OF
TRANSPORTATION, grantee: (wherever used herein the terms "grantor" and
"grantee" include all the parties to this instrument and the heirs,
legal representatives and assigns of individuals and the successors, and
assigns of organizations).

WITNESSETH: That the grantor, for and in consideration of the sum
of \$1.00 and other valuable considerations, receipt and sufficiency
being hereby acknowledged, hereby grants, bargains, sells, aliens,
remises, releases, conveys and confirms unto the grantee, all that
certain land situate in Brevard County, Florida, viz:

PARCEL NO. 137

SECTION NO. 70020-2549

F.P. NO. 237550 1

THAT PART OF:

"Lots Three (3), Four (4), Five (5) and Six (6), Block A, except Highway
Right-of-Way, INDIAN RIVER HOME SITES, according to the plat thereof, as
recorded in Plat Book 3, Page 37, Public Records of Brevard County,
Florida."

(The above described parcel of land being those lands described and
recorded in Official Records Book 4088, Page 3541, Public Records of
Brevard County, Florida.)

DESCRIBED AS FOLLOWS:

From an old 4" X 4" coquina monument at the Southwest corner of Lot 4 of
the plat of HONEYBROOK PLANTATION, as recorded in Plat Book 9, Page 75,
Public Records of Brevard County, Florida, run North 89 degrees 39
minutes 08 seconds East 195.365 meters (640.96 feet) along the North
boundary of Lot 5 of said HONEYBROOK PLANTATION to a point on the
existing West right of way-line of State Road 5, said existing West
right of way line being parallel with and 18.898 meters (62.00 feet)
West of, when measured at right angles to, the centerline of survey for
said State Road 5 as shown on the Florida Department Transportation
Right of Way Map, Section 70020-2549; thence North 15 degrees 31 minutes
10 seconds West 184.303 meters (604.67 feet) along said existing West
right of way line to a point on the South boundary of that certain
parcel of land as described and recorded in Official Records Book 1573,
Page 355, Public Records of Brevard County, Florida for the POINT OF
BEGINNING; thence North 89 degrees 57 minutes 03 seconds West 38.541
meters (126.45 feet) along said South boundary to the Southwest corner
of Lot 6, Block "A" of INDIAN RIVER HOMESITES, as recorded in Plat Book

PARCEL NO. 137.1R
SECTION 70020-2549
F.P. NO. 237550 1
PAGE 2

3, Page 37, Public Records of Brevard County, Florida; thence North 18 degrees 54 minutes 22 seconds West 7.652 meters (25.10 feet) to the Northwest corner of said Lot 6; thence South 89 degrees 57 minutes 08 seconds East 18.769 meters (61.58 feet) along the North boundary of said Lot 6 to the beginning of a nontangent curve concave Southwesterly and having a radius of 2022.500 meters (6635.49 feet); thence from a tangent bearing of North 17 degrees 12 minutes 24 seconds West, run Northwesterly 22.778 meters (74.73 feet) along the arc of said curve with a chord bearing of North 17 degrees 31 minutes 46 seconds West through a central angle of 00 degrees 38 minutes 43 seconds to a point on the North boundary of Lot 3 of the aforesaid Block "A"; thence South 89 degrees 57 minutes 21 seconds East 21.069 meters (69.12 feet) along said North boundary to the aforesaid existing West right of way line; thence South 15 degrees 31 minutes 10 seconds East 30.054 meters (98.60 feet) along said West right of way line to the Point of Beginning.

CONTAINING: 728.6 Square meters (7,843 Square feet), more or less.

This legal description prepared under the direction of:
Michael N. Crozier, PLS #3186
Jones, Wood & Gentry, Inc.
136 East Robinson Street
Orlando, Florida 32801



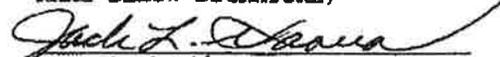
TOGETHER with all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

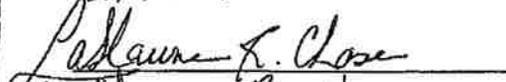
TO HAVE AND TO HOLD, the same in fee simple forever.

AND the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances.

IN WITNESS WHEREOF, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of: (Two witnesses required by Florida Law, PRINT/TYPE NAME BELOW SIGNATURE)


JACK L. KRAUS


LaShayne R. Chase


CORINNE K. RABENSTEINER,
Individually, and as Trustee
5246 N. Harbor City Blvd
P.O. Box 360334
Melbourne, FL 32936

PARCEL NO. 137.1R
SECTION 70020-2549
F.P. NO. 237550 1
PAGE 3

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 22ND
day of AUGUST, 2001, by CORINNE K. RABENSTEN
individually, and as Trustee, who is personally known to me or who has
produced R.D. RISE-111-19-821 as identification.


PRINT/TYPE NAME: ERROL REID
Notary Public in and for the
County and State last aforesaid.
My Commission Expires: 5-26-2003
Serial No., if any: CC840779



ACQUISITION OF THIS LAND IS
NECESSARY FOR R/W PURPOSES
UNDER THREAT OF CONDEMNATION
PURSUANT TO SEC. 337, 27 F.S.

L. D. O. T.

RESOLUTION 2001 - 414

VACATING RIGHTS-OF-WAY IN PLAT OF INDIAN RIVER HOME SITES IN
SECTION 30, TOWNSHIP 26 SOUTH, RANGE 37 EAST

WHEREAS, pursuant to Article II, Section 86-36, Brevard County Code, a petition has been filed by **RALPH D. MILLER** with the Board of County Commissioners to vacate rights-of-way in Brevard County, Florida, described as follows:

That portion of Third Avenue and Fourth Avenue lying north of the north right-of-way line of Central Boulevard as shown in the **PLAT OF INDIAN RIVER HOME SITES** as recorded in Plat Book 3, Page 37, of the Public Records of Brevard County, Florida. Legal description prepared by AAL Land Surveying Services, Inc.

WHEREAS, the vacating action will in no way affect any private easements which may also be present in the existing public easement or public right-of-way.

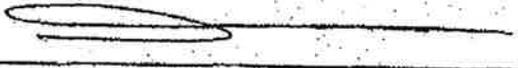
WHEREAS, notice of the public hearing before the Board of County Commissioners was published one time in the TODAY Newspaper, a newspaper of general circulation in Brevard County, Florida, prior to the public hearing; and

WHEREAS, the Board finds that vacating the rights-of-way will not be detrimental to Brevard County or the public.

THEREFORE BE IT RESOLVED, BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, that the rights-of-way are hereby vacated; and Brevard County renounces and disclaims any rights in and to said rights-of-way.

DONE, ORDERED AND ADOPTED, in regular session, this 4th day of December A.D., 2001.

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

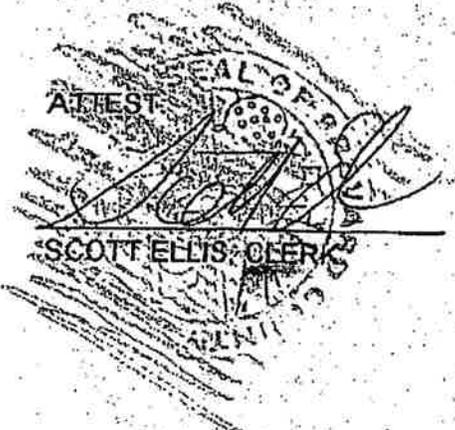

Truman Scarborough, Chairman

As approved by the Board on:
December 4, 2001



CFN:2001287857
OR Book/Page: 4494 / 1707

RETURN: Clerk to the Board #27



* ASSESSORS MAP *

SECTION: 30 TOWNSHIP: 26 South RANGE: 37 East DISTRICT: 4

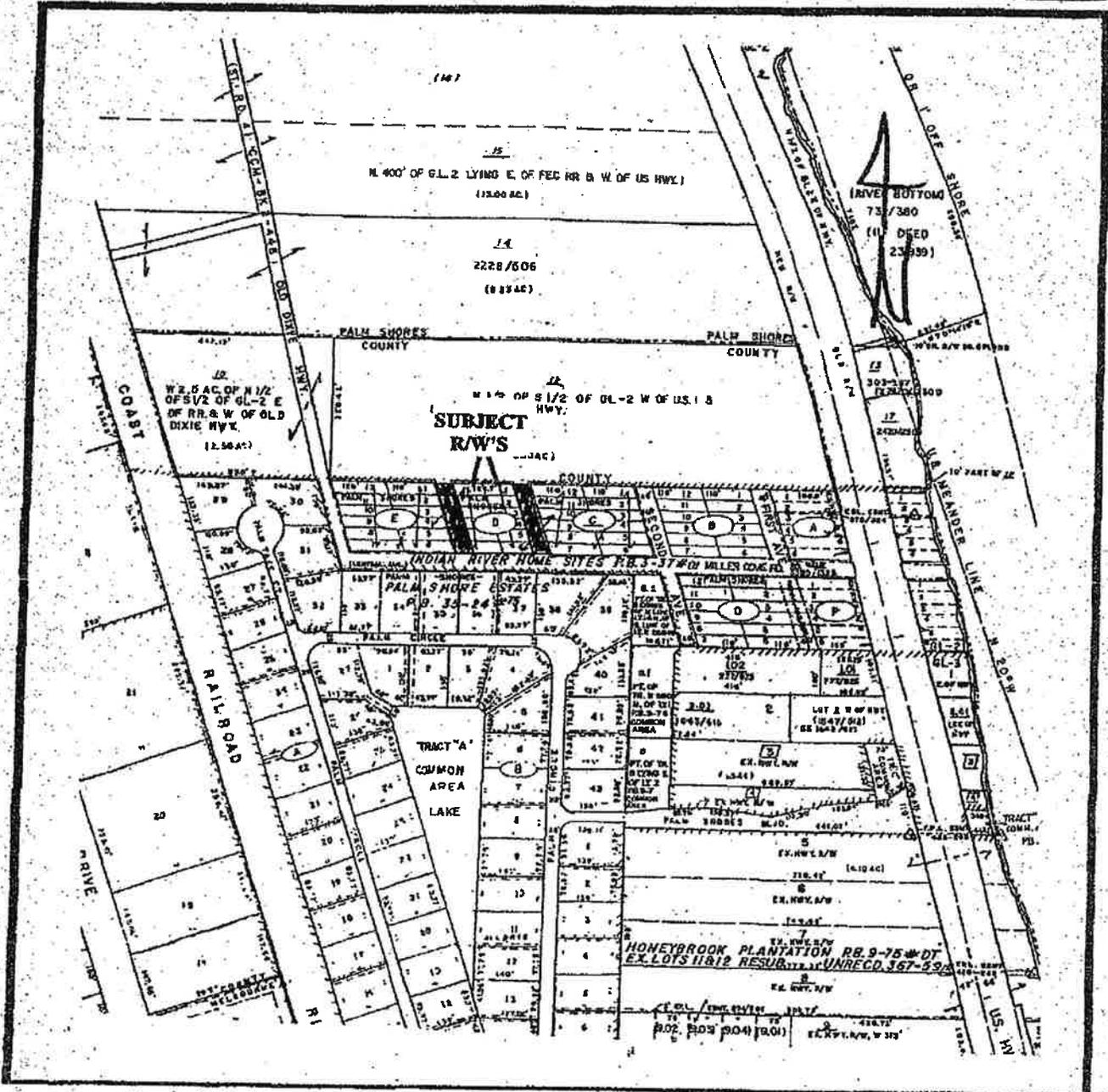
STREET NAME or
SUBDIVISION **INDIAN RIVER HOME SITES**



PETITIONER'S
NAME **RALPH D. MILLER**

CFN:2001287857
OR. Book/Page: 4494 / 1708

RETURN: Clerk to the Board #27



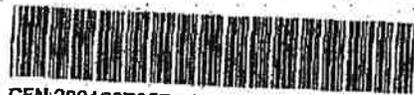
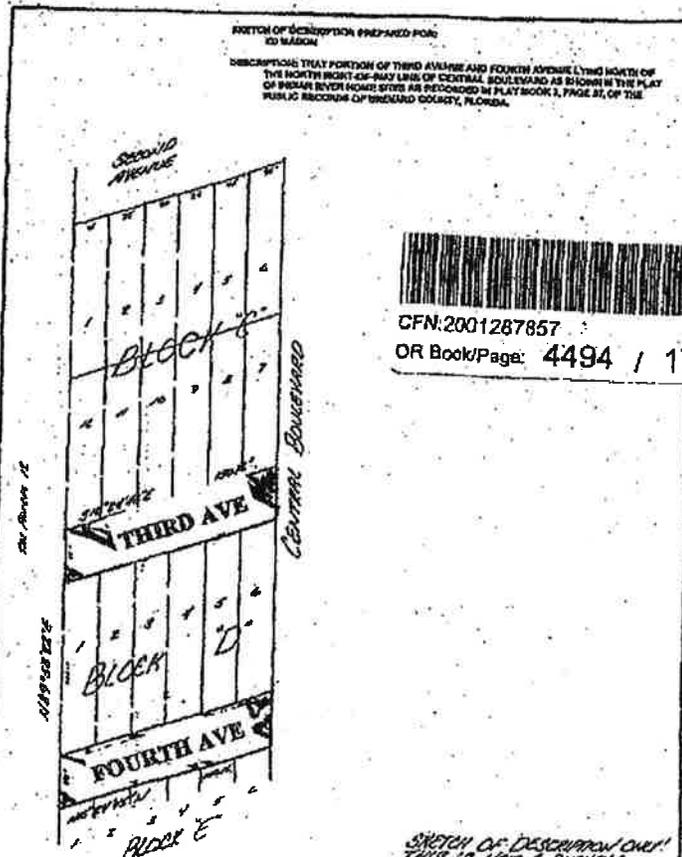
* SURVEY MAP *

SECTION: 30 TOWNSHIP: 26 South RANGE: 37 East DISTRICT: 4

STREET NAME OF SUBDIVISION INDIAN RIVER HOME SITES

PETITIONER'S NAME RALPH D. MILLER

RETURN: Clerk to the Board #27



CFN:2001287857
OR Book/Page: 4494 / 1709

*SKETCH OF DESCRIPTION ONLY!
THIS IS NOT A SURVEY!*

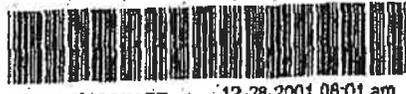
AAL LAND SURVEYING SERVICES, INC.

<p>OFFICE: 322 PHONE: 6774-8 FAX: 6774-8 ADDRESS: 1115 W. MILBOURN, WEST MILBOURN, FLORIDA 32909 EQUITY: 1115 W. MILBOURN, WEST MILBOURN, FLORIDA 32909 EQUITY: 1115 W. MILBOURN, WEST MILBOURN, FLORIDA 32909</p>	<p>1. THIS SURVEY AND ALL OTHER INSTRUMENTS OF SURVEY WILL APPEAR WITH THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA AS SET FORTH IN THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA IN PLAT BOOK 1, PAGE 27, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA IN PLAT BOOK 1, PAGE 27, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.</p> <p>2. THE SURVEY IS FOR THE PURPOSE OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA IN PLAT BOOK 1, PAGE 27, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.</p> <p>3. THE SURVEY IS FOR THE PURPOSE OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA IN PLAT BOOK 1, PAGE 27, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.</p> <p>4. THE SURVEY IS FOR THE PURPOSE OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA IN PLAT BOOK 1, PAGE 27, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.</p> <p>5. THE SURVEY IS FOR THE PURPOSE OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA IN PLAT BOOK 1, PAGE 27, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.</p> <p>6. THE SURVEY IS FOR THE PURPOSE OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA IN PLAT BOOK 1, PAGE 27, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.</p> <p>7. THE SURVEY IS FOR THE PURPOSE OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA IN PLAT BOOK 1, PAGE 27, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.</p> <p>8. THE SURVEY IS FOR THE PURPOSE OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA IN PLAT BOOK 1, PAGE 27, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.</p> <p>9. THE SURVEY IS FOR THE PURPOSE OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA IN PLAT BOOK 1, PAGE 27, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.</p> <p>10. THE SURVEY IS FOR THE PURPOSE OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA IN PLAT BOOK 1, PAGE 27, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.</p>	<p>1115 W. MILBOURN, WEST MILBOURN, FLORIDA 32909 EQUITY: 1115 W. MILBOURN, WEST MILBOURN, FLORIDA 32909 EQUITY: 1115 W. MILBOURN, WEST MILBOURN, FLORIDA 32909</p>
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Published Daily

CO. VACATING OF 3RD AVE & 4TH AVE
N. OF CENTRAL BLVD.



CFN:2001287857 12-28-2001 08:01 am
OR Book/Page: 4494 / 1706

Scott Ellis

Clerk Of Courts, Brevard County

#Pgs: 5 ✓ #Names: 2
Trust: 3.00 Rec: 21.00 Serv: 0.00
Mtg: 0.00 Excise: 0.00
Int Tax: 0.00

STATE OF FLORIDA
COUNTY OF BREVARD

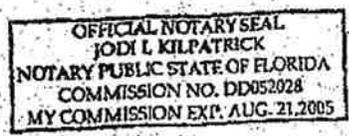
Before the undersigned authority personally appeared MAUREEN FARR who on oath says that she is LEGAL ADVERTISING CLERK of the FLORIDA TODAY, a newspaper published in Brevard County, Florida, that the attached copy of advertising being a LEGAL NOTICE (AD#769500-\$103.25) the matter of BREVARD COUNTY PUBLIC WORKS in the Court RE: RALPH D. MILLER

was published in the FLORIDA TODAY NEWSPAPER in the issues of NOVEMBER 15, 2001

Affiant further says that the said FLORIDA TODAY NEWSPAPER is a newspaper in said Brevard County, Florida, and that the said newspaper has heretofore been continuously published in said Brevard County, Florida, regularly as stated above, and has been entered as periodicals matter at the post office in MELBOURNE in said Brevard County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in said newspaper.

Maureen Farr
(Signature of Affiant)

Sworn to and subscribed before this this 15TH DAY OF NOVEMBER, 2001



Jodi L. Kilpatrick
(Signature of Notary Public)

JODI L. KILPATRICK
(Name of Notary Typed, Printed or Stamped)

Personally Known _____ or Produced Identification _____
Type Identification Produced _____

AD#769500-11/15/2001
LEGAL NOTICE
LEGAL NOTICE TO VACATE RIGHTS-OF-WAY IN INDIAN REVER HOME SITES IN SECTION 24, TOWNSHIP 24 SOUTH, RANGE 2 EAST NOTICE IS HEREBY GIVEN that pursuant to Chapter 336.99, Florida Statutes, and Chapter 224, Florida Statutes, Section 224.05, Brevard County Code, the Board of County Commissioners has authorized the Board of County Commissioners of Brevard County, Florida, to request vacating the following described property, to wit:
That portion of Third Avenue and Fourth Avenue lying north of the north-right-of-way line of Central Boulevard, as shown in the PLAT OF INDIAN REVER HOME SITES, recorded in Plat Book 2, Page 27, of the Public Records of Brevard County, Florida. A legal description prepared by AAL Land Surveying Services, Inc. is attached.
The Board of County Commissioners will hold a public hearing to determine the advisability of such vacating of the above-described rights-of-way at 2:00 p.m. on December 4, 2001, at the Brevard County Government Center Board Room, located at 223 Justice Court, Jacksonville, Florida. Persons wishing to present and discuss their objections or comments may be heard before final action is taken.
Pursuant to Section 224.05, Florida Statutes, if a person desires to appeal any decision made by the Board of County Commissioners with respect to the vacating of or the establishment of the above-described rights-of-way, and wish for alternative dispute resolution, the person may request a hearing before the Board of County Commissioners. Persons wishing to present a verbatim transcript of the record must make those arrangements at their own expense.
The needs of hearing or visually impaired persons shall be met if the department sponsoring the meeting/hearing is contacted at least 48 hours prior to the public hearing by any person wishing assistance.

RETURN: Clerk to the Board #27



Published Daily



CFN:2001287857

OR Book/Page: 4494 / 1710

RETURN: Clerk to the Board #27

STATE OF FLORIDA
COUNTY OF BREVARD

Before the undersigned authority personally appeared MAUREEN FARR who on oath says that she is LEGAL ADVERTISING CLERK of the FLORIDA TODAY, a newspaper published in Brevard County, Florida; that the attached copy of advertising being a LEGAL NOTICE

(AD#780640-\$56.00) the matter of

BREVARD COUNTY CLERK TO THE BOARD

in the _____ Court

RE: RALPH D. MILLER

was published in the FLORIDA TODAY NEWSPAPER

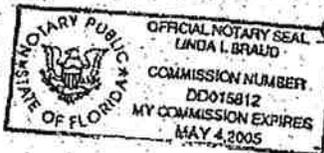
in the issues of DECEMBER 13, 2001

Affiant further says that the said FLORIDA TODAY NEWSPAPER

is a newspaper in said Brevard County, Florida, and that the said newspaper has heretofore been continuously published in said Brevard County, Florida, regularly as stated above, and has been entered as periodicals matter at the post office in MELBOURNE in said Brevard County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in said newspaper.

Maureen Farr
(Signature of Affiant)

Sworn to and subscribed before this this 13TH DAY OF DECEMBER, 2001



Linda L. Braud
(Signature of Notary Public)

LINDA L. BRAUD
(Name of Notary Typed, Printed or Stamped)

Personally Known _____ or Produced Identification _____

Type Identification Produced _____

AD#780640-12/13/2001
LEGAL NOTICE
RESOLUTION VACATING
RIGHTS-OF-WAY IN PLAT OF
INDIAN RIVER HOME SITES
IN SECTION 30
NOTICE IS HEREBY GIVEN
that on the 4th day of Decem-
ber, 2001, the Board of County
Commissioners of Brevard
County, Florida, adopted Reso-
lution vacating the following dis-
cription of Right-of-Way, Situated on
Beltline, as shown on the
WELLER, to wit:
That portion of Third Avenue
and Fourth Avenue lying north
of the north right-of-way line of
Central Boulevard as shown in
the PLAT OF INDIAN RIVER
HOME SITES, as recorded in
Public Book #3, Page 27 of the
Public Records of Brevard
County, Florida, Legal Descrip-
tion (Recorded) AAL Land
Survey and Service, Inc.
The Board further announced
and reclaimed any right of the
County in and to said rights-of-
way.
All persons take notice and gov-
ern yourselves accordingly.
BY ORDER OF THE BOARD
OF COUNTY COMMISSIONERS
OF BREVARD COUNTY,
FLORIDA:
SCOTT ELLIS, CLERK
By: Bernadette Talbot, Deputy
Clerk

RECEIVED
DEC 19 2001

Board of County Commissioners

*******ADDRESS & INFORMATION REQUEST FORM*******
(REQUEST SECTION)
(To be completed by Requestor)

DATE: _____

REQUESTOR: _____

COMPANY:
ADDRESS: _____

PHONE/FAX: _____
EMAIL: _____

COMMENTS: JOB # _____

IF REQUESTING ADDRESS (fill out information below)

IF REQUESTING INFO. (provide address): _____

TAX ACCOUNT # _____ (indicated on property tax bill)

LEGAL DESCRIPTION: Township _____ Range _____ Section _____
Subdivision Code _____ Block/Parcel _____ Lot _____

Note: A recorded deed may be necessary to obtain an address.

PLAT BOOK _____ PAGE _____ SUBDIVISION _____

PURPOSE: AT&T SFR IRRIG.PUMP ELECT SOIL TEST SEPTIC

LIFT STATION UNPAVED ROAD OTHER _____
(agreement required)

NOTE: A certified metes & bounds survey is required for all parcel split-outs.

SURVEY PROVIDED: YES NO PLOT PLAN PROVIDED: YES NO
(required for parcel split-outs) (required for corner lots)

NOTE: RECEIVING AN ADDRESS DOES NOT GUARANTEE A PROPERTY IS BUILDABLE OR THAT ANY PERMITS CAN BE ISSUED!

SUBMIT TO

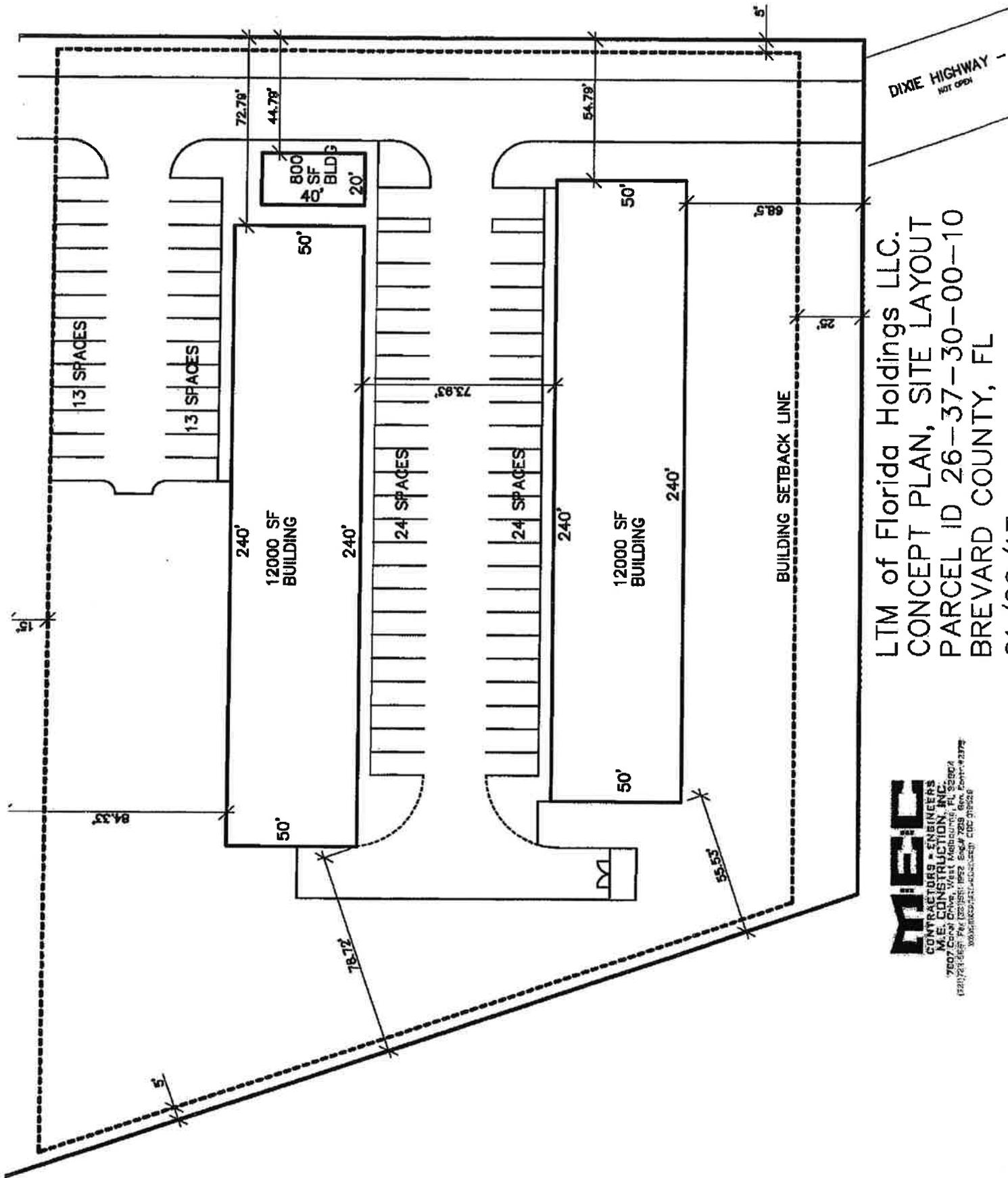
address.assign@brevardfl.gov OR Fax: (321) 690-6842

E9-1-1 Administration/Address Assignment
2725 Judge Fran Jamieson Way, Bldg. A120
Viera, FL 32940

If you have any questions, our office may be reached at (321) 690-6846.

Address Assignment Response Section (Page 2) will be emailed or faxed once processed.

Page 1 of 2



LTM of Florida Holdings LLC.
 CONCEPT PLAN, SITE LAYOUT
 PARCEL ID 26-37-30-00-10
 BREVARD COUNTY, FL

M.E.C.
 CONTRACTORS & ENGINEERS
 M.E. CONSTRUCTION, INC.
 7607 Coral Drive, West Melbourne, FL 32904
 (321) 231-5151 FAX (321) 951-1822 ENG# 7289 Gen. Contr.# 2379
 3005010001001-1400000000 CDC 078528

01/20/17



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

BOARD OF COUNTY COMMISSIONERS

To: John Denninghoff, Assistant County Manager

CC: Tad Calkins, Planning and Development Director
Andrew Holmes, Public Works Director

From: ~~Eden Bentley~~ Eden Bentley, Deputy County Attorney

Through: Scott Knox, County Attorney 

Subj.: LTM of Florida Holdings, LLC request to accept plat Item VI F (2)

Date: October 20, 2017

Question 1. Can the County accept the 1923 plat as requested?

Short Answer: Probably not due to jurisdictional issues involving the Town of Palm Shores.

Question 2. Is the area known as Miller Cove "road" owned and maintained by the County?

Short Answer: No. Case law indicates the actions listed by the applicant are not deemed to be acceptance of ownership and maintenance by the County.

Question 3. This question was not specifically presented by the agenda item, but is a logical question for the Board. Can the road areas alone be accepted by the County at this time?

Short Answer: There are numerous title issues in this area and at least one person has received a deed to a portion of the area referred to as Miller Cove Road. Questions regarding the exact location of improvements have also arisen which may create claims due to occupation as well as claims via deeds.

Recommendation: Request that the applicant provide a survey and appropriate title work for the area in question before proceeding further.



Brevard County Property Appraiser

Titusville • Merritt Island • Viera • Melbourne • Palm Bay

Phone: (321) 264-6700

<https://www.bcpao.us>

PROPERTY DETAILS

Account 2609832
 Owners Ltm Of Florida Holding LLC
 Mailing Address 4113 Quando Dr Belle Isle FL 32812
 Site Address Not Assigned
 Parcel ID 26-37-30-00-10
 Property Use 8060 - State Owned Land - Vacant
 Exemptions EXSF - State Owned
 Taxing District 4200 - Unincorp District 4
 Total Acres 2.42
 Subdivision N/A
 Site Code 0001 - No Other Code Appl.
 Plat Book/Page N/A
 Land Description W 2.5 Ac Of N 1/2 Of S 1/2 Of Lot 2 E Of Rr & W Of St Rd

VALUE SUMMARY

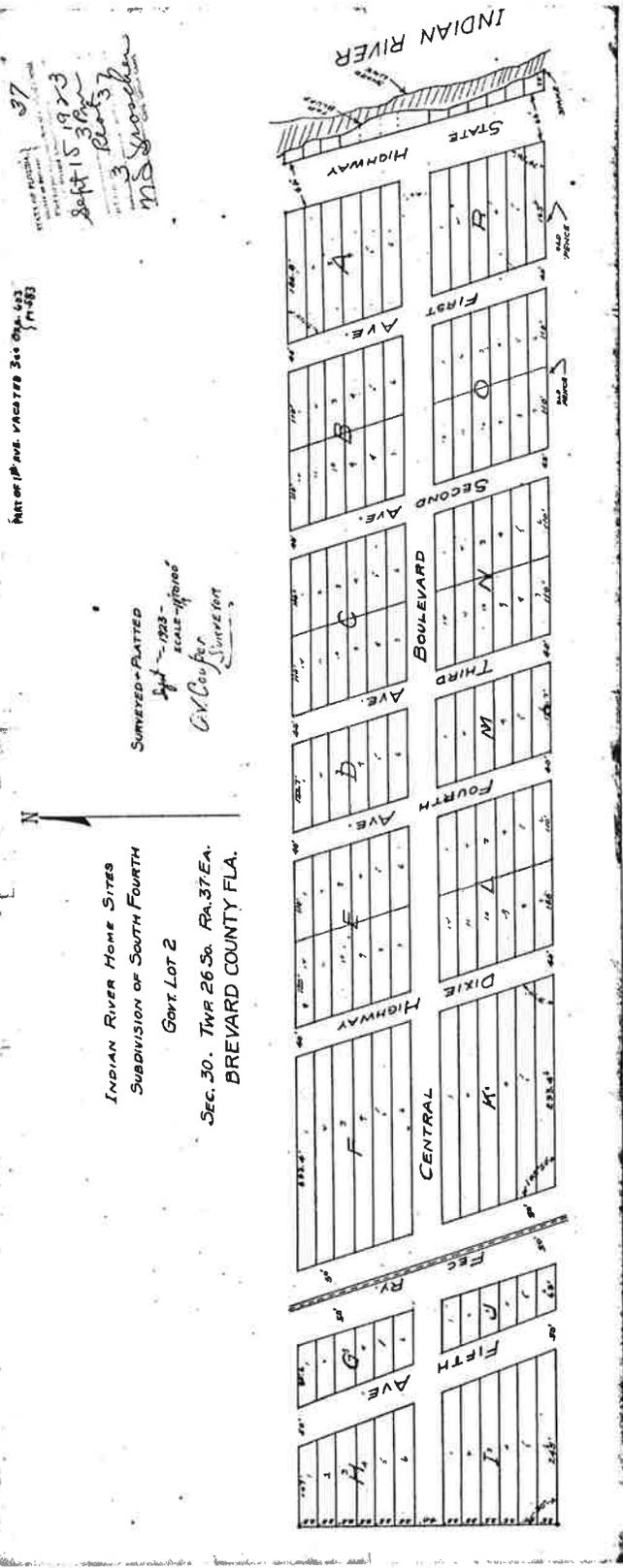
Category	2016	2015	2014
Total Market Value	\$26,620	\$26,620	\$26,620
Agricultural Market Value	\$0	\$0	\$0
Assessed Value Non-School	\$26,620	\$26,620	\$26,620
Assessed Value School	\$26,620	\$26,620	\$26,620
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$26,620	\$26,620	\$26,620
Taxable Value Non-School	\$0	\$0	\$0
Taxable Value School	\$0	\$0	\$0

SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
02/10/2017	\$69,700	QC	Improved	7824/2863
06/27/2001	--	WD	Vacant	4375/0562
01/29/2001	--	QC	Vacant	4285/4017
12/01/1988	\$50,000	WD	--	2971/2409
12/01/1986	--	QC	--	2752/2856
04/01/1980	\$17,400	--	--	2231/0644

BUILDINGS

No Data Found



37
 PART OF PLAT...
 15 19 23
 3
 M. S. G. S. S. S.

PART OF 1st AVE. VACATED 3-10-02
 (M-583)

INDIAN RIVER HOME SITES
 SUBDIVISION OF SOUTH FOURTH
 GOVT. LOT 2
 SEC. 30. TWP 26 So. RA. 37 Ea.
 BREVARD COUNTY FLA.

SURVEYED & PLATTED
 1923
 SCALE 1" = 100'
 G. W. COOPER
 SURVEYOR



Looking West on Miller Cove Road



Looking East on Miller Cove Road



Looking North on Old Dixie Highway



Looking south on Old Dixie Highway

Brevard County Property Appraiser



August 28, 2017

1:2,000
0 30 180

M.E.C.
CONTRACTORS ■ ENGINEERS
Mid-Florida Engineering Consultants dba

August 17, 2017

Kimberly Bonder Rezanka, Esq.
Cantwell and Goldman PA
96 Willard Street, Suite 302
Cocoa, FL 32922

Re: Miller Cove Road, Brevard County, FL Road Construction Feasibility

Dear Mrs. Rezanka,

M.E.C. has reviewed the standard details for paved and unpaved roads per the Brevard County "Official Land Development Exhibits". M.E.C. believes that a county road can be constructed in the ~800 linear feet of the Miller Cove Road Right-of-Way and ~160 linear feet of adjacent Old Dixie Highway contingent upon approval of the following:

- Variance/waiver to allow for a 40 foot wide Right-of-way in lieu of a 50 foot Right-of-Way.
- Variance/waiver to allow emergency vehicles to turnaround on site in lieu of constructing a Cul-De-Sac or Tee Turnaround within the Right-of-way.
- Variance/waiver to allow exemption from construction of roadside sidewalks.
- Variance/waiver to allow exemption from construction of roadside curbs.

M.E.C. has reviewed the FDOT as-built drawing this area mentioned above. This review has confirmed that there is a 50 foot by 50 foot road entrance with associated drainage structures that can be used to connect to the new proposed Miller Cove Road.

Please feel free to contact me with any questions. Thank you in advance.

Sincerely,



Gary Neal P.E.
Engineer
garyn@meconstruction.com

Law Offices of
CANTWELL & GOLDMAN, P.A.

www.cfglawoffice.com

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

474 N. Harbor City Blvd., Suite # 1
Melbourne, FL 32935
(by appointment only)

Bradly Roger Bettin, Sr.
William H. Cantwell, II^{1,2}
Mitchell S. Goldman
J. Wesley Howze
Matthew J. Monaghan
Nina V. Rawal
Kimberly Bonder Rezanka
Michael Sjuggerud³
Jay R. Thakkar

¹ Board Certified Construction Lawyer and
Board Certified Business Litigation Lawyer

² Also Member of West Virginia Bar

³ Also Member of District of Columbia
Bar, New York Bar, and Washington Bar

May 22, 2017

Via email: Eden.Bentley@brevardfl.gov

Ms. Eden Bentley
Assistant County Attorney
Brevard County Attorney's Office
2725 Judge Fran Jamison Way, Bldg. C
Viera, FL 32940

RE: Address and Access – Miller Cove Road, Palm Shores

Dear Eden:

We represent LTM of Florida Holdings, LLC ("LTM") regarding the land development permits and related issues for the Property identified as Parcel Id. 26-37-30-00-10, located in Brevard County but adjacent to lands in the Town of Palm Shores. *The Property Appraiser's information and map are enclosed.*

On April 28, 2017, Karl Bohne, the Town of Palm Shores' Attorney, sent you an email requesting the County Attorney's opinion on several matters related to the 1923 Indian River Homes Sites Plat, including whether the County had accepted the dedication of the roads in the Plat or whether the County believed the roads to be private roads. On May 1, 2017, my client and I met with you, John Denninghoff, Tad Caulkins, Cindy Thurman and several other County staff members to discuss my client's access to his Property by Miller Cove Road and Old Dixie Highway. You – understandably – believed the meeting was about the denial of an address assignment and had just received Mr. Bohne's lengthy email and attachments.

To date, we have heard nothing from the County in response to Mr. Bohne's email or our meeting of May 1st. LTM asserts that Miller Cove Road has been dedicated by the 1923 Plat, that the County accepted the dedication, and that LTM is entitled to access via Miller Cove Road and Old Dixie Highway. With this letter, we have provided additional information supporting these assertions.

As to the dedication, Mr. Bohne provided sufficient information to show the intent of the owner of the land that recorded the Plat, W. E. G. Harris, to dedicate the Plat to the County. As further evidence, we have all the deeds from Mr. Harris to subsequent owners that reference the Plat.

Mr. Harris left all the remaining property to his wife, Hettie Harris. We have copies of the probate of Mrs. Harris; the streets of Indian River Homes Sites Plat were not included in the Probate Estate.

I. Acceptance of the dedication of the 1923 Plat by Brevard County

Regarding the County's acceptance of the dedication, we provide the following facts which support acceptance. First, several properties along Miller Cove Road have been provided addresses on Miller Cove Road, including: 2360 Miller Cove Road (existing residence); 2340 Miller Cove Road (former plant nursery); and 2308 Miller Cove Road (cell tower and related structure). Additionally, there is a single-family residence on the south side of Miller Cove Road – accessible only by Miller Cove Road – with no assigned address, Parcel Id. 26-37-30-01-O-7.

Second, there are FPL power poles and lines, as well as AT&T fiber optic cable along and traversing Miller Cove Road. When FPL and AT&T were contacted about permits or easements, neither has permits or easements for their utilities. Both were told by the County that they could install the utilities on the County's right-of-way without permits. The Town of Palm Shores has no permits on file for the poles or cable, either. Furthermore, Waste Pro collects trash by way of Miller Cove Road, as evidenced by several green trash containers along Miller Cove Road. Right-of-ways for public road use include use for public utilities such as electric power poles. *See Nerbonne, N.V. v. Florida Power Corp.*, 692 So. 2d 929 (Fla. 5th DCA 1997).

Third, there is fifty feet (50') of paved road from U.S. 1 to the west, on what is known as Miller Cove Road. We are in the process of researching the as-builts and permits from 2003-2004 to determine who exactly paved this area and who has responsibility for its maintenance. FDOT does own a portion of this area, by virtue of a deed to it in 2001. *A copy of the Deed is enclosed.*

Fourth, the County vacated Third Avenue and Fourth Avenue of the 1923 Plat, by Resolution 2001-414, filed in ORB 4494, Page 1707, Public Records of Brevard County. According to the Resolution, this was done pursuant to County Code Section 86-36, which states that the Board of County Commissioners "is hereby authorized and empowered to close, vacate and abandon any county road, right of way, alley way, place of travel or easement (of any type) or any portion thereof within its jurisdiction." While you indicted that the vacating was akin to a quit claim deed, we dispute that characterization as it contradicts the plain and clear language of the County Code. The County can only vacate that over which it has jurisdiction. *A copy of the Resolution is enclosed.*

Acceptance of dedication may be implied from acts showing an intention to accept, including, among other things, use by the public or maintenance and improvement by proper authorities of part of the land dedicated. *Bonifay v. Dickson*, 459 So. 2d 1089, 1094 (Fla. 1st DCA 1089). Based upon the foregoing reasons and case law, we believe the acceptance is clear, unequivocal and with satisfactory proof of acceptance.

II. County-owned Miller Cove Road

Once ownership of Miller Cove Road is agreed upon, LTM has several challenges, as were discussed in far too much depth at our meeting of May 1, 2017. However, LTM requests consideration of several items.

First, an address must be assigned to LTM's Property, off of Old Dixie Highway. The Address Request Form (*copy enclosed*) does not appear to provide for any discretion and is a ministerial function. Moreover, the Form includes a bold disclaimer that "receiving an address does not guarantee a property is buildable or that any permits can be issued". LTM will be submitting this Form to address assignment today.

Second, LTM will be requesting waivers to the requirements of a 50' ROW, a full size paved roadway and sidewalks. As analyzed by Mr. Denninghoff, Miller Cove Road has insufficient width for all County Code requirements. There are many examples in the County of waivers of these requirements, including Sun Pointe Place, Morningside Drive and Furman Road. We understand from County staff there are many more examples.

Third, if the County is unwilling to work with LTM on these waivers, LTM will be requesting the County to pave the road under a proportionate share agreement per Sec. 163.3180, Fla. Stat. or a public-private partnership agreement under Sec. 255.065, Fla. Stat. LTM has been prepared to pave the roadway at its sole cost, but anticipated that the County would be enthusiastic about the improvement; enthusiasm appeared lacking at the May 1, 2017 meeting.

Fourth, Old Dixie Highway will also need to be improved as Miller Cove Road terminates into Old Dixie. Please confirm that the County agrees that the portion of Old Dixie Highway, from Miller Cove Road/Central Boulevard, is a county-owned road.

Fifth, LTM will need to apply for a permit, or obtain a waiver from a permit, to clear both Miller Cove Road and Old Dixie Highway. There are palm trees and other trees in the road right-of-way of both roads. A clearing permit will allow LTM to remove the remaining trees from the right-of-ways of Miller Cove Road and Old Dixie Highway.

III. Moving Forward

LTM needs to move forward on its project. It has a pending comprehensive plan amendment and rezoning scheduled before P & Z in July. Despite the contentions of Palm Shores' Mayor, LTM's neighbors are not opposed to the roadway or the use of LTM's Property as proposed. *The rendering of the proposed use is enclosed.* The Mayor's letter to the County opposing the rezoning will be addressed in more detail, but this is not the proper place to do so.

On behalf of LTM, we request a status update on these matters. Thank you for your assistance. We look forward to hearing from you in the near future.

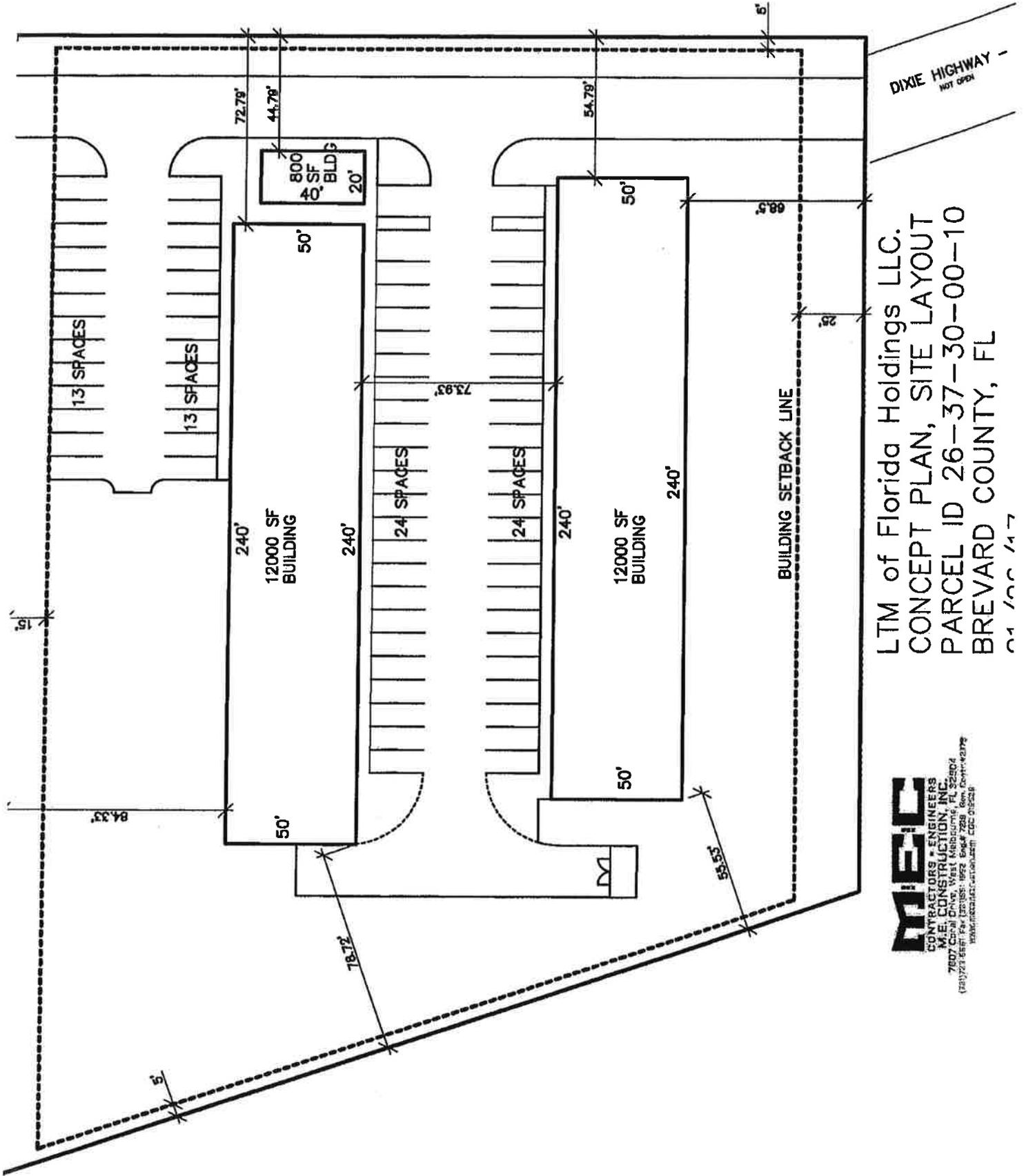
Sincerely,



Kimberly Bonder Rezanka

KBR/bms
enclosures

cc: John Denninghoff
Commissioner Curt Smith
Cindy Thurman
Karl Bohne, Esq.



LTM of Florida Holdings LLC.
 CONCEPT PLAN, SITE LAYOUT
 PARCEL ID 26-37-30-00-10
 BREVARD COUNTY, FL

M.E.C.
 CONTRACTORS & ENGINEERS
 M.E. CONSTRUCTION, INC.
 7807 Coral Circle, West Melbourne, FL 32904
 (321) 723-5591 Fax: (321) 855-1952 Email: mec@mecon.com
 MECON.COM

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

CASE NO.: 05-2012-CA-048562

MERRITT INDUSTRIAL PARK II, LLC, AS
SUCCESSOR IN INTEREST TO MERRITT
INDUSTRIAL PARK, INC., a Florida corporation,

Plaintiff,

v.
BREVARD COUNTY, a political subdivision
of the State of Florida, et al

Defendants.

MOTION FOR SUMMARY JUDGMENT AND
MOTION FOR SANCTIONS

Defendant, Brevard County, Florida (hereinafter "County"), by and through its undersigned counsel and pursuant to Fla.R.Civ.P. 1.510(c), hereby moves for entry of an order granting the Motion for Summary Judgment in its favor and against Plaintiff, Merritt Industrial Park II, LLC, and its successor in interest Park 'N Cruise II, LLC, and as good cause therefore states that the affidavits in support of this motion, together with the pleadings and discovery on file show that there is no genuine issue as to any material fact and that the County is entitled to summary judgment as a matter of law. County further motions the Court for sanctions against Plaintiff for filing a frivolous lawsuit. In accordance with Section 57.105(4), this motion was filed at least twenty-one days after service on the Plaintiff.

1. This is an action for quiet title and declaratory judgment involving property designated as a road in a residential subdivision plat, known as the Kelly Park Subdivision, as recorded in Official Public Records Book 4, page 21 in 1924 or 1925.

2. The determinative issue in this case is whether London Boulevard, specifically the area described in Plaintiff's Amended Complaint as the "London Property", is within the boundary of the Kelly Park Subdivision. Amended Complaint ¶¶ 10, 29

I. THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT

A. The Parties

Plaintiff, Merritt Industrial Park, Inc./Merritt Industrial Park II, LLC/Kabboord Properties II, LLC, no longer owns the property described in the complaint. The property described in paragraph 12 of the Amended Complaint was conveyed to Park 'N Cruise II, LLC, on October 1, 2014, according to the deed recorded in the Official Records of Brevard County, Florida, Book 7223, Page 1748. Copy of said deed is attached as Exhibit A. References to the "Plaintiff" throughout this Motion include Merritt Industrial Park, Inc., Merritt Industrial Park II, LLC/Kabboord Properties II, LLC, and Park 'N Cruise II, LLC, which all were/are managed by David W. Kabboord, 3201 N. Atlantic, Avenue, Cocoa Beach, Florida 32931.

3. Defendants Keith I. Notary, AC Notary Co., Charles C. Chandler, Sr., as Trustee of the Charles C. Chandler, Sr. Trust, Hubert V. Bays, Zvonimir Matkovic and Radonvan Cvetkovic own lots within the Kelly Park subdivision that are adjacent to London Boulevard. Amended Complaint ¶¶ 16, 19, 21, 23

4. Defendant County claims easement rights over all the roads depicted within the subdivision that have not otherwise been formally vacated and considers them public rights of way. Brevard County's Answer ¶¶ 6, 24, 30d, Fourth Aff. Def. , Fifth Aff. Def.

B. The Recorded Plat Map of Kelly Park

5. The legal descriptions in Plaintiffs' deeds state that the property lies "West of the Kelly Park Subdivision according to the plat thereof as recorded in Plat Book 4, Page 21 of the Public Records of Brevard County, Florida" (hereinafter referred to as the "Recorded Plat Map"). The western boundary of the Kelly Park Subdivision is the eastern boundary of Plaintiff's property. Amended Complaint Exbs. A & D; Campbell, Dep. Exb. 2; Sweeney Aff.; Exb. A; Carlile Dep. pp. 22-29

6. The Plaintiff has not paid property taxes for the land described in the Amended Complaint as the "London Property". Naughton Aff.

7. In or around May 1925, then-landowner, L.L. Kelly subdivided the property shown in the Recorded Plat Map, which was accepted by the clerk and recorded in Plat Book 4, Page 21 of the Official Records of Brevard County, Florida. Amended Complaint Exb. A; Sweeney Aff.; Hollmann Aff. Carlile Dep. pp. 22-29

8. The Recorded Plat Map, entitled "Map of Kelly Park" spans Sections 7 and 18 and includes property divided into blocks and lots, named and dimensioned roads, and parks. Amended Complaint Exb. A; Sweeney Aff.; Hollmann Aff.

9. The Recorded Plat Map shows the westernmost blocks and lots bounded on the west by a right of way named Roosevelt Avenue, which is further defined by dimensions. Amended Complaint, Exb. A; Campbell, Dep. Exb. 2; Carlile Dep. 22-29

10. In 1971, the County changed the names of most of the roads within the Recorded Plat Map. Roosevelt Avenue is now called London Boulevard. Amended Complaint ¶ 8, Exb. C

11. Around the same time the Recorded Plat Map was recorded, Mr. Kelly's surveyor, Harold Wilson, drafted two other maps that depict portions of the land subdivided in the Recorded Plat Map Park. Sweeney Aff. Campbell Aff.

12. Surveyor Wilson drafted a map of Section 7, T24SR37E entitled the "First Addition to Kelly Park." It does not show a road on the west side of the lots. It does not include all the blocks and lots that are depicted in the Recorded Plat Map. Amended Complaint Exb. B; Campbell, Aff. Exb. 1; Campbell, Dep. Exb. 3, p.21-23; Sweeney, Aff. Exb. 1

13. Surveyor Wilson also drafted a map titled "Map of L.L. Kelly First Addition to Kelly Park," which is also limited to a portion of Section 7. It depicts an unnamed but dimensioned street along the western boundary. It does not show all the lots and blocks depicted in the Recorded Plat Map. Campbell, Dep. 17, pp. 48-50; Sweeney Aff.

14. Neither draft map of the First Addition to Kelly Park was recorded in the Public Records of Brevard County, Florida. Campbell, Dep. pp. 19, 20, 48-50; Sweeney Aff.

15. On December 29, 1933, Mr. Kelly conveyed by warranty deed, all lots within the Kelly Park Subdivision to Edith S. Kelly recorded in Deed Book 218, Page 461, Public Records of Brevard County, Florida. Campbell Dep. p. 37, Exb. 10.

16. The legal description used in Mr. Kelly's deed includes a reference to the "subdivision of Kelly Park as recorded in the Public Records of Brevard Co., Fla. on page ____ of plat book ____." Although Mr. Kelly did not include the book or page number, according to the Brevard County Clerk, there is only one recorded Map of Kelly Park and that's the one recorded at Plat Book 4, Page 21, the Recorded Plat Map. Amended Complaint Exb. A; Campbell Dep. Exb. 10; Hollmann Aff.

17. Mr. Kelly's deed includes lots in Blocks D and E, which are located in Section 18 and shown only on the Recorded Plat Map. Campbell Dep. pp. 38, 39, Exb. 10; Sweeney Aff.

18. Through the years, government agencies such as the Florida Department of Transportation, the Canaveral Port Authority and the Brevard Property Appraiser, along with numerous surveyors, including Plaintiff's surveyor, John R. Campbell and surveyors within his surveying company working under his direction, have prepared signed and sealed surveys interpreting the Recorded Plat Map to include the London Property as a right of way within the boundaries of the Kelly Park Subdivision. Campbell, Dep. pp. 25-54 and Exbs. 4-9, 11-16, 18, 19

19. The County currently maintains North Banana River Drive and Dover Avenue as public rights of way. Jackson Aff.

20. Although London Boulevard is not open to the public at this time, the intersection of London Boulevard and Sea Ray Drive is improved with a drive way apron constructed to Brevard County public road standards. Ragain Aff.

21. There are no pending petitions to vacate the public right of way that encumbers London Boulevard or any public rights of way in the Kelly Park Subdivision. Cazessus Aff.

C. Opinion Testimony of John Campbell

22. Plaintiff filed this quiet title and declaratory judgment action to claim ownership of a portion of London Boulevard which Plaintiff describes as the "London Property" in paragraph 10 of the Amended Complaint, using the argument that L.L. Kelly never intended to

include London Boulevard, nee Roosevelt Avenue, within the boundary of the Kelly Park Subdivision. Campbell Aff.

23. Plaintiff does not allege or claim to have been aware of the unrecorded maps of the First Addition to Kelly Park at the time it acquired the above described property in 1976.
Amended Complaint

24. In addition to the unrecorded map of Section 7, Plaintiff's evidence to support its claim to London Boulevard is the opinion testimony from surveyor John R. Campbell who argues, by affidavit and deposition testimony, that the unrecorded map of Section 7 depicting a portion of the Kelly Park subdivision without any roads is what Mr. Kelly really intended to be the subdivision of Kelly Park. Campbell Aff.

25. Mr. Campbell is not aware of any recorded documents, conveying title to property or otherwise, that refer to the unrecorded maps of the First Addition to Kelly Park. Campbell, Dep. 20

26. Mr. Campbell does not know why the First Addition to Kelly Park draft maps were not recorded and does not know what L.L. Kelly intended to do with the unrecorded maps. Campbell, Dep. pp. 19, 48-50

27. Mr. Campbell discovered the unrecorded maps of the First Addition to Kelly Park in early 2012 upon receiving Surveyor Wilson's historical files from a retiring surveyor. It was upon this discovery that Mr. Campbell formed his opinion that London Boulevard was not included within the boundary of the Kelly Park Subdivision. Campbell, Dep. 50-51

28. The basis of Mr. Campbell's opinion is that the monuments depicted in the Recorded Plat Map are located on the block corners, not the roads, so the western side of those blocks is the western subdivision boundary. Campbell Aff. Campbell Dep. pp. 63, 64, Exb. 2

29. Florida's first platting and mapping law was enacted by the State Legislature in 1925 and became effective around the time the Recorded Plat Map was recorded. Ch. 10275, Laws of Florida, attached as Exhibit "B" and incorporated herein. Campbell Dep. 9

30. Unlike the current platting statute, Ch. 177, Fla. Stat., the 1925 law did not require monuments to be placed on the plat map boundary: "In making a survey a sufficient number of permanent monuments, in no case less than two (2) and in no case more than two thousand (2000) feet apart, shall be placed either within the tract or on the exterior boundaries thereof, or both, so as to provide definite reference lots set forth on the said plat." Ch. 10275, Sec. 7

31. The Recorded Plat Map includes monuments that meet this requirement. Campbell Dep. pp. 63, 64, Exb. 2

32. The Recorded Plat Map also complies with the then-applicable standards to create roads within plat boundaries. Campbell Exb. 2; Sweeney Aff. Carlile Dep. pp. 22-29 Ch. 10275, Sec. 8 states:

"All lots shall be numbered either by progressive numbers, or if in blocks, progressively numbered in each block, and the blocks progressively numbered or lettered, except that blocks in numbered additions bearing the same name shall be numbered consecutively throughout the several additions. **Excepted parcels must be marked 'Not included in this plat.' The dimensions of all lots and the width of all streets and alleys shall be given on the plat.** Where all lots in any block are of the same dimensions it shall be sufficient to mark the precise length and width of one tier thereof; by all oges, triangles or other lots which are not squares or parallelograms, shall have the length of their sides and angles plainly defined by figures. **The streets must be named or numbered** and the alleys of public grounds properly designated. **All land within the boundaries of the plat**

must be accounted for either by blocks, lots, out lots, parks, streets, alleys or excepted parcels. But no strip or parcel of land shall be reserved by the owner when recording a sub-division, unless the same is sufficient in size and area to be of some practical use or service.” *EMPHASIS PROVIDED*

II. BREVARD COUNTY IS ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW

A. Standard for Summary Judgment

33. The County is entitled to summary judgment because the pleadings, depositions, and affidavits on file with the Court shows that there is no genuine issue as to any material fact and the County is entitled to judgment as a matter of law. Fla.R.Civ.P. 1.510(c).

34. The purpose of a motion for summary judgment is to determine the existence or absence of genuine issues of material fact for the trier of fact. *Pamperin v. Interlake Co., Inc.*, 634 So.2d 1137 (Fla. 1st DCA 1994); *CSX Transp., Inc. v. Pasco County*, 660 So.2d 757 (Fla. 2^d DCA 1995). In a motion for summary judgment, the burden is on the moving party to show the absence of a genuine issue of material fact. *Albelo v. Southern Bell*, 682 So.2d 1126, 1129 (Fla. 4th DCA 1996); *Fine Arts Museums Foundation v. First Nat'l*, 633 So.2d 1179 (Fla. 4th DCA 1994). Once the moving party tenders competent evidence to support the motion, the opposing party must come forward with counter-evidence sufficient to reveal a genuine issue for trial. *Landers v. Milton*, 370 So2d 368, 369 (Fla. 1979); *Williams v. Garden City Claims, Inc.*, 796 So.2d 586, 588 (Fla. 3^d DCA 2001). It is not enough for the non-moving party to merely assert that an issue exists. *Landers at 369*. If the opposing party cannot point to admissible evidence that creates a triable issue, the Court should grant the motion for summary judgment. *Id*

B. The Evidence Offered By Plaintiff To Reinterpret Its Deed Is Inadmissible.

35. Plaintiff's claim to the London Property is based on a reinterpretation of the legal description in the Plaintiff's deed and the intent of the original owner, L. L. Kelly, in creating the Kelly Park Subdivision. Extrinsic or parol evidence is only admissible to interpret a deed if there is a latent ambiguity in the deed. *Mason v. Roser*, 588 So.2d 622 (Fla. 1st DCA 1991). "Where a deed refers to another deed or to a map, plat or survey for a description, the deed, map, plat or survey becomes as much a part of the instrument as if copied therein." *Routh v. Williams*, 141 Fla. 334, 337 (Fla. 1940). If there is no ambiguity in the language used, then the intention of the grantor must be ascertained from that language. *Western World, Inc. v. Dansby*, 566 So.2d 866 (Fla. 1st DCA 1990). Parol evidence is not admissible to contradict the plain intent of the language used or when the purpose and effect of such evidence it to alter, impair or defeat the operation and effect of the deed. *Reid v. Barry*, 93 Fla. 849 (Fla. 1927).

36. The facts in *Routh* are similar to this case. The buyer in that case negotiated the deal with an unrecorded purchase map before the plat was recorded. Using the unrecorded map as evidence, she alleged that her lot was larger than what was reflected on the recorded plat referenced in her deed. *Routh* at 337-338. She argued that the recorded plat was merely a picture of the lines and corners of the lots as surveyed and that the deed intended to convey property according to the unrecorded purchase plat. *Id.* The Florida Supreme Court disagreed, holding that neither the unrecorded purchase plat nor the evidence of the engineer who created it was sufficient to overthrow the recorded plat by which the purchase was made. *Id.* at 338. There was no ambiguity in the deed that allowed for the admission of parol evidence because the "plat by which both parties purchased was definite and certain as to the description and the record [left] no doubt whatever as to the intention of the parties." *Id.*

37. Plaintiff has less evidence to offer in support of its claim, than the unsuccessful property owner in *Routh*. Plaintiff cannot offer evidence that it relied on the unrecorded map of Section 7 in acquiring its property. Plaintiff had no knowledge of either unrecorded map of the First Addition to Kelly Park at the time it acquired the property. Those draft maps were stored away for decades in the historic files of Harold Wilson, unknown to modern surveyors until rediscovered by Mr. Campbell in 2012. But still they are of no consequence. These unrecorded maps are nothing more than draft worksheets used to prepare the document Mr. Kelly ultimately chose to create the Kelly Park Subdivision, the Recorded Plat Map. The fact that one of the draft maps does not include a road on the western side is meaningless in light of the clear and unambiguous language of the Recorded Plat Map, Mr. Kelly's deed and the chain of title extending therefrom, including Plaintiffs' deeds and the Defendant's deeds.

38. In this case, the incorporation of the Recorded Plat Map in the legal description contained in the Plaintiffs' deeds is undeniable. Mr. Kelly's intent in recording the Recorded Plat Map and selling property in reference to that document is also uncontroverted. The language in Plaintiffs' deeds identifying the eastern boundary of the property as the western boundary of London Boulevard as is clear and unambiguous. The unrecorded map of Section 7 and Mr. Campbell's testimony based on that map are inadmissible parol evidence as a matter of law.

C. London Boulevard Is Located Within The Kelly Park Subdivision Boundary.

39. Mr. Campbell's opinion that London Boulevard doesn't exist and the western boundary of the Recorded Plat Map is the monumented western boundary of Block C is not consistent with the plat law in effect at the time of recording. Campbell, Aff. ¶¶ 7, 8; Campbell, Dep. pp. 14-19, 38, 63-64. Unlike the current platting laws which require the exterior boundaries

of a plat map to be monumented, this was not the requirement in 1924 or 1925. See Section 177.091(7), Fla. Stat. The Recorded Plat Map satisfies the monumentation requirements of the earliest platting statute. Ch. 10275, Sec. 7; See paragraphs 29-32 above.

40. The Recorded Plat Map also meets the requirements to identify and include the London Property within the boundary of the Kelly Park Subdivision. As required in Ch. 10275, Section 8, all roads, including London Boulevard, formerly named Roosevelt Avenue, are clearly named and dimensioned. If Mr. Kelly had intended to exclude any area of the Recorded Plat Map from the boundaries, those areas should have been identified and marked as “Not included in this plat.” Sweeney Aff.; Exhibit B

41. In addition, Mr. Campbell’s suggestion that Mr. Kelly intended to not provide access to lots located in the Kelly Park Subdivision is illogical and contrary to law. Without inclusion of London Boulevard within the plat boundary, most of the lots on the western side of the subdivision would not have access. Without such access lot owners would have to sue Mr. Kelly for access by way of necessity. It is illogical to presume, as Mr. Campbell suggests, that Mr. Kelly would have intentionally created a situation that would require lot owners to sue him to gain access. Campbell, Dep. 21-23 The presumption is actually the opposite. Florida law, now and at the time the Kelly Park Subdivision plat map was recorded, presumes that streets and roads depicted on a recorded plat map without a written declaration create a private access right to the lot owners and constitutes an offer to dedicate use of those rights of way to the public. *Kirkland v. City of Tampa*, 75 Fla. 271 (1918); *City of Palmetto v. Katsch*, 86 Fla. 506, (1923).

42. L.L. Kelly’s intention in creating the Kelly Park Subdivision through the Recorded Plat Map and including the roads within the boundary of that subdivision is clear and

unambiguous. The eastern boundary of Plaintiff's property is the western boundary of London Boulevard.

D. Plaintiff Has No Legal Interest In The London Property.

43. As established above, London Boulevard, and the London Property as described in Paragraph 10 of the Amended Complaint, are included within the boundary of the Recorded Plat Map and the Kelly Park Subdivision. Since the legal description of Plaintiffs' deed references the western boundary of the Recorded Plat Map as the eastern boundary of Plaintiffs' property, Plaintiff does not own property within the boundaries of the Kelly Park Subdivision. This means that Plaintiff has no legal standing to challenge the status of London Boulevard as a public right of way. Only the grantor, in this case, Mr. Kelly, or his successors in interest to London Boulevard, the Defendant lot owners and other subdivision lot owners with access to London Boulevard, have legal standing to make such claims.

44. The effect of a dedication of property rights is that the legal title of the property remains in the grantor, while the public takes the beneficial use of the property. *Robbins v. White*, 42 So. 841 (Fla. 1907). Dedication essentially grants an easement in favor of the public for the purpose intended in the dedication. *City of Coral Gables v. Old Cutler Bay Homeowners Corp.*, 529 So.2d 1188 (Fla. 3d DCA 1988). Grantor-subdivider's legal title in dedicated property passes to the grantees of lots sold in reference to a plat, which lots abut the dedicated streets. Their title extends the entire width of the right of way, subject to the public easement, if there is no lot owner on the other side of the street. If there are lots on each side of the street, title extends to the centerline of the right of way. *Walker v. Pollack*, 74 So.2d 886 (Fla. 1954); *Smith v. Horn*, 70 So. 435 (Fla. 1915); *New Pierce Hotel Co. v. Phoenix Tax title Corp.*, 171 So.

525 (Fla. 1936); *United States v. 16.33 Acres of Land in County of Dade*, 342 So.2d 476, 480 (Fla. 1977); See also Sections 177.085(2)¹ and 336.12, Fla. Stat. Since the Plaintiff does not own any lots within the Kelly Park Subdivision, it does not have any rights to London Boulevard should the County vacate the public rights in the future. Accordingly, Plaintiff has no legal standing to challenge the interpretation of the Recorded Plat Map.

45. This rule is reflected in the statutory process required to vacate all or a portion of a recorded plat. Section 177.101(3), Fla. Stat. qualifies that only the person who holds “fee simple title to the whole or that part of the tract covered by the plat sought to be vacated” may file an application. Plaintiff doesn’t own property within the plat and therefore is not an eligible party to seek a change to the plat because it doesn’t stand to benefit from the outcome of a vacating.

46. Even if Plaintiff had standing to challenge the status of London Boulevard, a claim that London Boulevard was never dedicated as a public road is contrary to the principles of common law dedication and acceptance of roadways. The Florida Supreme Court discussed these principles in *City of Palmetto* at 353:

“In *Florida East Coast Ry. Co. v. City of Miami*, 79 Fla. 539, 84 So. 726, this court held that a common law dedication is the setting apart of land for public use, and to constitute it there must be an intention by the owner clearly indicated by his words or acts to dedicate the land to the public use, and an acceptance by the public of the dedication. [Citations omitted] This seems to be the general rule, and whether an express or an implied dedication is relied on, the intention of the owner to set apart the lands for the use of the public is the foundation and essence of every dedication. The act of dedication is affirmative in character, need not be by formal act or dedication, may be by parol, may result from the conduct of the owner of the lands dedicated, and may be manifested by a written grant,

¹ Any reversionary interest Mr. Kelly may have claimed in the dedicated rights of way in the Kelly Park Subdivision was extinguished by Section 177.085(2), Fla. Stat. There is no evidence that Mr. Kelly attempted to enforce his reversionary rights at any time. A claim to London Boulevard based on reversionary rights is barred by statute.

affirmative acts, or permissive conduct of the dedicator. In fact, any manner in which the owner sees fit to indicate a present intention to appropriate his lands to public use meets the requirement of the law. The means generally exercised to express one's purpose or intention to dedicate his lands to the public use are by a (1) written instrument executed for that purpose; (2) filing a plat or map of one's property designating thereon streets, alleys, parks, etc.; (3) platting one's lands and selling lots and blocks pursuant to said plat indicating thereon places for parks, streets, public grounds, etc.; (4) recitals in a deed by which the rights of the public are recognized; (5) oral declarations followed by acts consistent therewith; (6) affirmative acts of the owner with reference to his property, such as throwing it open in a town, fencing and designating streets thereon; (7) acquiescence of the owner in the use of his property by the public for public purposes."

In addressing the issue of whether a plat constitutes a sufficient dedication, the Court in *Florida East Coast R. Co. v. Worley*, 49 Fla. 297, 303, 241 So. 541(1906), wrote:

"It has frequently been held by this court that where the owner of a tract of land makes a town plat thereof, laying same out into blocks and lots with intervening streets clearly indicated upon the plat separating the blocks and conveys lots with reference to such plat, he thereby evinces an intention to dedicate the streets to public use as such, and his grantees as against him and those claiming under him acquire the right to have such streets kept open. Such acts constitute a complete dedication and the streets cannot be closed up or obstructed unless in pursuance of legal authority. [Citations omitted] This is true although there is no formal written dedication accompanying the map and the rule stated applies not only to streets and avenues, but to parks and other public places designated upon such plat."

Mr. Kelly's intention to create the roads described in the Recorded Plat Map and sell the lots created in the Kelly Park subdivision subject to the Recorded Plat Map is consistent with common law dedication of those roads for public right of way use.

47. Just as an offer to dedicate can be made by implication, formal acceptance by the governing authority occurs by implication. The Florida Supreme Court established the rule that use of some of the platted roads is considered acceptance of all. Citing cases from around the country, the Court focused on the important public policy behind the principle that acceptance of any part of the roads before revocation constitutes an acceptance of all of the roads stating:

"It is impossible for a municipality to improve all streets shown on a plat as soon as the plat is recorded. Many people own wild and uncultivated land without any buildings on it. They conceive the idea that in the natural course of events there will be increases in population, main roads will be built and the land will become useful for development and home sites. They have engineers survey the land and make maps of it. They have streets, alleys and other public places shown on these plats, and they are recorded. In due course, main thoroughfares are built which will attract people to the land. Lots are sold and houses are built. The dedicators or owners of the land knew and did not intend that all streets, alleys and ways would be put to public use immediately, but that they would be put to public use with changing conditions and as the need became evident." *Indian Rocks Beach v. Ewell*, 59 So.2d 647, 654 (Fla. 1952).

48. There is no time requirement for the development of all rights of way once accepted. Even if some roads are not opened, the public rights cannot be lost through abandonment or adverse possession. *Waterman v. Smith*, 94 So.2d 186 (Fla. 1957). The public's rights in the developed and undeveloped portions of dedicated rights of way is protected as an exception to the application of the Marketable Records Title Act (MRTA), Section 712.03(5), Fla. Stat. *Florida Department of Transportation v. Clipper Bay Investments, LLC*, 160 So.3d 858, 867 (Fla. 2015); citing *Water Control District of South Brevard v. Davidson*, 638 So.2d 521, 526 (Fla. 5th DCA 1994)("Rights or easements acquired for the use and benefit of the public are not easily lost or surrendered and MRTA should be broadly construed to protect these rights to the extent possible under the law.")

49. Through the years, the County has demonstrated its acceptance of Mr. Kelly's common law offer to dedicate the rights of way shown on the Recorded Plat Map. At least two of the rights of way in the Recorded Plat Map, Dover Avenue and North Banana River Dr., have been maintained as public roads by the County for decades. Jackson Aff. In 1971, the County renamed all the rights of way shown in the Recorded Plat Map. Amended Complaint, Exb. C. There have also been multiple occasions where the County vacated the public interest in

portions of rights of way and a park parcel located within the Recorded Plat Map. Cazessus Aff. Why would the County take these actions if it didn't believe it had an interest in the platted rights of way or park parcel? The rights of way in the Kelly Park Subdivision, including London Boulevard, are subject to a dedicated public right of way easement.

III. CONCLUSION

50. The County is entitled to summary judgement on Amended Complaint Count I for quiet title as a matter of law. London Boulevard is located within the Kelly Park Subdivision and outside of Plaintiff's legal description. Plaintiff has no standing to challenge the status of London Boulevard, which is clearly established in the record as a dedicated public right of way.

51. The County is entitled to summary judgment on Amended Complaint II for declaratory judgement as a matter of law. The document Plaintiff seeks an interpretation of, the unrecorded map of Section 7, along Mr. Campbell's erroneous opinion of the 1925 Recorded Plat Map boundary, are inadmissible parol evidence offered in attempt to reform the legal descriptions of Plaintiffs' deeds. Plaintiffs' deeds and legal descriptions are clear and unambiguous. The eastern boundary of Plaintiff's property is the western boundary of London Boulevard. There is also no actual, present or bona fide need for declaratory relief. Contrary to Plaintiff's allegations there is no pending petition to vacate London Boulevard.

52. The facts recited above, as set forth in the affidavits, pleadings and discovery of record, establish that the boundary of the Kelly Park subdivision includes the London Boulevard. Therefore the area described in the Amended Complaint as the London Property is not owned by the Plaintiff. The adjoining lot owners have the equitable interest in the London Property and the County holds a public right of way easement over the same. Plaintiff lacks standing to file a

claim to London Boulevard and has failed to state a claim for which relief can be granted. Even if Plaintiff has standing, the claim, which is tantamount to a claim for reformation of Plaintiffs' deed, is barred by statute of limitations. Section 95.231(2), Fla.Stat.

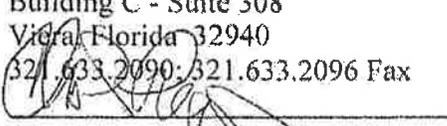
IV. SANCTIONS

53. Pursuant to Section 57.105, Florida Statutes, sanctions are appropriate wherever a party and/or its attorney pursue a claim that they know or should know is not supported by the application of then-existing law to the material facts. As discussed above, Plaintiff, through its attorney and expert witness, has pursued claims without legal standing which are neither supported by then-existing law, nor application of the material facts to such law. Plaintiff and Plaintiffs' attorney failed to make any attempt to withdraw or correct the deficiencies in the Amended Complaint. The County is entitled to sanctions under Section 57.105, Fla. Stat., against Plaintiff and Plaintiffs' attorney for filing and maintaining a frivolous lawsuit.

WHEREFORE, Defendant, Brevard County, respectfully requests that this Honorable Court enter Summary Final Judgment with prejudice against Plaintiff as to Counts I and II of the Amended Complaint filed herein, Grant County's Motion for Sanctions, including attorney's fees and litigation costs, and grant such other relief as the Court deems just and proper.

Dated this 27th day of February, 2016.

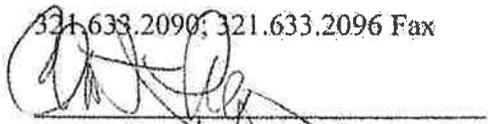
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Christine Lepore, Assistant County Attorney
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Attorney for Brevard County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail through the Florida Courts eFiling portal to Jason Gordon, Esq., jgordon@brevardlegal.com and jbarlow@brevardlegal.com; Joe Caruso, Esq., joec@jtchmspa.com and krystalw@jtchmspa.com and Timothy Pickles, Esq., tfpickles@brevardlawgroup.com on this the 29th day of February, 2016.

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Attorney for Brevard County

2

Prepared by and Return to
Superior Title Insurance Agency II, LLC,
1980 N Atlantic Avenue, Suite 807
Cocoa Beach, Florida 32931

0

File Number KPI - 32

Corporate Warranty Deed

This Indenture, made, October 1, 2014 A D

Between

Kabboord Properties II, LLC, a Florida limited liability company whose post office address is 3201 North Atlantic Ave, Cocoa Beach, FL 32931 a corporation existing under the laws of the State of Florida, Grantor and

Park N Cruise II, LLC, a Florida limited liability company whose post office address is 3201 N Atlantic Avenue, Cocoa Beach, FL 32931, Grantee,

Witnesseth, that the said Grantor, for and in consideration of the sum of Ten and No/100 Dollars (\$10 00), to it in hand paid by the said Grantee, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said Grantee forever, the following described land, situate, lying and being in the County of Brevard, State of Florida, to wit

Parcel 1

A parcel of land being a part of the East 1/2 of the SE 1/4 of the SW 1/4, Brevard County, Florida, being more particularly described as follows

Commence at the intersection of the North right of way line of Lambert Road and the West right of way line of Roosevelt Avenue per plat of Kelly Park Subdivision, according to the plat thereof, as recorded in Plat Book 4, Page 21, thence run S 73°08'18" W along said North right of way line, a distance of 283 97 feet to the Point of Beginning, thence continue S 73°08'18" W along said North right of way line, a distance of 27 59 feet to the point of curvature of a curve to the right, thence run along the arc of said curve having a radius of 865 00 feet through a central angle of 05°03'31" an arc distance of 76 33 feet to a point on the East line of lands described in O R Book 2422, Page 2496, of said Public Records, thence run N 00°41'21" E along said East line a distance of 231 00 feet, thence run S 89°18'39" E a distance of 100 00 feet, thence run S 00°41'21" W a distance of 202 90 feet to the North right of way line of said Lambert Road and the Point of Beginning, said land is located in Section 7, Township 24 South, Range 37 East, Brevard County, Florida

Parcel 2

That part of the East 1/2 of the Southeast 1/4 of the Southwest 1/4 and of Government Lot 4, lying North, South and East of lands owned by the Canaveral Port Authority, also lying North of the North right of way of State Road No 528 and West of Kelly Park Subdivision according to the Plat thereof as recorded in Plat Book 4, Page 21, of the Public Records of Brevard County, Florida, said land is located in Section 7, Township 24 South, Range 37 East, Brevard County, Florida LESS and Except lands described in Official Records Book 3510, Page 268, of the Public Records of Brevard County, Florida

Subject to taxes for the current year, covenants, restrictions and easements of record, if any

Parcel Identification Number 2443801 and 2428311

And the said Grantor does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever



Prepared by and Return to
Superior Title Insurance Agency II, LLC.
1980 N Atlantic Avenue, Suite 807
Cocoa Beach, Florida 32931

File Number KPI - 32

In Witness Whereof, the said Grantor has caused this instrument to be executed in its name by its duly authorized officer and caused its corporate seal to be affixed the day and year first above written

Kabboord Properties II, LLC, a Florida limited liability company

Signed and Sealed in Our Presence:

By [Signature]
David Kabboord
Its, President

Witness Print Name CANDICE ESTABROOK

[Signature]

Witness Print Name ASHLEY BYRD

State of Florida
County of Brevard

The foregoing instrument was acknowledged before me this 1st day of October, 2014, by David Kabboord, the President of Kabboord Properties II, LLC, a Florida limited liability company A corporation existing under the laws of the State of Florida, on behalf of the corporation
He is personally known to me

[Signature]
(Seal)
Notary Public
Notary Printed Name CANDICE ESTABROOK
My Commission Expires





REGULAR SESSION 1925

GENERAL
ACTS AND RESOLUTIONS

ADOPTED BY THE
LEGISLATURE OF FLORIDA

At its Twentieth Regular Session,
April 7 to June 5, 1925
Under the Constitution of A. D. 1885

PUBLISHED BY AUTHORITY OF LAW UNDER
DIRECTION OF THE ATTORNEY GENERAL

Vol. 1
1925

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EXHIBIT
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the City of Tallahassee; and the sum of thirty thousand dollars, or so much thereof as may be required, is hereby appropriated for that purpose.

Chap. 10275.
1925

Sec. 2. That the amount to be paid by the State Treasurer for the construction of such sidewalks and pavements shall not be proportionately greater than the rate paid by citizens of Tallahassee for their proportionate share of the cost of such construction, and the assessments shall be on the same basis.

Proportion same as for citizens.

Sec. 3. That the proportionate cost of any such improvement may be assessed against the property of the State along which such sidewalks and pavements are constructed, and the State Comptroller shall approve such assessments if proportionately the same as the assessments against private property abutting the same streets, and shall draw his warrant in favor of the city for the amount of such assessments, and the State Treasurer shall pay the same from the appropriation hereby made.

Sec. 4. That the streets where the improvements are to be made as contemplated by this Act are Jefferson Street south of the property of the State College for Women, paving and sidewalk; Copeland Street east of the property of the State College for Women, sidewalk; Brevard Street south of the Governor's mansion, paving; Green square; paving and sidewalks on four sides; Jackson Square, paving on north and south sides; Wayne Square, paving and sidewalks on three sides.

Property designated.

Sec. 5. That this Act shall take effect immediately on its passage and approval by the Governor, or on its becoming a law without such approval.

Approved June 11, 1925.

CHAPTER 10275—(No. 253).

AN ACT to Regulate the Making of Surveys and Filing for Record of Maps and Plats in the State of Florida.

Be It Enacted by the Legislature of the State of Florida:

Section 1. That whenever maps or plats of any land within this State are brought to a County Clerk or other public recording officer to be placed on public record, it shall be the duty of the County Clerk or other public

Examination of plats and maps before recording.

Chap. 10275.
1925

recording officer, before filing, to examine said map or plat and see that it complies in form with all the requirements of this Act. If this Act has been complied with, he shall so certify, with date of filing for record, on the map or plat and also on the copy thereof required by Section 11 of this Act; otherwise he shall return the map or plat to the owner for correction.

Surveys
required.

Sec. 2. Whenever any City, Town or addition thereto shall be laid out or altered as hereinafter provided, or whenever any land shall be platted into lots and blocks, within this State, the proprietor or proprietors thereof, shall cause a survey and true map or plat thereof to be made by a Civil Engineer or competent Surveyor.

Requirements
of plats.

Sec. 3. Such map or plat shall in every case be made with India ink, or some other equally substantial and distinct method, and be made on a scale sufficiently large to show plainly all details, on tracing cloth (of such size as each county may require). In case of a large plat it may require two or more sheets, in which case the sheets are to be numbered, and the number of the sheets to be indicated on the first sheet below the title.

Sec. 4. The plat shall have a title or name. If the plat be a Town, City or Village, the full name of such Town, City or Village must appear as the title or name of the plat; if the land platted be an addition to or a subdivision of a Town, City or Village already platted, then shall the title of the plat include, with the name of such addition or subdivision, the name of the Town, City or Village, as the case may be, of which such platted land is a subdivision, or to which it is an addition. The name of the County and State in which the land platted is situated should appear under the title.

Sec. 5. There shall be written or printed upon the tracing cloth on which map or plat shall be made a full and detailed description of the land embraced in said map or plat showing the Township and Range in which such lands are situated and the Section and parts of Sections platted. If the premises are in a Spanish grant or are not included in the subdivision of the Government surveys, then the boundaries are to be defined by metes and bounds and courses. The initial point in the description shall be tied to the nearest Government corner, forty-acre corner, or other recorded and well established corner. The description must be so complete that from it without reference to the plat, the starting point can be determined

and the outlines run. If a subdivision of a part of a previous recorded plat is made the previous lots and blocks shall be given. If the plat be a re-subdivision of the whole of a previous recorded plat the fact shall be so stated.

Sec. 6. In connection with the description there shall be a dedication of the plat by the owner or owners, and his or their wives, whose signatures must be witnessed, and their execution of the dedication must be acknowledged in the same manner as deeds conveying lands are required to be witnessed and acknowledged; and in all cases the title, caption and dedication must agree. In case the dedication is to be made by a corporation then it shall be signed by the President and Secretary, respectively, of the corporation, by and with authority of its Board of Directors.

Sec. 7. In making the survey a sufficient number of permanent monuments, in no case less than two (2) and in no case more than two thousand (2000) feet apart, shall be placed either within the tract or on the exterior boundaries thereof, or both, so as to provide definite reference points from which may be located any points, lines or lots set forth on the said plat. The monuments so placed shall be of metal not less than 3 inches in diameter and 24 inches long, driven in the ground, or if smaller, to be incased in a solid block of concrete, said monuments having the reference point marked thereon. They shall have their position in reference to each other indicated by distances and angles and not less than one of said monuments shall have its location indicated on the plat in reference to the nearest Government corner or other corner referred to in Section 5 hereof. The position of said monuments shall be indicated on the plat by a small circle and shall be marked "PERMANENT REFERENCE MONUMENT" or the initials "P. R. M." to designate the same.

Sec. 8. In drawing the map or plat three inches shall be left blank on the left edge of the tracing cloth for binding in the record book. A plain designation of the cardinal points, the date of survey, and the correct scale of the drawing, shall be given. The drawing shall be made in a workman-like manner and must agree with the description. All section lines and quarter-section lines occurring in the map or plat shall be indicated by lines drawn upon such map or plat, with appropriate words and figures. If the description is by metes and bounds, the point of be-

Dedication.

Permanent reference monuments.

Margin on plats.

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Chap. 10275.
1925

Numbering
of lots and
streets.

gining shall be indicated together with all bearings and distances of the boundary lines.

All lots shall be numbered either by progressive numbers, or if in blocks, progressively numbered in each block, and the blocks progressively numbered or lettered, except that blocks in numbered additions bearing the same name shall be numbered consecutively throughout the several additions. Excepted parcels must be marked "Not included in this plat." The dimensions of all lots and the width of all streets and alleys shall be given on the plat. Where all lots in any block are of the same dimensions it shall be sufficient to mark the precise length and width of one tier thereof; but all gores, triangles or other lots which are not squares or parallelograms, shall have the length of their sides and angles plainly defined by figures. The streets must be named or numbered and the alleys or public grounds properly designated. All land within the boundaries of the plat must be accounted for either by blocks, lots, out lots, parks, streets, alleys or excepted parcels. But no strip or parcel of land shall be reserved by the owner when recording a sub-division, unless the same is sufficient in size and area to be of some practical use or service.

Certificate
of engineer.

Sec. 9. The Engineer or Surveyor making the survey or plat shall certify on the plat that it is a correct representation of the land platted and that permanent reference monuments have been placed as called for under Section 7 of this Act.

Approval
certificate.

Sec. 10. Before said map or plat shall be presented to the County Clerk for record, the owner or owners shall cause to be placed thereon a certificate of approval by the County Commissioners, Town Board, or Council, or the Board of Commissioners (in municipalities having a commission form of government) or their accredited representatives, having jurisdiction over the land described in the said map or plat. However, such approval shall not bind the County Commissioners, Town Board, City Council or Board of Commissioners to open up and keep in repair any parcels dedicated to the public in any map or plat so offered, but they may exercise such right at any time.

Sec. 11. For purposes of record the owner or owners, shall present to the County Clerk in and for the County in which the land platted is a part, a map or plat of the land platted drawn on tracing cloth together with a print or photographic copy of the tracing made on cloth.

LAWS OF FLORIDA.

Chap. 10276.
1925

Sec. 12. The map or plat on tracing cloth is to be filed by the County Clerk in his office in a book of the proper size for such papers so that it shall not be folded, and kept in the vault. The print or photographic copy on cloth shall be filed in a similar book and kept in his office for the use of the public.

Penalties.

Sec. 13. It shall be a misdemeanor for any person or persons to molest any monuments established according to this Act, or to deface or destroy any map or plat placed on public record.

Sec. 14. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed.

Sec. 15. This Act shall take effect upon its passage and approval by the Governor, or upon becoming a law without such approval.

Approved June 11, 1925.

CHAPTER 10276--(No. 254).

AN ACT to Designate and Describe the Route of State Road No. 63.

Be it Enacted by the Legislature of the State of Florida:

Section 1. That a road beginning at Zolfo Springs, and extending to Bradenton via Ona, in the most direct and practicable route, is hereby declared to be a State road and designated as Road No. 63.

State Road
No. 63.

Sec. 2. This Act shall take effect immediately upon its passage and approval by the Governor, or upon becoming a law without such approval.

Approved June 11, 1925.

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Kimberly Bonder-Rezanka

From: jetmec27@aol.com
Sent: Monday, May 22, 2017 11:55 AM
To: address.assign@brevardfl.gov; kim@cglawoffice.com
Subject: adress request
Attachments: address filled out.pdf; deed.pdf

To whom it may concern

My Name is Mark Mattioli and I am requesting an address assigned to my property. I have attached the paper work that is required.

Thank you Mark

***** ADDRESS & INFORMATION REQUEST FORM *****

(REQUEST SECTION)

(To be completed by Requestor)

DATE:

5/22/2017

REQUESTOR:

MARK MATTIOLI (LTM of Florida)

COMPANY:

4880 SILVER OAK BLVD.

ADDRESS:

MELBOURNE FL - 32935

PHONE/FAX:

407-222-8605

EMAIL:

COMMENTS:

JOB #

IF REQUESTING ADDRESS (fill out information below)

IF REQUESTING INFO. (provide address): _____

TAX ACCOUNT # 2609832 (indicated on property tax bill)

LEGAL DESCRIPTION: Township 26 Range 37 Section 30
Subdivision Code _____ Block/Parcel _____ Lot _____

Note: A recorded deed may be necessary to obtain an address.

PLAT BOOK ~~477~~ PAGE ~~152~~ SUBDIVISION _____

PURPOSE: AT&T SFR IRRIG.PUMP ELECT SOIL TEST SEPTIC

LIFT STATION UNPAVED ROAD OTHER Pull Permits
(agreement required)

NOTE: A certified metes & bounds survey is required for all parcel split-outs.

SURVEY PROVIDED: YES NO

(required for parcel split-outs)

PLOT PLAN PROVIDED: YES NO

(required for corner lots)

NOTE: RECEIVING AN ADDRESS DOES NOT GUARANTEE A PROPERTY IS BUILDABLE OR THAT ANY PERMITS CAN BE ISSUED!

address.assign@brevardfl.gov

OR

Fax: (321) 690-6842

E9-1-1 Administration/Address Assignment
2725 Judge Fran Jamieson Way, Bldg. A120
Viera, FL 32940

SUBMIT TO

If you have any questions, our office may be reached at (321) 690-6846.

Address Assignment Response Section (Page 2) will be emailed or faxed once processed.

Page 1 of 2

Kimberly Bonder-Rezanka

From: Assignment, Address [Address.Assignment@brevardfl.gov]
Sent: Monday, May 22, 2017 4:58 PM
To: jetmec27@aol.com
Cc: kim@cfglawoffice.com; Assignment, Address; Bentley, Eden
Subject: RE: address request (Mattioli) Miller Cove Road
Attachments: address filled out.pdf; deed.pdf

Mr. Mattioli,

Our office is awaiting a status of the roadway issue; therefore, at this time we are unable to issue an address.

Once this has been determined and our office is officially notified by appropriate staff that the roadway is county maintained to your property, then we can possibly release an address with the proper approvals.

If you have any questions or our office can be of further assistance, please let us know.

Respectfully,

Regina R. Mahaney
9-1-1 Addressing Coordinator
Brevard County E9-1-1 Administration
2725 Judge Fran Jamieson Way
Building A, Suite 120
Viera, FL 32940-6022
Office: (321) 690-6846 Ext. 1
Fax: (321) 690-6842
address.assign@brevardfl.gov

NOTICE: Receiving an address does not guarantee a property is buildable or that any permits can be issued!
Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

 Please consider the environment before printing this E-mail.

From: jetmec27@aol.com [mailto:jetmec27@aol.com]
Sent: Monday, May 22, 2017 11:55 AM
To: Assignment, Address; kim@cfglawoffice.com
Subject: adress request

To whom it may concern

My Name is Mark Mattioli and I am requesting an address assigned to my property. I have attached the paper work that is required.

Thank you Mark

Lewis, Sally A

From: Karl Bohne <kbohne@fla-lawyers.com>
Sent: Tuesday, May 23, 2017 12:06 PM
To: Bentley, Eden
Subject: Miller Cove

Eden, below is my response to the letter you recently received from Ms. Rezanka.

On page one last paragraph I don't know that this information provides "sufficient" information concerning the intent to dedicate. Also, the mere reference to the plat in subsequent sales does not necessarily show an intent to dedicate. It could merely be a reference to a recorded plat that did not dedicate to the County. But assuming it is an intent to dedicate, there appears to be insufficient evidence of acceptance.

Address assignment is not an intent to accept a purported dedication, nor does the issuance of a building permit. Also, if the county did not issue any utility permits and if the utilities were advised that they can be installed in the "County right of way" again that's not evidence of acceptance. Neither FP&L nor AT&T applied to the town for any utility permits. As far as Waste Pro, they do not provide service. Apparently a dumpster located on another property is used for trash service. As you recall in my previous email to you there were identified many instances of an acceptance of a common law dedication. This in my opinion falls under the second type of presumed dedication is set forth in section 95.361(2) and applies to roads not constructed by a government entity. Enacted in 2003, this provision employs nearly the same language used in section 95.361(1), the only differences being that the road must have been "regularly maintained or repaired" rather than "maintained or repaired continuously and uninterruptedly" and such maintenance must occur for seven years rather than four years. So unless they can show that the ROW was "regularly maintained or repaired" by the County, for the appropriate time period of 7 years they have no public access and their access is private.

The portion paved was done by FDOT, not the Town or County. So, again I don't see how that can be imputed acceptance by the County of any alleged dedication. Also, trash collection has nothing to do with County acceptance. Don't waste collectors provide trash collection on private roads...of course they do.

As far as the "vacate", if the ROWs were not accepted then the vacation of them is a non-issue. If the county never "owned" them they cannot legally vacate them.

The determination as to the status of the ROWs on this plat must be resolved. Despite the contention that the neighbors are on board, the Town continues to receive inquiries from Town residents who do express concern. The residents of Ashley Oaks and the residents impacted in Palm Shores Estates by the project absolutely object to the project. They are concerned about the flooding of their property due to removal of all trees, changes in underground drainage, the increase in the height of the road, noise, crime, traffic and a complete change of use adjacent to residential communities. I think suffice to say the Miller Cove Road is in the County and it is being cleared without a permit as best as the Town can determine. Ms. Rezanka has inquired of the Town whether it would want to annex the areas in questions and the Town would not be interested if the property is rezoned to commercial that would permit storage warehouses. The Town would like to see the development be consistent with the surrounding neighborhood which is predominately residential.

Karl W. Bohne, Jr.

Schillinger & Coleman, P.A.

1311 Bedford Drive

Melbourne, FL 32940

321-255-3737 Telephone

321-255-3141 Facsimile

Office Hours:

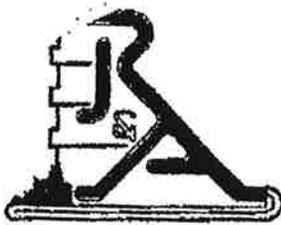
8:30 a.m. to 5:00 p.m. Monday thru Thursday

8:30 a.m. to 12 Noon on Friday

THE INFORMATION CONTAINED IN THIS E-MAIL COMMUNICATION IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENT NAMED ABOVE. This message may be an Attorney-Client communication, and as such is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that you have received this communication in error, and that any review, dissemination, distribution or copying of the message is strictly prohibited. If you have received this transmission in error, please notify me immediately by telephone and or by reply e-mail. Thank you.

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Robertson and Associates
LAND PLANNING & DEVELOPMENT CONSULTANTS

September 9, 2009

Cynthia Streater, Operations Specialist
Transportation Engineering/Survey Section
2725 Judge Fran Jamieson Way Bldg. A, Rm. 220
Viera, FL 32940

Re: Miller Cove Road, Palm Shores

Dear Cynthia:

You recently informed me that First Avenue, a dirt road extending north from Miller Cove Road in the Town of Palm Shores was not considered to be a County road. My question now is whether Miller Cove Road (see attached map) is a County road, or does Brevard County consider it to be the Town's responsibility for maintenance. If this is the case, please provide the rationale for this determination, i.e., instrument of conveyance or County ordinance.

As always, we appreciate your assistance. Please give me a call if you have any questions.

Sincerely,

Doug Robertson, President
Robertson and Associates

Cc: Carol M. McCormack, Mayor, Town of Palm Shores
Scott Lamb, P.E.



FLORIDA'S SPACE COAST



TRANSPORTATION ENGINEERING DEPARTMENT
2725 Judge Fran Jamieson Way, Viera, Florida 32940
Telephone: (321) 617-7315
Fax: (321) 633-2083

September 30, 2009

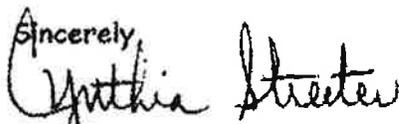
Robertson & Associates
Land Planning & Development Consultants
Doug Robertson, President
100 Parnell Street
Merritt Island, FL 32953

SUBJECT: MILLER COVE ROAD, PALM SHORES

Dear Mr. Robertson,

This is in response to your letter dated September 9, 2009, in which you have questions regarding the maintenance responsibility for Miller Cove Road. Brevard County does not have any jurisdiction over any portion of the subject right of way. Attached is a copy of Resolution 94-01 that named a private road to "Miller Cove Road" May 24, 1994 for address purposes only, and there was no acceptance or responsibility for improvement, repair or maintenance.

If we can be of further assistance, please advise.

Sincerely,

Cynthia Streeter
Public Works Department

CS

Attachments

RETURN TO
TOWN OF PALM SHORES
P.O. BOX 11522
PALM BEACH, FL 33411-1522
(561) 832-1100

RESOLUTION NO. 94-01

A RESOLUTION TO OFFICIALLY NAME A PRIVATE ROAD
MILLER COVE ROAD

WHEREAS, The Town of Palm Shores of Brevard County, Florida, has been requested to name certain private roadways affording ingress and egress to and from Highway 1 for the occupants of Indian River Home Sites; and

WHEREAS, the owner of said private roadway has identified said private road by name and Brevard County Officials have requested the Town of Palm Shores adopt a resolution acknowledging and approving the name identifying said private road in order for addresses to be assigned and said road to be entered into the Brevard County Emergency Telephone System;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF PALM SHORES, PALM SHORES, FLORIDA, AS FOLLOWS:

Section 1. The following street name identifying the private road within the Indian River Home Sites, Plat Book 3, Page 37, as recorded in the Public Records of Brevard County, are hereby acknowledged, accepted and approved by the Town of Palm Shores, via:
Miller Cove Road

Section 2. That the location of this private road named in Section 1 of this Resolution is shown and depicted on the map marked "Exhibit A", attached to this Resolution and by this referenced incorporated herein and made a part hereof.

611522
MAY 26 AM 10:48

BK3395PG1323

Landy Crawford Clerk Circuit Court
Recorded and Verified Brevard County, FL
Pgs. 3 # Pages 3
Trust Fund 2.00 Rec Fee 3.00
Stamp-Deed _____ Excise Tax _____
Stamp-Mtg _____ Int Tax _____
Service Chg _____ Refund _____

Section 3. This Resolution is adopted to enable Brevard County officials to enter the addresses and street name into the Brevard County 911 Emergency Telephone System.

Section 4. Nothing contained in this Resolution shall be deemed or construed to be an acceptance of the herein designated road as a public street or road of the Town of Palm Shores, nor to constitute said roadway as part of the public street system of the Town of Palm Shores, nor as any assumption by the Town of Palm Shores of responsibility for improvement, repair, maintenance or safety of the private road herein identified.

Section 5. It shall be the property owners responsibility to install and maintain the proper street sign and stop sign and keep said road clear and accessible for emergency vehicles.

PASSED AND ADOPTED at a regular meeting of the Town of Palm Shores, Town of Palm Shores, Florida, this 24 day of May, A.D. 1994

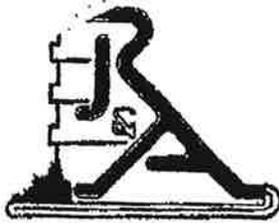
Anna J. Jensen
Mayor, Town of Palm Shores

Attest:

Patty Waterman
City Clerk

(SEAL)

BK3395PG1324



Robertson and Associates
LAND PLANNING & DEVELOPMENT CONSULTANTS

September 9, 2009

Cynthia Streater, Operations Specialist
Transportation Engineering/Survey Section
2726 Judge Fran Jamieson Way Bldg. A. Rm. 220
Viera, FL 32940

Re: Miller Cove Road, Palm Shores

Dear Cynthia:

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Sincerely,


Doug Robertson, President
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Cc: Carol M. McCormack, Mayor, Town of Palm Shores
Scott Lamb, P.E.



FLORIDA'S SPACE COAST



TRANSPORTATION ENGINEERING DEPARTMENT
2725 Judge Fran Jamieson Way, Viera, Florida 32940
Telephone: (321) 617-7315
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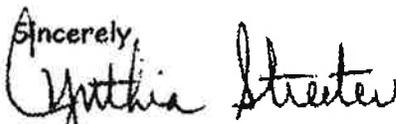
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Cynthia Streeter
Public Works Department

CS

Attachments

RETURN TO
TOWN OF PALM SHORES
BY THE
PLAT BOOK 3, PAGE 37
(10/30/09)

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A RESOLUTION TO OFFICIALLY NAME A PRIVATE ROAD
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6/15/20
9/26 AM 10:48

BK3395PG1323

Sandy Crawford Clerk Circuit Court
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Pgs. 3 # Pages 3
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Armen J. Terzian
Mayor, Town of Palm Shores

Attest:
Patty Waterman
City Clerk

(SEAL)

BK3395PG1324

Lewis, Sally A

From: Karl Bohne <kbohne@fla-lawyers.com>
Sent: Tuesday, May 23, 2017 12:06 PM
To: Bentley, Eden
Subject: Miller Cove

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Karl W. Bohne, Jr.

Schillinger & Coleman, P.A.

1311 Bedford Drive

Melbourne, FL 32940

321-255-3737 Telephone

321-255-3141 Facsimile

Office Hours:

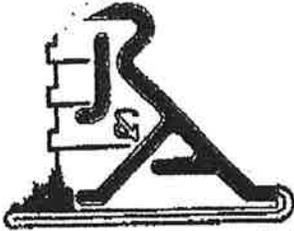
8:30 a.m. to 5:00 p.m. Monday thru Thursday

8:30 a.m. to 12 Noon on Friday

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Robertson and Associates
LAND PLANNING & DEVELOPMENT CONSULTANTS

September 9, 2009

Cynthia Streeter, Operations Specialist
Transportation Engineering/Survey Section
2725 Judge Fran Jamieson Way Bldg. A. Rm. 220
Viera, FL 32940

Re: Miller Cove Road, Palm Shores

Dear Cynthia:

You recently informed me that First Avenue, a dirt road extending north from Miller Cove Road in the Town of Palm Shores was not considered to be a County road. My question now is whether Miller Cove Road (see attached map) is a County road, or does Brevard County consider it to be the Town's responsibility for maintenance. If this is the case, please provide the rationale for this determination, i.e., instrument of conveyance or County ordinance.

As always, we appreciate your assistance. Please give me a call if you have any questions.

Sincerely,

Doug Robertson, President
Robertson and Associates

Cc: Carol M. McCormack, Mayor, Town of Palm Shores
Scott Lamb, P.E.



FLORIDA'S SPACE COAST



TRANSPORTATION ENGINEERING DEPARTMENT
2725 Judge Fran Jamieson Way, Viera, Florida 32940
Telephone: (321) 617-7315
Fax: (321) 633-2083

September 30, 2009

Robertson & Associates
Land Planning & Development Consultants
Doug Robertson, President
100 Parnell Street
Merritt Island, FL 32953

SUBJECT: MILLER COVE ROAD, PALM SHORES

Dear Mr. Robertson,

This is in response to your letter dated September 9, 2009, in which you have questions regarding the maintenance responsibility for Miller Cove Road. Brevard County does not have any jurisdiction over any portion of the subject right of way. Attached is a copy of Resolution 94-01 that named a private road to "Miller Cove Road" May 24, 1994 for address purposes only, and there was no acceptance or responsibility for improvement, repair or maintenance.

If we can be of further assistance, please advise.

Sincerely,
Cynthia Streeter
Cynthia Streeter
Public Works Department

CS

Attachments

RETURN TO
TOWN OF PALM SHORES
111528
P.O. BOX 111528
PALM BEACH, FL 33406
(561) 833-1111

RESOLUTION NO. 94-01

A RESOLUTION TO OFFICIALLY NAME A PRIVATE ROAD
MILLER COVE ROAD

WHEREAS, The Town of Palm Shores of Brevard County, Florida, has been requested to name certain private roadways affording ingress and egress to and from Highway 1 for the occupants of Indian River Home Sites; and

WHEREAS, the owner of said private roadway has identified said private road by name and Brevard County Officials have requested the Town of Palm Shores adopt a resolution acknowledging and approving the name identifying said private road in order for addresses to be assigned and said road to be entered into the Brevard County Emergency Telephone System;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF PALM SHORES, PALM SHORES, FLORIDA, AS FOLLOWS:

Section 1. The following street name identifying the private road within the Indian River Home Sites, Plat Book 3, Page 37, as Recorded in the Public Records of Brevard County, are hereby acknowledged, accepted and approved by the Town of Palm Shores, viz:
Miller Cove Road

Section 2. That the location of this private road named in Section 1 of this Resolution is shown and depicted on the map marked "Exhibit A", attached to this Resolution and by this referenced incorporated herein and made a part hereof.

Judy Crawford Clerk Circuit Court
Recorded and Verified Brevard County, FL
Pgs. 3 # Names 2
Trust Fund 2.00 Rec Fee 13.00
Stamp-Dead _____ Excise Tx _____
Stamp-Mtg _____ Int Tx _____
Service Chg _____ Retard _____

BK3395PG1323

611528
94JUN26 AM 10:48

Section 3. This Resolution is adopted to enable Brevard County officials to enter the addresses and street name into the Brevard County 911 Emergency Telephone System.

Section 4. Nothing contained in this Resolution shall be deemed or construed to be an acceptance of the herein designated road as a public street or road of the Town of Palm Shores, nor to constitute said roadway as part of the public street system of the Town of Palm Shores, nor as any assumption by the Town of Palm Shores of responsibility for improvement, repair, maintenance or safety of the private road herein identified.

Section 5. It shall be the property owners responsibility to install and maintain the proper street sign and stop sign and keep said road clear and accessible for emergency vehicles.

PASSED AND ADOPTED at a regular meeting of the Town of Palm Shores, Town of Palm Shores, Florida, this 24 day of May, A.D. 1994

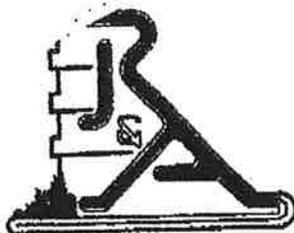
Anna J. Jernsten
Mayor, Town of Palm Shores

Attest:

Patty Waterman
city clerk

(SEAL)

BK 3395PG 1324



Robertson and Associates
LAND PLANNING & DEVELOPMENT CONSULTANTS

September 9, 2009

Cynthia Streater, Operations Specialist
Transportation Engineering/Survey Section
2725 Judge Fran Jamieson Way Bldg. A. Rm. 220
Viera, FL 32940

Re: Miller Cove Road, Palm Shores

Dear Cynthia:

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As always, we appreciate your assistance. Please give me a call if you have any questions.

Sincerely,

Doug Robertson, President
Robertson and Associates

Cc: Carol M. McCormack, Mayor, Town of Palm Shores
Scott Lamb, P.E.

BREVARD *County*
BOARD OF COUNTY COMMISSIONERS

FLORIDA'S SPACE COAST



TRANSPORTATION ENGINEERING DEPARTMENT
2725 Judge Fran Jamieson Way, Viera, Florida 32940
Telephone: (321) 617-7315
Fax: (321) 633-2083

September 30, 2009

Robertson & Associates
Land Planning & Development Consultants
Doug Robertson, President
100 Parnell Street
Merritt Island, FL 32953

SUBJECT: MILLER COVE ROAD, PALM SHORES

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If we can be of further assistance, please advise.

Sincerely,
Cynthia Streeter
Cynthia Streeter
Public Works Department

CS

Attachments

RETURN TO
TOWN OF PALM SHORES
1000 N. W. 1st St.
Palm Shores, FL 32909
(407) 286-1111

RESOLUTION NO. 94-01

A RESOLUTION TO OFFICIALLY NAME A PRIVATE ROAD
MILLER COVE ROAD

WHEREAS, The Town of Palm Shores of Brevard County, Florida, has been requested to name certain private roadways affording ingress and egress to and from Highway 1 for the occupants of Indian River Home Sites; and

WHEREAS, the owner of said private roadway has identified said private road by name and Brevard County Officials have requested the Town of Palm Shores adopt a resolution acknowledging and approving the name identifying said private road in order for addresses to be assigned and said road to be entered into the Brevard County Emergency Telephone System;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF PALM SHORES, PALM SHORES, FLORIDA, AS FOLLOWS:

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Section 2. That the location of this private road named in Section 1 of this Resolution is shown and depicted on the map marked "Exhibit A", attached to this Resolution and by this referenced incorporated herein and made a part hereof.

Lundy Crawford Clerk Circuit Court
Recorded and Verified Brevard County, FL
Pgs. 3 # Names 2
Trust Fund 2.00 Rec Fee 13.00
Stamp-Duty _____ Excise Tax _____
Stamp-Mtg _____ Int Tax _____
Service Chg _____ Retard _____

BK3395PG1323

611528
9 MAY 26 AM 10:48

Section 3. This Resolution is adopted to enable Brevard County officials to enter the addresses and street name into the Brevard County 911 Emergency Telephone System.

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Section 5. It shall be the property owners responsibility to install and maintain the proper street sign and stop sign and keep said road clear and accessible for emergency vehicles.

PASSED AND ADOPTED at a regular meeting of the Town of Palm Shores, Town of Palm Shores, Florida, this 24 day of May, A.D. 1994

Ann J. Jensen
Mayor, Town of Palm Shores

Attest:

Patty Waterman
City Clerk

(SEAL)

BK3395P61324