# Agenda Report

2725 Judge Fran Jamieson Way
Viera, FL 32940

## Unfinished Business

I.3. 5/20/2025

## Subject:

Request for a waiver of Section 62-102(c), Unpaved Road Agreements (District 1)
Applicant: Larry Stewart

## Fiscal Impact:

Indeterminate.

## Dept/Office:

County Attorney's Office / Planning and Development

## Requested Action:

Consider the applicant's request for waivers to Section 62-102(c), Brevard County Code of Ordinances, to allow construction of a house on property located at Parcel ID 20G-35-01-01-3-3.01 (Tax Account No. 2004427) without meeting any of the following Code requirements: (1) constructing an unpaved road within County right of way; (2) providing for the maintenance of said road; and (3) dedicating or deeding additional easements to the County on each side of the existing 30-foot right of way to meet the minimum right of way width requirement of 50 feet. Significantly, the Board of County Commissioners considered this request in regular session on October 26, 2021, and tabled the matter to allow the applicant to provide County staff with the information necessary to process such a waiver. The applicant has refused to provide the necessary information. If the Board denies the requested waivers, the Board may wish to direct the County Attorney to prepare a resolution setting forth findings of fact upon which the decision is based.

## Summary Explanation and Background:

Section 62-102 stipulates that no building permit for a single-family dwelling will be issued by the County unless the property on which the dwelling is to be located abuts a public road dedicated and accepted for maintenance by the County. Section 62-102(c) - Unpaved Road Agreements, provides that the County and a property owner whose property abuts a public right of way that is not maintained by the County may enter into an agreement to allow the issuance of a permit to construct an unpaved road within the right of way and obtain a permit for a single-family residence if certain criteria are met. Among those criteria are the following:

(1) Unpaved road agreements are limited to existing County rights of way of at least 50 feet in width. If the right of way is less than 50 feet wide, additional easements dedicated or deeded to the County and accepted by the County for maintenance must be obtained on each side of the right of way to allow room for drainage and, if applicable, sidewalks.

(2) Every participating property owner is responsible for all costs related to the construction of the unpaved roadway including survey, design, initial signage and installation, engineering, permitting and construction for the length of roadway covered by the agreement. The roadway shall be designed and stabilized to a minimum of between LBR 40 and 60 and shall be reviewed

and inspected by the County for approval prior to the issuance of a building permit.

(3) To defer the cost of County maintenance, unpaved road agreements shall stipulate a fixed amount that must be paid prior to execution of the agreement. This amount is determined by the Public Works Department and adopted by resolution in an amount necessary to reimburse the County for maintenance costs.

(4) Typically, the unpaved road agreement constitutes the property owner's consent to a special assessment to pay a proportionate share of the County's cost to pave the road once 50 percent of the owners of lots abutting the unpaved road have obtained building permits. However, where the subject roadway on which the agreement applies intersects with an existing County-maintained dirt road (as opposed to a paved road), and where all buildable lots abutting the subject roadway are two and one-half acres or larger in area, the property owner would not be required to participate in the establishment of a special assessment project for paving of the road.

Section 62-102(d) provides for waivers which might be warranted where "undue hardship may result from strict compliance with subsection (c)...." Section 62-102(d) provides that a waiver applicant "shall submit a written request" and requests "must be submitted prior to or in conjunction with the application for an unpaved road." Among other things, it further provides "the [C]ounty may attach such conditions to the waiver to assure that the waiver will comply with the intent and purpose of this section."

The applicant is the owner of a 4.9-acre parcel of property with a Future Land Use of Residential 1 and AU zoning, both of which generally permit the erection of a single-family dwelling as a use of the property. The property was part of a larger parcel which was divided into two adjoining parcels with the applicant's purchase of the property on December 3, 2021. The property is located on a 30-foot wide "paper right of way" (a platted right of way that has never been improved with a proper road or maintained by the County), 628 feet east of said right of way's intersection with Dixie Way, a dirt road that the County has maintained since 1976.

Aerial photos from 2014 to current show a grassy trail through the right of way. At some point, an unknown party placed asphalt millings in the unmaintained right of way without a permit. Asphalt millings are not an FDOT or County approved base material, and do not meet the Code requirements for a paved or unpaved road. Property to the east of the subject property is also undeveloped and could potentially seek access through this unmaintained right of way in the future. The properties west of the subject property have frontage on Dixie Way and were developed with single family homes in 1994 and 2005, respectively.

Since December 3, 2020, a year to the day before the applicant purchased the property, he had been in contact with County staff to determine whether a single-family residence could be constructed on the property. Staff advised the applicant that his development plans required an unpaved road agreement as provided in Section 62-102(c) of the County Code. Additionally, he would need to either (1) obtain an additional 20 feet right of way to meet Section 62-102(c)'s requirement that unpaved road agreements "be limited to existing County rights-of-way of at least 50 feet in width" or (2) obtain a waiver from the road width rule. The applicant wishes a waiver from the requirement for an unpaved road agreement entirely. It should be noted that because the subject unmaintained 30-foot right of way abuts an existing County-maintained dirt road (Dixie Way), and all buildable lots abutting the right of way are two and one-half acres or larger in area, the applicant would not be required to participate in the establishment of a special assessment project for paving of the right of way.

Before purchasing the property (i.e., while the property was under contract), the applicant applied for a waiver. The "undue hardship" recited in the applicant's waiver request was his alleged financial inability "to construct a road of minimum design standards just to access my property."

County staff did not "concur that undue hardship was placed on the applicant," that "[t]he particular physical condition, shape or topography of the specific property involved causes an undue hardship to the applicant if the strict letter of [Section 62-102(c)] is carried out," that [t]he conditions upon which [the] request for waiver are based, are peculiar to the property for which the waiver is sought and are not generally applicable to other property and do not result from the actions of the applicant," or that the granting of the waiver "serves the public interest," each of which is a requirement for the administrative approval of a waiver under Section 62-102(d). Therefore, staff requested that the merits of the applicant's waiver request be evaluated by the Board of County Commissioners.

On October 26, 2021, at a public hearing on his waiver request, the Board of County Commissioners tabled consideration of the matter to allow the applicant an opportunity to show "how the road can be constructed within the 30[-]foot right-of-way, with additional easements of the right-of-way including necessary improvements, road drainage, and utilities; and this will provide staff the administrative authority, at that time, to review and approve the plans, if appropriate, including a waiver of engineering standards."

On December 3, 2021, the applicant purchased the property, fully aware of what would be required for staff to review and act upon the waiver request. In the intervening months and years, the applicant has adamantly refused to provide the necessary information for staff to administratively review and approve the requested waivers. For example, on June 20, 2023, the County Attorney proposed to the applicant's attorney that County staff would consider very relaxed and flexible design standards if the applicant would submit something meeting the requirements of the Code and the prior Board direction:

"As we previously discussed, the County will consider road design guidelines that will provide a great degree of flexibility for the designer to exercise engineering judgment, and which can likely be met within the constrained 30' right-of-way, though much will depend on the drainage design. I previously sent to you the Guidelines for Geometric Design of Low-Volume Roads. Since then, I obtained a copy of the Guidelines for Geometric Design of Very Low-Volume Roads, which I have attached hereto. If [the applicant] obtains engineering showing a design that meets the reduced design criteria in these guidelines, County staff will waive applicable technical standards where judgment indicates that this can be accomplished without substantially affecting safety or drainage."

The applicant again refused. The applicant instead sued the County in federal court, where his complaint was twice dismissed for several reasons, including lack of ripeness. The second time the court dismissed the case, it denied the applicant's request for leave to file an amended complaint, though the case was dismissed without prejudice (meaning that the applicant can potentially file a new lawsuit).

With the most recent dismissal, the applicant's attorney requested "to call our waiver application up for a hearing in front of the Board," or, "[a]lternatively, please advise if the Board of County Commissioners plans on not hearing the application for a waiver." The attorney made clear that the applicant would not submit engineering plans or other pertinent information in support of the waiver request.

Attachments:

1. October 26, 2021 Board of County Commissioners Agenda Report Item J.1., "Waiver of Section 62-102 (c), Re: Unpaved Road Agreements to Allow Access Via Paper Right-of-Way to Dixie Way (District 1)," including:
   a. Land Development Waiver Application
   b. Staff Report (analysis of Waiver Application and Waiver Criteria)
2. October 27, 2021 Clerk's Memorandum
3. June 6, 2022 correspondence from County Attorney to applicant's attorney with attachments
4. March 6, 2025, Order dismissing applicant's federal lawsuit against County
5. March 10, 2025 to March 20, 2025 email correspondences between applicant's attorney and County Attorney

## Clerk to the Board Instructions:

Please provide a copy of the Clerk's Memorandum to the County Attorney's Office and the Planning and Development Department Director.

BREVARD County
BOARD OF COUNTY COMMISSIONERS

FLORIDA'S SPACE COAST

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

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

May 21, 2025

MEMORANDUM

TO: Morris Richardson, County Attorney

RE: Item I.3., Request for a Waiver of Section 62-102(c), Unpaved Road Agreements for Applicant: Larry Stewart

The Board of County Commissioners, in regular session on May 20, 2025, denied the applicant's request for waivers to Section 62-102(c), Brevard County Code of Ordinances; and authorized you to prepare a resolution, setting forth findings of fact upon which the decision is based.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell

Kimberly Powell, Clerk to the Board

/ds

cc: Planning and Development
Finance
Budget

# Agenda Report

2725 Judge Fran Jamieson Way
Viera, FL 32940

## New Business - Development and Environmental Services Group

J.1. 10/26/2021

## Subject:
Waiver of Section 62-102(c), Re: Unpaved Road Agreements to Allow Access Via Paper Right-of-Way to Dixie Way (District 1)
Applicant: Lawrence Stewart

## Fiscal Impact:
None

## Dept/Office:
Planning and Development

## Requested Action:
The applicant is seeking the Board's approval of a waiver to the Code of Ordinances of Brevard County, Section 62-102(c) to allow construction of a house at Tax ID 2004427 without: (1) constructing an unpaved road within county right-of-way; (2) providing for the maintenance of said roadway; and (3) agreeing to a proportion share assessment for the paving of the roadway.

## Summary Explanation and Background:
Section 62-102 stipulates that no building permit for a single-family dwelling will be issued by the County unless the property abuts a public maintained road dedicated and accepted for maintenance by the County. Section 62-102(c), Unpaved road agreements, provides that the Board and a property owner whose property abuts a right-of-way (ROW) which is not maintained by the County may enter into an agreement to construct a home that is subject to: (1) the applicant constructing an unpaved road within county right-of-way; (2) providing for the maintenance of said roadway; and (3) agreeing to a proportion share assessment for the paving of the roadway (see Staff Report). The applicant is requesting that the Board allow them to construct a single-family home with the access via an unpaved and unmaintained County right-of-way without entering into the required agreement for unpaved roadway construction, maintenance, and paving.

The subject property is located approximately 640 feet east of Dixie Way, which is a county maintained unpaved road. The unmaintained right-of-way in question intersects with Dixie Way, is 30' wide, and was created by Plat Book 8, Page 48 recorded in 1937. Aerial photos from 2014 to current show a grassy trail through the right-of-way. Asphalt millings have recently been placed in the right-of-way without a permit. Asphalt millings are not an F.D.O.T. or County approved base material, and do not meet the Code requirements for a paved or unpaved road. Property to the east of the subject property is also undeveloped, and could potentially seek access through this unmaintained right-of-way in the future. The properties west of the subject property have frontage on Dixie Way and were developed with single family homes in 1994 and 2005.

Pursuant to Section 62-102(d), staff has not confirmed that strict compliance with Section 62-102(c) causes

undue hardship and serves the public interest. Staff requests the merits of the request be evaluated by the Board of County Commissioners. Board approval of this project does not relieve the developer from obtaining all other necessary jurisdictional permits.

Reference: 21WV00016

Contact: Amanda Elmore, Assistant Director, Ext. 58996

BOARD OF COUNTY COMMISSIONERS

**Planning and Development**
**Planning and Zoning**
2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940
(321) 633-2070 Phone

# LAND DEVELOPMENT WAIVER APPLICATION

This form should be used for all waiver requests or appeals associated with the Code of Ordinances, Section 62, as it relates to Subdivisions, Minor Subdivisions, and Site Plans. Fees for Waivers are $775.00.

**Office Use Only**

Request Date _____ Fees _____ Board Date _____

Original Project Number _____ Waiver Number _____

Coordinator Initials _____ Reference Files _____

County Manager/Designee Approval _____

**APPLICATION TYPE:** ◯ Subdivision Waiver ◯ Site Plan Waiver ◉ Other

Waiver and appeal to unpaved road
If other, please indicate

**Tax Parcel Identification:**

| 20G | 35 | 01 | 01 | 2 | 3 |
|---|---|---|---|---|---|
| Township | Range | Section | Subdivision | Block/Parcel | Lot |

**Tax Account Numbers** (list all) 2004427 _____ _____

_____ _____ _____ _____

_____ Purchasing from Louis Morehead
Project Name Property Owner

**Site Address:**

| Address not assigned | Mims | Fl | 32754 |
|---|---|---|---|
| Street | City | State | Zip Code |

**CORRESPONDENCE TO BE PROVIDED TO APPLICANT AT THE ADDRESS BELOW:**

| Lawrence Stewart | |
|---|---|
| Applicant Name | Company |

| P.O. Box 642 | Scottsmoor | Fl | 32775 |
|---|---|---|---|
| Street | City | State | Zip Code |

| N/A | 321-302-1433 | N/A | larstew3@yahoo.com |
|---|---|---|---|
| Phone Number | Cell Phone Number | Fax Number | Email Address |

**ENGINEER/CONTRACTOR (if different from applicant)**

| | |
|---|---|
| Company | Engineer or Project Manager |

| | | | |
|---|---|---|---|
| Street | City | State | Zip Code |

| | | | |
|---|---|---|---|
| Phone Number | Cell Phone Number | Fax Number | Email Address |

**DESCRIPTION OF WAIVER REQUEST AND CODE SECTION:**

Waiver request as outlined in Brevard County Municipal Code ch.62-102, subsection (d).

| | Lawrence Stewart |
|---|---|
| Owner/Applicant Signature | Print Name |

If you wish to appeal any decision made by the county staff on the waiver, you may request the Board of County Commissioners to make a determination. The Board's decision approving or disapproving the waiver or interpretation is final.

**LAND DEVELOPMENT APPLICATION DOCUMENT SUBMITTAL REQUIREMENTS**
Waivers for Site Plans or Subdivisions require an application, waiver criteria (listed below), an 8 ½-inch x 11 inch vicinity map, and a fee of $775.00.

**WAIVER CRITERIA FOR SUBDIVISIONS AN SITE PLANS**
For a waiver to be considered and approved by staff, your request must comply with all of the following criteria. Please explain, in detail, how your request meets the following conditions.

1. The particular physical conditions, shape, or topography of the specific property involved causes an undue hardship to the applicant if the strict letter of the code is carried out.
   I am requesting to use the platted Right-Of-Way, as constructed, as legal access to be able to acquire an address for, and live on my property. The ROW is already privately constructed for agricultural usage, to include a grassed over asphalt milling base for most of the length, and stormwater drainage structures previously installed by the county. This ROW is approximately 635' in length. I cannot afford, as a single working father, to construct a road of minimum design standards just to access my property. I am submitting this waiver application due to this obvious financial hardship to my family.
2. The granting of the waiver will not be injurious to the other adjacent property.
   This ROW is already used as a secondary "convenience" access for the two properties that abut the North and South sides. "Injurious" to these properties would be constructing a road of minimum design standards here, effectively blocking and disrupting their current access. Also, this is an agricultural area of rural beauty, and the construction of a new road is an unwelcomed eyesore.

3. The conditions, upon which a request for waivers are based, are particular to the property for which the waiver is sought and are not generally applicable to other property and do not result from actions of the applicant.

   Yes. The cost to construct a road of minimum design standards is financially impossible for most private citizens. "Particular to my property" is that I would be the only resident that requires access via this ROW, therefore unable to share any of the cost with anyone.

4. The waiver is consistent with the intent and purpose of the county zoning regulations, the county land use plan, and the requirements of this article.

   Yes. The zoning for my property is Agricultural Residential, (AU). This allows for a single-family detached residential dwelling and the keeping of animals and livestock. I desire to construct 1 single-family residence here and live an agricultural based life with my children.

5. Delays attributed to state or federal permits.

   I am currently renting a small home with my family. I sold my home, placing many belongings in storage, and began the purchase process of this property, already investing a great deal of money, before I understood that I could not currently use this ROW as legal access for address assignment. My family is currently in a burdensome state of displacement and the delays associated with this process create hardship on my young children and I.

6. Natural disasters.

   N/A

7. County development engineer and affected agencies concur that an undue hardship was placed on the applicant. (To be filled out by county staff)

**Site Address:**

| Address not assigned | Mims | Fl | 32754 |
|---|---|---|---|
| Street | City | State | Zip Code |

**CORRESPONDENCE TO BE PROVIDED TO APPLICANT AT THE ADDRESS BELOW:**

| Lawrence Stewart | |
|---|---|
| Applicant Name | Company |

| P.O. Box 642 | Scottsmoor | Fl | 32775 |
|---|---|---|---|
| Street | City | State | Zip Code |

| N/A | 321-302-1433 | N/A | larstew3@yahoo.com |
|---|---|---|---|
| Phone Number | Cell Phone Number | Fax Number | Email Address |

**ENGINEER/CONTRACTOR (if different from applicant)**

| | |
|---|---|
| Company | Engineer or Project Manager |

| | | | |
|---|---|---|---|
| Street | City | State | Zip Code |

| | | | |
|---|---|---|---|
| Phone Number | Cell Phone Number | Fax Number | Email Address |

**DESCRIPTION OF WAIVER REQUEST AND CODE SECTION:**

Waiver request as outlined in Brevard County Municipal Code ch.62-102, subsection (d).

|  | Lawrence Stewart |
|---|---|
| Owner/Applicant Signature | Print Name |

If you wish to appeal any decision made by the county staff on the waiver, you may request the Board of County Commissioners to make a determination. The Board's decision approving or disapproving the waiver or interpretation is final.

Planning & Development Department
2725 Judge Fran Jamieson Way
Building A, Room 115
Viera, Florida 32940
321-633-2065

BOARD OF COUNTY COMMISSIONERS

**STAFF REPORT:** Lawrence Stewart (21WV00016, Tax Parcel: 2004427)

Mr. Stewart is seeking a waiver of the Section 62-102(c) which stipulates that no building permit for a single-family dwelling will be issued by the County unless the property abuts a public maintained road dedicated and accepted for maintenance by the County. Mr. Stewart's property (Tax Account # 2004427) does not directly access a public street that has been accepted for maintenance by the County. Therefore, he is requesting that the Board allow him to construct a single-family home with the access via an unpaved and unmaintained County right-of-way off of Dixie Way without entering into the required agreement for unpaved roadway construction, maintenance, and paving. This report provides background and history for unpaved road agreements, and analysis of waiver request.

**Background**

Prior to the adoption of the subdivision regulations in 1978, procedures neither existed for subdividing land to create lots nor for the construction of the necessary associated infrastructure (roadways, drainage, etc). This resulted in potentially thousands of lots being created in Brevard County with access via a "paper" right-of-way (R.O.W.) considering the first subdivision plat was recorded in 1891. These paper R.O.W.s, offer a means of legal access, but they are unimproved access ways in a natural state. Until 1991, the County issued building permits for single family homes with the homeowner responsible for maintaining the paper right-of-way providing access to their home. In many cases, the owners would clear the area depicted on the paper R.O.W. and utilize it without making grading or drainage improvements. As more homes were constructed along these access ways, the necessary roadway maintenance would go beyond the individual homeowners' capabilities. Homeowners along the access way would petition the County to take over maintenance of these access ways, which necessitated a revenue source to construct the accessway to county standards and maintain an unpaved road.

In 1991, the County determined that individual property owners building on the unmaintained R.O.W. should be responsible for providing the access roadway and drainage improvements, similar to that required of a developer in the subdivision regulations. In 1993, the adoption of Ordinance 93-27 created criteria for the unpaved road agreements. Today, Section 62-102(c), provides that the Board and a property owner whose property abuts a paper R.O.W. may enter into an agreement to construct a home that is subject to: (1) the applicant constructing an unpaved road within county right-of-way; (2) providing for the maintenance of said roadway; and (3) agreeing to a proportion share assessment for the paving of the roadway (see Exhibit A). The intent was to reduce the access standard (reducing the cost) to allow homes to be built with access to these paper R.O.W.s while assuring there is mechanism to pave the road once 51% of the lots along the R.O.W. obtain building permits.

**Subject Property**
The current configuration of the 9.8-acre lot was created in 1991 through warranty deed transfer of the east half of Tract 3, Block 3, and the east half of Tract 3, Block 2 recorded in Plat Book 8, Page 48 back in 1937. The property abuts an unnamed paper R.O.W., and is located approximately 640 feet east of Dixie Way, which is County maintained. Aerial photos from 2014 to current show a grassy trail through the right-of-way. Asphalt millings have recently been poured down the right-of-way. However, this is not an FDOT or County approved base material, and does not meet the code requirements for a paved or unpaved road. Property to the east is also undeveloped, and could potentially seek access through this unmaintained right-of-way in the future.

**Analysis of Unpaved Road Agreement Criteria**
The existing paper R.O.W. fronting the subject parcel has not been constructed to County Standards nor has it been accepted for maintenance as a public street by the County as required Section 62-102. Section 26-102(c) establishes nine criteria for the unpaved road agreement between the Board of County Commissioners and a single property. Mr. Stewart's request is to essentially forgo the nine requirements and the agreement altogether. The following compares the code requirements and the existing or proposed solution:

*Sec. 62-102(c)1 - The agreements are to be limited to existing county rights-of-way of at least 50 feet in width.*

This paper R.O.W. does not satisfy the requirement as it is platted at 30 feet wide. Nor has the applicant demonstrated a roadway, drainage, and utilities can be placed in the existing right-of-way.

*Sec. 62-102(c)2 and 62-102(c)3 - Only those properties within 1,320 feet of a county-maintained roadway are eligible.*

The subject parcel meets this criterion as it is approximately 640 feet from the county-maintained R.O.W.

*Sec. 62-102(c)4 – Granting the waiver would not eliminate compliance with all other development regulations, all of the requirements of the comprehensive plan, all criteria of the environmental health section, and requirements of the Office of Natural Resource Management and land clearing regulations for issuance of a building permit.*

Compliance with the above regulations will be reviewed during the building permit process.

*Sec. 62-102(c)5 - There shall be a limitation of one agreement per parcel, which agreement shall not be transferable.*

The applicant is requesting not to have an agreement.

*Sec. 62-102(c)6 – Requires that every participating property owner is responsible for all costs related to permitting, construction and maintenance cost of the unpaved roadway. Additionally, the participating land owner's consent to a special assessment project involving the payment of a*

*proportionate share of the county's cost to pave the road once 50 percent of the lots abutting an unpaved road have obtained building permits.*

Mr. Stewart's request to forgo the agreement would result in not having a mechanism to ensure the funding responsibility of the aforementioned improvements. Currently, more than 50 percent of the owners of lots abutting the subject 30-foot right-of-way, up to the subject parcel, have obtained building permits.

*Sec. 62-102(c)7 – Establishes conditions that apply to the county's acceptance of a dedication or deed for right-of-way required to construct an unpaved road.*

Mr. Stewart's request would eliminate this requirement.

*Sec. 62-102(c)8 – Stipulates that the special assessment for the paving shall be implemented using the procedures and a methodology provided for in Florida Statute Chapter 170.*

Mr. Stewart's request would eliminate this requirement.

*Sec. 62-102(c)9 – Alleviates the paving requirement where the subject intersects with an existing county-maintained dirt road, and lots abutting are two and one-half acres or larger in area.*

This criterion applies to Mr. Stewart's request since the subject right-of-way intersects with Dixie Way, a county maintained unpaved road and abutting lots exceed the minimum 2.5 acres.

**Analysis of Waiver Criteria**

Section 62-102 (d), stipulates that where staff finds that undue hardship may result from strict compliance with the unpaved road agreements subsection, the county manager may approve a waiver provided it serves the public interest and satisfies the following criteria.

1) The particular physical condition, shape or topography of the specific property involved causes an undue hardship to the applicant if the strict letter of the code is carried out.

   Staff comment: The physical condition of the subject unmaintained right-of-way has a limited width of 30-feet. Per Section 62-102 (c), "additional easements, dedicated or deeded to the county and accepted by the county for maintenance in accordance with the provisions of subsection 7... must be obtained on each side of the right-of-way by the owner for drainage and sidewalk purposes to bring the total width to 50 feet." The applicant would need to dedicate 20-feet of additional right-of-way fronting their property, and would also need to obtain 20-feet of additional right-of-way from the properties to the west. If the applicant/owner could not obtain additional dedicated right-of-way from the properties to the west, the applicant/owner would need to show due diligence on the design to incorporate all of the required improvements within the limited right-of-way including the road, drainage, and sidewalks.

2) The granting of the waiver will not be physically or economically injurious to other adjacent property.

Staff comment: The parcels along the subject right-of-way to the west (Tax Account # 2004931 and 204436) will not have access to a County maintained road if the waiver is granted. Code requirements for County maintained roads ensure access for emergency response to serve all properties along that road.

3) The conditions upon which a request for waiver are based, are peculiar to the property for which the waiver is sought and are not generally applicable to other property and do not result from actions of the applicant.

   Staff comment: Staff had been in contact with the applicant prior to purchasing the lot. On December 3, 2020, staff discussed unpaved road requirements with the applicant and the constraints with the limited 30-foot wide right-of-way. On December 7, 2020, staff emailed the applicant a link to Section 62-102 which includes the unpaved road requirements. The email also included information regarding requesting a waiver to an unpaved road, and noted that if a waiver is granted, survey information would be needed by a licensed surveyor within the right-of-way. Additionally, a Professional Engineer, registered in the State Florida, would need to provide plans addressing drainage and access for emergency response to the subject parcel.

4) The waiver is consistent with the intent and purpose of the county zoning regulations, the county land use plan and the requirements of this section.

   Staff comment: Staff has confirmed that the subject lot could be developed with one single family residence. It meets or exceeds the minimum size requirements in Section 62-1334 for AU, Agricultural Residential zoning, and complies with the Future Land Use of Res1.

5) The county and affected agencies concur that undue hardship was placed on the applicant.

   Staff comment: Staff had been in contact with the applicant prior to purchasing the subject parcel at Tax Account # 2004427. According to the Property Appraiser's website, as of October 11, 2021, this parcel has not been transferred to the applicant. The applicant was advised that an unpaved road is required per Code within the subject right-of-way and will need to be designed, permitted and constructed by the applicant including survey by a licensed surveyor and plans by a licensed professional engineer. For the applicant to design, permit, and construct a paved or unpaved road with associated drainage and sidewalks, additional right-of-way will need to be obtained.

**Conclusion**

Staff was not able to determine that granting the waiver serves the public interest. Staff requests the Board evaluate the conditions of the waiver to determine undue hardship and the public interest for final approval or disapproval of the application. Board approval of this project does not relieve the developer from obtaining all other necessary jurisdictional permits.

# EXHIBIT A

**Section 62-102(c) Unpaved road agreements**

The board of county commissioners and a single property owner or multiple property owners whose property abuts a right-of-way which is not maintained by the county may enter into an agreement, to allow the issuance of a permit to construct an unpaved road within county right-of-way and obtain a permit for the consideration of one or more single-family residence under the following conditions:

1. These agreements shall be limited to existing county rights-of-way of at least 50 feet in width. If a right-of-way exists of less than 50 feet in width, additional easements, dedicated or deeded to the county and accepted by the county for maintenance in accordance with the provisions of subsection 7. below, must be obtained on each side of the right-of-way by the owner for drainage and sidewalk purposes to bring the total width to 50 feet. Any requests for deviation from the 50-foot width requirement shall be made as part of the application process and will be reviewed by the county for a determination. Any acquisition costs associated with the right-of-way and easements will be borne solely by the property owner. The traveling surface of the road will be centered within the right-of-way.

2. Only those properties within 1,320 feet of a county-maintained roadway are eligible. However, an administrative approval may be considered by staff to allow a distance up to 20 percent or 264 feet beyond the 1,320 feet, if the extension would not create a detrimental impact to the public interest. Staff shall consider topography, drainage characteristics and impact to adjacent land in granting this administrative approval.

3. When an unpaved road is initiated, it may only extend 1,320 feet from an existing county-maintained roadway which has been established as the beginning point for the project. If the existing maintained roadway is unpaved, that existing maintained roadway must have been constructed and maintained without the benefit of unpaved road agreements. In addition, the roadway built under an unpaved road agreement will not be permitted to extend beyond the original 1,320 feet from an existing county-maintained roadway until such time as the existing county-maintained road is paved and a special assessment project has been established to pave the unpaved road section constructed under one or more unpaved road agreements.

4. Each lot, parcel or tract of land must meet all of the requirements of the comprehensive plan, shall satisfy all criteria of the environmental health section, and shall meet all of the requirements of the office of natural resource management and land clearing regulations for issuance of a building permit.

5. There shall be a limitation of one agreement per parcel, which agreement shall not be transferable.

6. By entering into an unpaved road agreement, every participating property owner is responsible for all costs related to the construction of the unpaved roadway including survey, design, initial signage and installation, engineering, permitting and construction for the length of roadway covered by the agreement. The roadway shall be designed and stabilized to a minimum of between

LBR 40 and 60 and shall be reviewed and inspected by the county for approval prior to the issuance of a building permit. Additionally, to defer the cost of county maintenance, the agreement shall stipulate a fixed amount that must be paid prior to execution of the agreement. This amount would be determined by the road and bridge department or its successor and adopted by resolution in an amount necessary to reimburse the county for maintenance costs. The unpaved road agreement shall also constitute the participating land owner's consent to a special assessment project involving the payment of a proportionate share of the county's cost to pave the road, in the manner prescribed by subsections 7.a. and 8. once 50 percent of the owners of lots abutting the unpaved road have obtained building permits.

7. The following conditions shall apply to the county's acceptance of a dedication or deed for right-of-way required to construct an unpaved road:

a. Whether an unpaved road agreement exists or not, the county's acceptance of an owner's offer to dedicate or deed right-of-way, shall constitute an agreement by the property owner dedicating or conveying the right-of-way necessary to construct an unpaved road as well as the agreement of any successor in interest to that owner, approving a special assessment project involving the payment of a proportionate share of the county's cost to pave the road once 50 percent of the owners of lots abutting the unpaved road have obtained building permits. The proportionate share shall be calculated by a method of assessment procedure which may entail a calculation based upon a property's front footage along the road, or the number of platted lots fronting the road, or square footage of platted lots fronting the road, or any combination thereof deemed equitable by the board of county commissioners. Said method of assessment shall be based upon the cost to pave the road and shall be assigned to the number of assessable lots specially benefitted by the paving project. Assessable lots shall include all lots specially benefitted by the paving project, including any lot, the owner of which, has entered into an unpaved road agreement and any owner who has not entered into an unpaved loan agreement.

b. Either upon receipt of notice that a special assessment is being levied for paving of an unpaved road or upon application for a building permit for property abutting an unpaved road, any owner of such property may enter into an agreement for the assessment and repayment of the owner's pro rata share for the cost of paving the unpaved road, as determined in subparagraph a. above, at the time the paving project is completed. The agreement shall provide for repayment of the owner's assessment upon completion of the paving project, in either (1) a lump sum; or (2) over a period of ten years in monthly or annual installments of the principal due bearing interest at a rate not to exceed two percent above the true interest cost of any bonds used to finance the cost for paving the road, or (3) through any other method of financing approved by the board. Such an agreement shall take the form of a recordable assessment lien against the owner's property, provided the county may also record against any owner of an assessable lot who does not enter into an unpaved road an assessment lien in the amount of the assessment plus interest (as recited above) payable over a period of ten years in monthly or annual installments. Per Resolution 04-045, Brevard County will use the uniform method of collecting non-ad valorem assessments levied by the county for any assessment lien. Default in non-ad valorem taxes can result in a tax certificate being sold on the property and additional charges will accrue, subject to the exception provided for in subparagraph 8. below.

c. Dedication or conveyance of the right-of-way required to pave an unpaved road, as well as the

maintenance responsibility for that right-of-way, must be accepted by resolution duly adopted, by the Brevard County Board of County Commissioners. The resolution shall provide a legal description of the property and shall be recorded in the public records of Brevard County, Florida.

8. Any special assessment project arising out of the application of this subsection 62-102(c) shall be implemented using the procedures and a methodology provided for in F.S. Ch. 170. Upon completion of the special assessment project and compliance with the procedures in F.S. Ch. 170, the special assessment shall constitute a lien with the priority provided for in said statutes. The special assessment lien shall be enforceable by the uniform method of collecting non-ad valorem assessments, provided that the owners of residential property qualified for a homestead exemption on September 30, 2008, may defer payment of the assessment until the homestead is sold and conveyed. The county shall record a release of lien within 60 days after the date the assessment is paid.

9. Where the subject roadway on which the agreement applies intersects with an existing county-maintained dirt road, and where all buildable lots abutting the subject roadway are two and one-half acres or larger in area, the property owner would not be required to participate in the establishment of a special assessment project for paving of the road.

**Section 62-102(d) Waivers and appeals to unpaved roads**

Where the county manager and/or his designee, and affected agencies find that undue hardship may result from strict compliance with subsection (c), the county manager may approve a waiver to the requirements of this section if the waiver meets the criteria set forth in subparagraphs 1. through 5. below and serves the public interest. An applicant seeking a waiver shall submit a written request, stating the reasons for the waiver and the facts, which support such waiver. All requests for waivers must be submitted prior to or in conjunction with the application for an unpaved road. The county manager and affected agencies shall not approve a waiver, unless they determine the following:

1. The particular physical condition, shape or topography of the specific property involved causes an undue hardship to the applicant if the strict letter of the code is carried out.

2. The granting of the waiver will not be physically or economically injurious to other adjacent property.

3. The conditions upon which a request for waiver are based, are peculiar to the property for which the waiver is sought and are not generally applicable to other property and do not result from actions of the applicant.

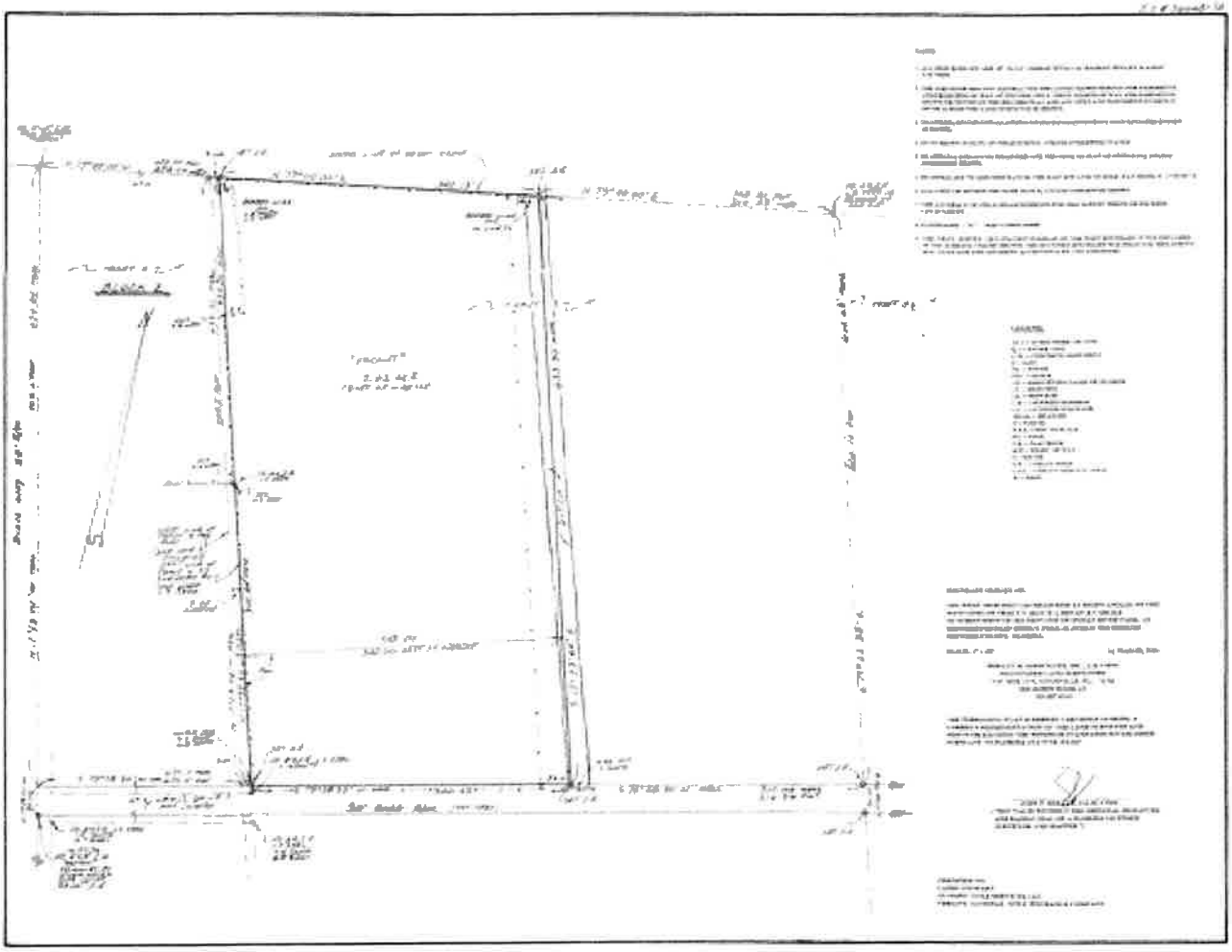
4. The waiver is consistent with the intent and purpose of the county zoning regulations, the county land use plan and the requirements of this section.

5. The county and affected agencies concur that undue hardship was placed on the applicant.

If the county manager and affected agencies approve a waiver, the county may attach such conditions to the waiver to assure that the waiver will comply with the intent and purpose of this

section.

The board of county commissioners shall hear appeals relating to any administrative decisions or determination concerning implementation or application of the section provisions, and shall make the final decision approving or disapproving the decision or interpretation in the event of such appeal. The request for appeal shall be submitted to the county within 30 calendar days of the written decision or determination. A hearing shall be scheduled before the board of county commissioners within 30 days of receipt of the written request. The request shall contain the basis for the appeal.



Dana Blickley, CFA
Brevard County Property Appraiser

887

# LOCATION MAP

UNPAVED ROAD WAIVER - UNPAVED RIGHT-OF-WAY TO DIXIE WAY

21WV00016


N

W E

S

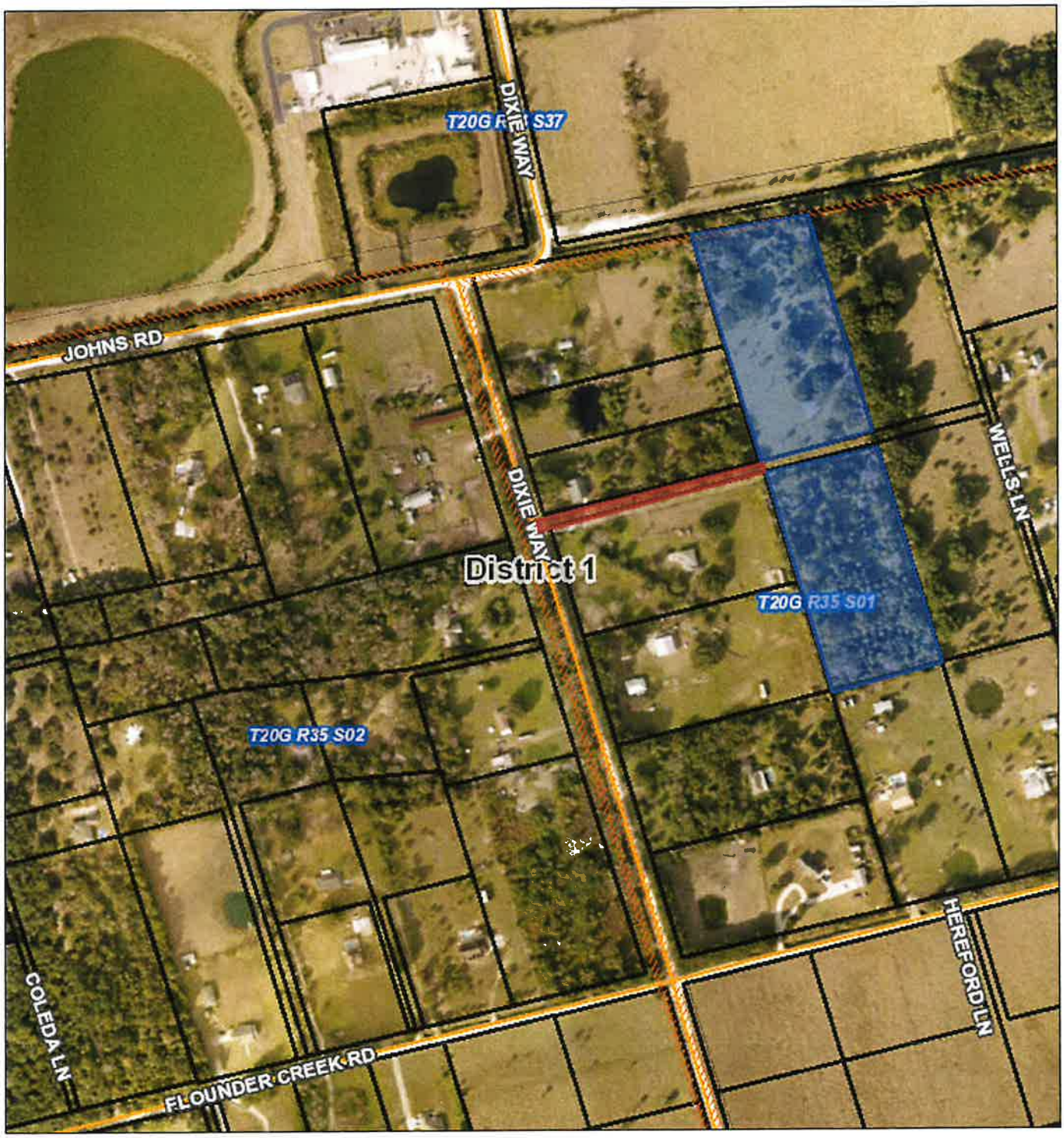
1:24,000 or 1 inch = 2,000 feet

Subject Property

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 10/4/2021

# ArcGIS Web Map




Street Label (S4800_S2400)

County Maintained

**Roadway**

- County
- County ROW/Non-Maintained
- Non-County (Bonded)

**PW Maintained Properties**

- Facilities
- Heavy Equipment Fleet
- Road & Bridge
- Traffic Ops
- Commissioner Districts
- Section

1:4,800

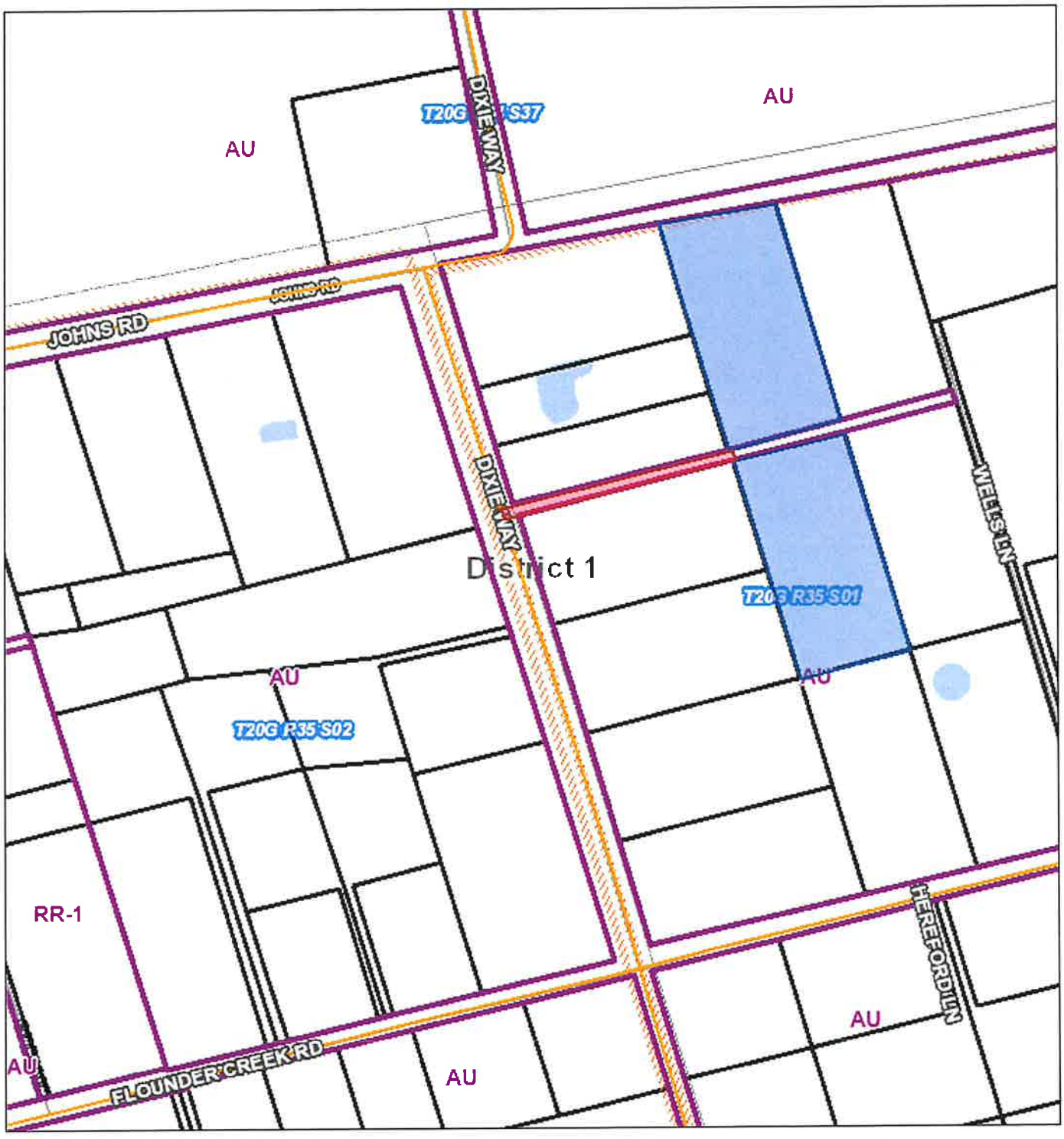
0 0.04 0.08 0.16 mi

0 0.05 0.1 0.2 km

Brevard County Property Appraiser Office

10/1/2021, 1:34:32 PM

# ArcGIS Web Map




Street Label (S4800_S2400)

County Maintained

**Roadway**

- County
- County ROW/Non-Maintained
- Non-County (Bonded)

**PW Maintained Properties**

- Facilities
- Heavy Equipment Fleet
- Road & Bridge
- Traffic Ops
- Zoning
- Commissioner Districts

1:4,800

0 0.04 0.08 0.16 mi

0 0.05 0.1 0.2 km

10/1/2021, 1:43:48 PM

BREVARD County
BOARD OF COUNTY COMMISSIONERS

FLORIDA'S SPACE COAST

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

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

October 27, 2021

MEMORANDUM

TO: Tad Calkins, Planning and Development Director Attn: Amanda Elmore

RE: Item J.1., Waiver of Section 62-102(c), Re: Unpaved Road Agreements to Allow Access Via Paper Right-of-Way to Dixie Way

The Board of County Commissioners, in regular session on October 26, 2021, tabled consideration of a waiver to the Code of Ordinances of Brevard County, Section 62-102(c) to allow construction of a house at Tax ID 2004427 without constructing an unpaved road within County right-of-way, providing for the maintenance of said roadway, and agreeing to a proportion share assessment for the paving of the roadway. This will provide time for the applicant to provide County staff with engineering plans showing how the road can be constructed within the 30 foot right-of-way, with additional easements of the right-of-way including necessary improvements, road drainage, and utilities; and this will provide staff the administrative authority, at that time, to review and approve the plans, if appropriate, including a waiver of engineering standards.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell, Clerk to the Board

/sm

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

**BOARD OF COUNTY COMMISSIONERS**

June 6, 2022

Scott Knox, Esq.
Widerman Malek
1990 W. New Haven Ave.
Second Floor
Melbourne, FL 32904

**RE: Larry Stewart Access Question**

Dear Scott,

In response to your correspondence dated March 3, 2022, and your client's recent requests to have his waiver request placed back on the Board's agenda (**attached – Exhibit A**), the County has evaluated the situation and can provide the following synopsis:

As to the request for the administrative waiver to the unpaved road agreements outlined in Section 62-102, Brevard County Code, the County provided your client with guidance on what information staff would need in order to process such a waiver. Specifically, the County requested engineered plans either indicating: (1) the existing travel way (including drainage, utilities, and other minimum standards) was built within the constrained right-of-way, or (2) an engineered plan depicting the proposed roadway (including drainage, utilities, and other minimum standards) could be built within the constrained right-of-way (**attached – Exhibit B**). The County requested, and is again requesting, such information be provided in order to allow staff to review the current state of the right-of-way and evaluate the situation pursuant to Section 62-102(d), Brevard County Code. Unless and until such information is provided, the application is considered deficient as the lack of information is preventing the County from being able to fully evaluate the conditions that presently exist. If your client could provide such information within sixty (60) days of this letter, that would be greatly appreciated. Based on the Board's action to table the request on October 26, 2021, staff is not authorized to put the item on the Board's agenda without having gone through the administrative process (**attached – Exhibit C**).

With that being said, in addition to the potential resolution of the situation through the waiver process, your client may have an alternative option of creating a flag lot in order to meet the requirements outlined in Section 62-102, Brevard County Code.

Sincerely,

Abigail Jorandby
County Attorney
Board of County Commissioners of Brevard County, Florida

Phone (321) 633-2090 • Fax (321) 633-2096
Website: www.BrevardFL.gov

# EXHIBIT A

**From:** Calkins, Tad
**To:** Esseesse, Alexander; Jorandby, Abigail F.
**Subject:** FW: Board Meeting Request
**Date:** Wednesday, May 25, 2022 12:18:51 PM
**Importance:** High

---

FYI

-----Original Message-----
From: Ramos, Tania <Tania.Ramos@brevardfl.gov>
Sent: Wednesday, May 25, 2022 11:22 AM
To: Calkins, Tad <tad.calkins@brevardfl.gov>
Subject: FW: Board Meeting Request
Importance: High

Please see the email below from Larry Stewart.

Tania Ramos, Planner II

Planning & Zoning
Office (321) 350-8278

This office can only provide zoning and comprehensive plan information. You may wish to contact other County agencies to fully determine the development potential of this property. This letter does not establish a right to develop or redevelop the property and does not constitute a waiver to any other applicable land development regulations. At the time of development, this property will be subject to all such regulations. 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.

-----Original Message-----
From: Larry Stewart <larstew3@yahoo.com>
Sent: Wednesday, May 25, 2022 11:12 AM
To: Ramos, Tania <Tania.Ramos@brevardfl.gov>; Scott Knox <sknox@uslegalteam.com>
Subject: Board Meeting Request

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Tania,

This is Larry Stewart. In regards to my pending waiver request, (21WV00016), I have been advised by my attorney to request to be put back on the agenda. This request was originally heard by the board, and "tabled" by Commissioner Pritchett, on 10/26/2021. Due to the length of time my request has been pending, and the financial burden that is destroying my family as a direct result of this delay, I do request to be added to the agenda for the next scheduled "regular" meeting of the board. Thank you.

Sent from my iPhone

**From:** Calkins, Tad
**To:** Esseesse, Alexander
**Subject:** FW: Board Meeting Request
**Date:** Thursday, June 2, 2022 9:57:59 AM

---

FYI

-----Original Message-----
From: Larry Stewart <larstew3@yahoo.com>
Sent: Wednesday, June 1, 2022 9:28 AM
To: Ramos, Tania <Tania.Ramos@brevardfl.gov>; Calkins, Tad <tad.calkins@brevardfl.gov>
Cc: Scott Knox <sknox@uslegalteam.com>
Subject: Re: Board Meeting Request

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Tania,

According to the commission meeting calendar, the next board meeting is scheduled for Tuesday, July 12th. If my issue hasn't been resolved by then, then I trust I will be added to that agenda. Please advise. Thank you.

Sent from my iPhone

> On May 25, 2022, at 11:35 AM, Ramos, Tania <Tania.Ramos@brevardfl.gov> wrote:
>
> Mr. Stewart,
>
> I have forwarded your request to my Director, Tad Calkins.
>
> Thank you,
>
> Tania Ramos, Planner II
>
> Planning & Zoning
> Office (321) 350-8278
>
> This office can only provide zoning and comprehensive plan information. You may wish to contact other County agencies to fully determine the development potential of this property. This letter does not establish a right to develop or redevelop the property and does not constitute a waiver to any other applicable land development regulations. At the time of development, this property will be subject to all such regulations. 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.
>
> -----Original Message-----
> From: Larry Stewart <larstew3@yahoo.com>
> Sent: Wednesday, May 25, 2022 11:12 AM
> To: Ramos, Tania <Tania.Ramos@brevardfl.gov>; Scott Knox <sknox@uslegalteam.com>
> Subject: Board Meeting Request
>
> [EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.
>
> Tania,
>

> This is Larry Stewart. In regards to my pending waiver request, (21WV00016), I have been advised by my attorney to request to be put back on the agenda. This request was originally heard by the board, and "tabled" by Commissioner Pritchett, on 10/26/2021. Due to the length of time my request has been pending, and the financial burden that is destroying my family as a direct result of this delay, I do request to be added to the agenda for the next scheduled "regular" meeting of the board. Thank you.
>
> Sent from my iPhone

# EXHIBIT B

**From:** Calkins, Tad <tad.calkins@brevardfl.gov>
**Sent:** Wednesday, January 12, 2022 9:34 AM
**To:** Larry Stewart <larstew3@yahoo.com>; Denninghoff, John P <John.Denninghoff@brevardfl.gov>; Abbate, Frank B <Frank.Abbate@brevardfl.gov>
**Cc:** Grivas-Pereno, Bessie <Bessie.Grivas-Pereno@brevardfl.gov>
**Subject:** RE: Larry Stewart 62-102 (d)

Mr. Stewart,

This matter has been going on for an extended amount of time, considering the first correspondence was December 3, 2020. There have been numerous conversations, emails, and a couple of meetings on the subject of your request. In your most recent email you refer to the property as "my property" and you are trying to obtain "legal access". No one has questioned whether the property has "legal" access. The question has been and remains, does the access to the property satisfy the requirements of unpaved road agreements in Section 62-102(c) to allow the County to issue a building permit for a single dwelling. If you have recently purchased the property (Tax Account 2004427), then you have done so knowing that this matter is unresolved.

You have mentioned our June 2, 2021, meeting in several of your correspondences. However, correspondence does not mention the discussion relating to the inability to approve your request of essentially waiving the entire unpaved road approval process. At the meeting, I stated only the technical requirements (e.g., right-of-way width, base & surface material, travel lane width, etc.) of the minimum design standards for unpaved roads could be waived. It would also be in your best interest to provide either an engineered plan indicating: (1) the existing travel way (including drainage, utilities, and other minimum standards) was built within the constrained right-of-way, or (2) an engineered plan depicting the proposed roadway (including drainage, utilities, and other minimum standards) could be built to within the constrained right-of-way. Even without having said plan, we scheduled your waiver request for the Board on October 26, 2021. The Board then tabled the application, requesting the aforementioned engineered plan demonstrating the roadway design, and granted staff the administrative authority to approve it.

To the best of my knowledge, as of today's date, no engineered plans have been submitted for staff's consideration, rather we have received numerous emails similar to this one expressing opinions of actions and questioning why the existing condition of the right-of-way is not acceptable. It is my understanding, the drainage inlet referred to in your emails is for Dixie Way drainage. While it may collect some runoff from the subject right-of-way, the design capacity of the system does not include such runoff. In addition, historic aerial photographs may demonstrate that the unpermitted improvements existed, but they do not establish that these improvements meet the minimum design standards for unpaved roads. This is the first correspondence where you have indicated that you have some engineering information regarding structural analysis of the unpermitted improvements in the Right-of-way. However, this is only a part of the minimum design standards for unpaved roads. Please provide a set of signed and sealed plans by a Florida Registered Professional Engineer demonstrating the proposed improvements or the existing improvements or combination thereof meet the Minimum Design Standards for Unpaved Roads established in Exhibit 10. The minimum design standards were provided to you on September 8, 2021 and are attached for convenience.

We stand ready to review the Board directed plans, once we receive them. I am happy to schedule a call or meeting if you wish to discuss the matter further.

Best regards,

Tad
**From:** Larry Stewart <larstew3@yahoo.com>
**Sent:** Tuesday, January 11, 2022 5:55 PM
**To:** Calkins, Tad <tad.calkins@brevardfl.gov>; Denninghoff, John P <John.Denninghoff@brevardfl.gov>; Abbate, Frank B <Frank.Abbate@brevardfl.gov>
**Subject:** Re: Larry Stewart 62-102 (d)



Mr. Calkins,

I am still awaiting a response to my questions. They should not be hard questions to answer. I do not deserve to be ignored on this issue. Especially since, as I've already stated, policy exists in my favor. I have called Brevard County home for over 40 years. And I have given this county over 21 years of public safety service, dedicating approximately 12 years as a volunteer firefighter/EMT, and 10 years as a Brevard County Sheriff's Deputy. Now I find myself in danger of having to house my family in a motel or extremely substandard home, due to the extremely high cost that rent has risen to in the past year. This of course is because I sold my family's beautiful home after being lead to believe that this waiver was possible by your own public works department.

On Monday, January 10, 2022, 03:00:36 PM EST, Calkins, Tad <tad.calkins@brevardfl.gov> wrote:

Mr. Stewart,

I wanted to acknowledge that I have received your email and will be drafting a response.

Tad

**From:** Larry Stewart <larstew3@yahoo.com>
**Sent:** Sunday, January 9, 2022 11:35 AM
**To:** Calkins, Tad <tad.calkins@brevardfl.gov>; Denninghoff, John P <John.Denninghoff@brevardfl.gov>
**Subject:** Larry Stewart 62-102 (d)

Mr. Calkins,

I am still pursuing the granting of the waiver outlined within the Brevard County Municipal Code ch. 62-102, subsection (d), to provide legal access to my property. I have been extremely patient with this process for more than a year, but my patience has run out. Brevard County's refusal to follow existing policy and grant my application has caused a great financial burden upon my family. A burden that my family does not deserve to be facing as we have done nothing wrong. It is totally unreasonable to expect an individual citizen to construct a road to design standards just to access his home. The board realized this in 1991, which is why they adopted 62-102, subsection (d). That is at least what you said in the commission meeting of 9-14-2021, when you stated "Section 62-102 was adopted in 1991 and it was primarily to aid residents with developing lots that were created prior to the subdivision regs. Subdivision regs were adopted in 1970."

I met with you, in your office, this past June 2nd at 3 p.m. I do still possess the meeting confirmation from your staff. During this meeting, I was advised by you that I would need engineering to show the current road conditions, and that engineering would be used to ask to waive additional improvements along the road. At the close of our meeting, I even recall you suggesting that it would be great if I could find an engineer that would be able to show that the road already met standards. After a very long struggle, I was finally able to obtain that engineering, structural analysis, showing that the road does in fact meet the LBR requirements. Since our meeting, I have also obtained historic aerial photographs that clearly show this road constructed and in use as a main access road as far back as 1975. While I do have reason to believe it was constructed way before then, I have not obtained those aerials yet. This road also already contains stormwater drainage structures to pickup the storm watershed from the road. Why would Brevard County Road and Bridge have installed this project if this road were not already acceptable to be used? I have also obtained several maps from the Brevard County GIS and Mapping Department, (across the hall from your office), that clearly show a number of COUNTY MAINTAINED roads that DO NOT meet the 50' width requirement. Nor do any of them contain sidewalks, or the cul-de-sacs for Brevard County Fire Rescue. If this is acceptable for a county maintained road, then why is it not acceptable for my road? I have also conducted a Brevard County Public Records request for all of the same applications over the last 10 years. The results did show that over the past 10 years, 5 similar waivers were requested, with only one going to the board. These waivers were approved. And there were never any engineering reports required for any of those approvals. Why was the waiver ok for them but not for me?

I appeared before the board on 10-26-2021. Commissioner Pritchett "tabled" my application in order to allow me more time on my quest to find the engineer. Like I said earlier, I have finally been able to obtain that engineering. I do not however know who to submit the reports to. I have placed several telephone calls to you, and left voice mails, requesting a call back. You have never responded. I do not appreciate being ignored and swept aside on this issue. Especially since during this 10-26 meeting you stated that you were "Happy to work with Mr. Stewart to get this accomplished." And Commissioner Pritchett "Made a motion to allow staff to have administrative authority to work with the applicant", which passed 5-0. Following my appearance at this meeting, I was approached by you in the lobby outside the board room. At this time you seemed willing to work with me on finding an engineer, even saying that you would e-mail me a list of them that I could work with. I am truly not surprised that I have never received that e-mail. Thankfully though, because of my persistence, I did not end up needing the list in the first place.

One main concern of Commissioner Pritchett's is that my road does not provide access to emergency vehicles. However, I have been able to obtain correspondence from Brevard County Fire Rescue

administration confirming that their agency would in fact provide emergency services to my property using my road in the case of an emergency.

With the facts that my property and access road were created with the dedication and approval of the plat in April of 1937, with the dedication stating that it does "hereby dedicate this plat and the roads and streets shown thereon to the perpetual use of the public"; and that already adopted policy and municipal code exists in my favor and to support my request; and that my request matches others that have been approved in the past; and that I am a free citizen, landowner, and tax payer within Brevard County, I DEMAND THAT BREVARD COUNTY GOVERNMENT, AND PUBLIC WORKS STAFF IMMEDIATELY APPROVE MY WAIVER APPLICATION AND ALLOW ME TO OBTAIN A BUILDING PERMIT TO LIVE UPON MY PROPERTY.

I do request an immediate response to this letter by the end of business Monday, January 10th, 2022.

EXHIBIT C

BREVARD County
BOARD OF COUNTY COMMISSIONERS

FLORIDA'S SPACE COAST

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

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

October 27, 2021

MEMORANDUM

TO: Tad Calkins, Planning and Development Director Attn: Amanda Elmore

RE: Item J.1., Waiver of Section 62-102(c), Re: Unpaved Road Agreements to Allow Access Via Paper Right-of-Way to Dixie Way

The Board of County Commissioners, in regular session on October 26, 2021, tabled consideration of a waiver to the Code of Ordinances of Brevard County, Section 62-102(c) to allow construction of a house at Tax ID 2004427 without constructing an unpaved road within County right-of-way, providing for the maintenance of said roadway, and agreeing to a proportion share assessment for the paving of the roadway. This will provide time for the applicant to provide County staff with engineering plans showing how the road can be constructed within the 30 foot right-of-way, with additional easements of the right-of-way including necessary improvements, road drainage, and utilities; and this will provide staff the administrative authority, at that time, to review and approve the plans, if appropriate, including a waiver of engineering standards.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell, Clerk to the Board

/sm

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

LAWRENCE STEWART,

Plaintiff,

v. Case No: 6:23-cv-2326-JSS-DCI

BREVARD COUNTY, FLORIDA,

Defendant.
_____/

**ORDER**

Defendant, Brevard County, Florida, moves to dismiss the amended complaint (Dkt. 33) filed by Plaintiff, Lawrence Stewart, for failure to state a claim, asserting lack of ripeness and other grounds. (Dkt. 36.) The County also moves to stay discovery pending resolution of its motion to dismiss. (Dkts. 46, 57.) Plaintiff opposes the County's motions. (Dkts. 37, 53, 58.) For the reasons outlined below, the court grants the motion to dismiss based on lack of ripeness, denies the motions to stay as moot, denies Plaintiff leave to amend, and dismisses this case without prejudice.

**BACKGROUND**[1]

Plaintiff sues the County under 42 U.S.C. § 1983 for violations of his constitutional rights to equal protection (count 1), substantive due process (count 2),

[1] Because the County's ripeness arguments raise facial, rather than factual, challenges to the court's subject matter jurisdiction, (*see* Dkt. 36), the court accepts the well-pleaded allegations in the amended complaint as true and construes them in the light most favorable to Plaintiff. *See Lawrence v. Dunbar*, 919 F.2d 1525, 1529 (11th Cir. 1990) ("On a facial attack, a plaintiff is afforded safeguards similar to those provided in opposing a . . . motion [to dismiss for failure to state a claim]—the court must consider the allegations of the complaint to be true.").

and procedural due process (count 3) and those rights protected under the takings clause of the Fifth Amendment (count 4). (*See* Dkt 33.) Plaintiff asserts that these constitutional violations have infringed on his statutory rights to use his property and to erect a residential dwelling. (*See id.*) Plaintiff's claims arise from tensions between his plan to develop his property and the County's property development requirements, which Plaintiff alleges have been unconstitutionally applied to him. (*See id.*)

Plaintiff is the owner of a 4.9-acre parcel of property in an "agricultural and rural residential area of [the] County" with a Future Land Use of Residential 1 and AU zoning, both of which "permit the erection of a single-family dwelling as a use of the [p]roperty." (*Id.* ¶¶ 9–12.) The property at issue was once part of a larger parcel which has been divided into two adjoining parcels. (*Id.* ¶ 10.) Plaintiff's property is located 628 feet east of an intersection between an access road and Dixie Way, a street that the County has maintained since 1976. (*Id.* ¶¶ 17–18.) Plaintiff claims that in 1995, the County vacated a 374-foot length of its 30-foot right of way leaving its right of way "to nowhere" 325 feet to the east of the property and creating an opportunity for Plaintiff to obtain a required waiver to begin construction on his property. (*Id.* ¶¶ 23– 30.)

"Since December 3, 2020," a year to the day before Plaintiff purchased the property, Plaintiff "ha[d] been in contact with [the County's] administrative staff to determine whether a single-family residence could be constructed on the [p]roperty." (*Id.* ¶¶ 9, 28.) Plaintiff was advised that his development plans required a waiver from the road width rule "under the County's unpaved road agreement ordinance" as

codified by section 62-102(c) of the County's ordinance code. (*Id.* ¶ 29.) Plaintiff claims that his purchase of the property was contingent on his ability to construct a residence there. (*See id.* ¶ 31.) Accordingly, Plaintiff requested a waiver as set forth in section 62-102(c). (*Id.*) However, on October 26, 2021, at a public hearing on Plaintiff's waiver request, the Board of County Commissioners tabled consideration of the matter "to provide time for [Plaintiff] to provide [the County's] staff with engineering plans showing how the road c[ould] be constructed within the 30[-]foot right[ ]of[ ]way, with additional easements of the right[ ]of[ ]way including necessary improvements, road drainage, and utilities." (*Id.* ¶ 41.) The Board explained that this course of action would "provide staff the administrative authority, at that time, to review and approve the plans, if appropriate, including a waiver of engineering standards." (*Id.*)

In 2022, Plaintiff alleges, he came to understand that section 62-102 applies only to subdivisions proposing unpaved roads and therefore does not apply to his property. (*Id.* ¶¶ 77–79.) In his view, he is instead subject to the requirements of section 62-1188, which defines nonconforming lots of record. (*Id.* ¶¶ 82–83.) At a subsequent hearing requested by Plaintiff to address his takings claim, "the County Attorney stated that if [Plaintiff]'s answer is that he is never going to provide the things that the Board requested, then he thinks the next thing that needs to be brought forward for final action is the waiver application." (*Id.* ¶ 127.) Plaintiff's waiver request is pending with the County. (*See id.* ¶ 116.)

Plaintiff filed the initial complaint in this case in December 2023. (Dkt. 1) The

County moved to dismiss it based on lack of ripeness and other grounds, (Dkt. 19), and the court granted the motion, (Dkt. 32.) The court explained that it lacked subject matter jurisdiction: "because Plaintiff has not received a final adjudication from the County denying his application for waiver, his claims are not ripe and no actual case or controversy exists over which the court may exercise jurisdiction." (*Id.* at 8.) The court thus dismissed the initial complaint but granted Plaintiff leave to amend. (*Id.* at 12.) The amended complaint is highly similar to the initial complaint but contains additional factual allegations, including a section devoted to asserting a stalemate between Plaintiff and the County concerning his desired use of his property. (*Compare* Dkt. 1, *with* Dkt. 33.)

## APPLICABLE STANDARDS

Federal courts are "powerless to act without jurisdiction" and are therefore "obligated to inquire into subject matter jurisdiction" "at the earliest possible stage in the proceedings." *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 410 (11th Cir. 1999). "The burden for establishing federal subject matter jurisdiction rests with the party bringing the claim" in federal court, *Williams v. Poarch Band of Creek Indians*, 839 F.3d 1312, 1314 (11th Cir. 2016) (quotation omitted), here Plaintiff. "[I]f the court determines that subject matter jurisdiction is lacking, it must dismiss the entire case." *Trusted Net Media Holdings, LLC v. Morrison Agency, Inc.*, 550 F.3d 1035, 1042 (11th Cir. 2008) (en banc). However, a "dismissal for lack of subject matter jurisdiction is not a judgment on the merits and is entered without prejudice." *Stalley v. Orlando Reg'l*

*Healthcare Sys., Inc.*, 524 F.3d 1229, 1232 (11th Cir. 2008).

"[R]ipeness is a question of subject matter jurisdiction." *Reahard v. Lee County*, 978 F.2d 1212, 1213 (11th Cir. 1992); *see Dermer v. Miami-Dade County*, 599 F.3d 1217, 1220 (11th Cir. 2010). "Article III of the United States Constitution limits the jurisdiction of the federal courts to cases and controversies of sufficient concreteness to evidence a ripeness for review." *Digit. Props., Inc. v. City of Plantation*, 121 F.3d 586, 589 (11th Cir. 1997); *accord Lozman v. City of Riviera Beach*, 119 F.4th 913, 917 (11th Cir. 2024) ("Article III 'restricts the ability of courts to review cases and controversies that are not ripe.'" (quoting *Carver Middle Sch. Gay-Straight All. v. Sch. Bd. of Lake Cnty.*, 842 F.3d 1324, 1329 (11th Cir. 2016))). "Decisions on ripeness are fact[-]sensitive." *Strickland v. Alderman*, 74 F.3d 260, 266 (11th Cir. 1996) (quotation omitted). "A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300 (1998) (cleaned up).

A challenge to the court's subject matter jurisdiction is either facial or factual. *Kennedy v. Floridian Hotel, Inc.*, 998 F.3d 1221, 1230 (11th Cir. 2021). A facial challenge disputes that the "plaintiff has sufficiently alleged a basis of subject matter jurisdiction," whereas a factual challenge addresses "the existence of subject matter jurisdiction irrespective of the pleadings." *Id.* (quotation omitted). Accordingly, a court accepts a complaint's well-pleaded allegations as true when deciding a facial challenge but considers evidence external to a complaint when deciding a factual

challenge. *Id.*; *Lewis v. Governor of Ala.*, 944 F.3d 1287, 1309 (11th Cir. 2019) ("A facial attack requires the court to determine, based only on the pleadings, whether the plaintiff sufficiently alleged a basis of subject matter jurisdiction. By contrast, a factual attack permits the court to consider extrinsic evidence." (citations and footnote omitted)). Here, the County raises a facial challenge, (*see* Dkt. 36), so the court accepts the well-pleaded allegations in the amended complaint as true and construes them in the light most favorable to Plaintiff. *See Lewis*, 944 F.3d at 1309 ("When considering a facial attack . . . , the court 'must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party.'" (quoting *Warth v. Seldin*, 422 U.S. 490, 501 (1975))).

**ANALYSIS**

The court previously analyzed the ripeness issue at length with respect to the initial complaint, (Dkt. 32 at 4–11), and therefore now discusses the issue only briefly. The County contends that Plaintiff's claims are still not ripe because the amended complaint "does not allege [that] the County has reached any final decisions as to his waiver request[] or other matters related to his supposed developmental efforts." (Dkt. 36 at 13.) The County explains that although the amended complaint—with its new stalemate section—"repeats and attempts to amplify certain allegations as to [Plaintiff's] general assertion that it would be 'futile' to seek a final decision," the amended complaint does not establish futility. (*Id.* at 13–15 (asserting that the "very question[s]" still "to be addressed" are "whether and the extent to which the Board might exercise discretion" to grant Plaintiff's waiver request and that given "his

admitted inaction in addressing the Board's concerns," the Board's refusal to act on the request "does not support any finding of 'futility'").) The court agrees with the County.

Typically, when a property owner bases as-applied challenges to a zoning decision on the Constitution's equal protection, due process, and takings clauses, as Plaintiff has done here, (*see* Dkt. 33), the challenges are not ripe until the property owner receives a final decision regarding the application of the zoning law to the property. *See Eide v. Sarasota County*, 908 F.2d 716 (11th Cir. 1990), *overruled on other grounds by Knick v. Twp. of Scott*, 588 U.S. 180 (2019), *as stated in S. Grande View Dev. Co. v. City of Alabaster*, 1 F.4th 1299, 1305 n.9 (11th Cir. 2021); *see also S. Grande View*, 1 F.4th at 1305 ("In order for a just compensation claim to be ripe for adjudication, the landowner must obtain a final decision regarding the application of the zoning ordinance or regulation to his or her property." (cleaned up)); *Strickland*, 74 F.3d at 265 ("As[-]applied due process and equal protection claims are ripe for adjudication when the local authority has rendered its final decision with respect to the application of the regulation."). However, "[a]n exception to th[is] final decision requirement exists where it would be futile for the plaintiff to pursue a final decision." *Strickland*, 74 F.3d at 265; *accord New Life Outreach Ministry Inc. v. Polk County*, No. 8:06-CV-1547-T-27MAP, 2007 U.S. Dist. LEXIS 59408, at *9 (M.D. Fla. Aug. 14, 2007) (concluding that the case was ripe when "any further attempt to obtain the County's approval for [the plaintiffs' desired] use of the property . . . would [have] constitute[d] an exercise in futility").

Here, the facts asserted in the amended complaint do not demonstrate that the County has issued a final decision as to Plaintiff's property or that in light of his alleged stalemate with the County, it would be "an exercise in futility," *see New Life Outreach*, 2007 U.S. Dist. LEXIS 59408, at *9, for him to ask the County to issue a final decision granting his request. (*See* Dkts. 33, 37.) As the County explains, (*see* Dkt. 36 at 13–15), the amended complaint does not establish that the County's inaction on Plaintiff's waiver request (or other claims related to his property) indicates futility because the amended complaint does not establish that the County has had an adequate "opportunity to render a final decision with respect to" Plaintiff's property, *see Strickland*, 74 F.3d at 266. "Because [Plaintiff] has not set forth facts sufficient to prove futility, . . . his claims are not ripe." *See id.* Accordingly, the court lacks subject matter jurisdiction over the claims and dismisses them without prejudice. *See Digit. Props.*, 121 F.3d at 590–91 (holding that the district court properly dismissed the case for lack of subject matter jurisdiction because "[w]ithout the presentation of a binding conclusive administrative decision, no tangible controversy exist[ed]").

"A district court is not required to grant a plaintiff leave to amend his complaint sua sponte when the plaintiff, who is represented by counsel, never filed a motion to amend or requested leave to amend before the district court." *United States ex rel. Sanchez v. Lymphatx, Inc.*, 596 F.3d 1300, 1303 (11th Cir. 2010) (alteration adopted) (quoting *Wagner v. Daewoo Heavy Indus. Am. Corp.*, 314 F.3d 541, 542 (11th Cir. 2002) (en banc)). Here, a review of the docket shows that Plaintiff has been represented by counsel throughout these proceedings and has not moved for leave to amend his

amended complaint. Accordingly, the court denies Plaintiff leave to amend. *See id.* ("Sanchez was represented by counsel but did not move for leave to amend, and we cannot conclude that the district court abused its discretion by failing to grant leave that was never requested.").

**CONCLUSION**

Accordingly:

1. The County's motion to dismiss (Dkt. 36) is **GRANTED**.
2. The County's motions to stay (Dkts. 46, 57) are **DENIED as moot**.
3. This case is **DISMISSED without prejudice** based on lack of ripeness.
4. The Clerk is **DIRECTED** to terminate any pending motions and deadlines and to close the case file.

**ORDERED** in Orlando, Florida, on March 6, 2025.

JULIE S. SNEED
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record

## Richardson, Morris

**From:** W. Nathan Meloon <nmeloon@uslegalteam.com>
**Sent:** Thursday, March 20, 2025 3:16 PM
**To:** Richardson, Morris; Dale Scott
**Cc:** Ariana Tellone; Scott Knox; Julie S. Hochard; Maxwell Stork; Michael Ocasio; Bernath, Marc; Calkins, Tad; Esseesse, Alexander; Gerena, Rachel; Jackson, Susan G
**Subject:** RE: Activity in Case 6:23-cv-02326-JSS-DCI Stewart v. Brevard County, Florida Order on Motion to Dismiss



Mr. Richardson,

My client has not and will not receive the engineering plans that are not required by the County Code. As such, we look forward to appearing before the board at the April 22 hearing.

WIDERMAN MALEK
ATTORNEYS AT LAW

**W. Nathan Meloon, Attorney at Law**
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(321) 255-2332 (321) 255-2351 fax



**From:** Richardson, Morris <Morris.Richardson@brevardfl.gov>
**Sent:** Tuesday, March 18, 2025 5:41 PM
**To:** W. Nathan Meloon <nmeloon@uslegalteam.com>; Dale Scott <dscott@tessmari.com>
**Cc:** Ariana Tellone <ATellone@uslegalteam.com>; Scott Knox <sknox@uslegalteam.com>; Julie S. Hochard <Julie@uslegalteam.com>; Maxwell Stork <mstork@uslegalteam.com>; Michael Ocasio <mocasio@uslegalteam.com>; Bernath, Marc <Marc.Bernath@brevardfl.gov>; Calkins, Tad <tad.calkins@brevardfl.gov>; Esseesse, Alexander <Alexander.Esseesse@brevardfl.gov>; Gerena, Rachel <Rachel.Gerena@brevardfl.gov>; Jackson, Susan G

<Susan.Jackson@brevardfl.gov>
**Subject:** RE: Activity in Case 6:23-cv-02326-JSS-DCI Stewart v. Brevard County, Florida Order on Motion to Dismiss

Mr. Meloon,

As you know, when Mr. Stewart's waiver request was considered by the Board of County Commissioners on October 27, 2021, the Board tabled the matter to allow Mr. Stewart time "to provide County staff with engineering plans showing how the road can be constructed within the 30 foot right-of-way, with additional easements of the right-of-way including necessary improvements, road drainage, and utilities; and this will provide staff the administrative authority, at that time, to review and approve the plans, if appropriate, including a waiver of engineering standards."

To date, Mr. Stewart has not provided any engineering plans or otherwise addressed the Board direction. I will reiterate a proposal made in correspondence to Scott Knox on June 20, 2023:

"As we previously discussed, the County [staff] will consider road design guidelines that will provide a great degree of flexibility for the designer to exercise engineering judgment, and which can likely be met within the constrained 30' right of way, though much will depend on drainage design. I previously sent to you the Guidelines for Geometric Design of Low-Volume Roads. Since then, I obtained a copy of the Guidelines for Geometric Design of *Very* Low-Volume Roads, which I have attached hereto. If Mr. Stewart obtains engineering showing a design that meets the reduced design criteria in these guidelines, County staff will waive applicable technical standards where judgment indicates that this can be accomplished without substantially affecting safety or drainage."

Please advise whether Mr. Stewart will make any effort to follow through on the Board direction regarding his waiver request. If not, I will place this on the agenda for the April 22 BOCC meeting.

Kind regards,


## Morris Richardson

**County Attorney**
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**From:** W. Nathan Meloon <nmeloon@uslegalteam.com>
**Sent:** Monday, March 17, 2025 1:42 PM
**To:** Dale Scott <dscott@tessmari.com>; Richardson, Morris <Morris.Richardson@brevardfl.gov>
**Cc:** Ariana Tellone <ATellone@uslegalteam.com>; Scott Knox <sknox@uslegalteam.com>; Julie S. Hochard <Julie@uslegalteam.com>; Maxwell Stork <mstork@uslegalteam.com>; Michael Ocasio <mocasio@uslegalteam.com>
**Subject:** RE: Activity in Case 6:23-cv-02326-JSS-DCI Stewart v. Brevard County, Florida Order on Motion to Dismiss

Good afternoon,

I wanted to follow up on the below.

WIDERMAN MALEK
ATTORNEYS AT LAW

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**From:** W. Nathan Meloon
**Sent:** Monday, March 10, 2025 9:09 AM
**To:** Dale Scott <dscott@tessmari.com>; Morris.richardson@brevardfl.gov
**Cc:** Ariana Tellone <ATellone@uslegalteam.com>; Scott Knox <sknox@uslegalteam.com>; Julie S. Hochard <Julie@uslegalteam.com>; Maxwell Stork <mstork@uslegalteam.com>; Michael Ocasio <mocasio@uslegalteam.com>
**Subject:** FW: Activity in Case 6:23-cv-02326-JSS-DCI Stewart v. Brevard County, Florida Order on Motion to Dismiss

Good morning,

Based on the below order granting the County's Motion to Dismiss without prejudice, we would like to call our waiver application up for a hearing in front of the Board. Alternatively, please advise if the Board of County Commissioners plans on not hearing the application for a waiver.

**From:** cmecf_flmd_notification@flmd.uscourts.gov <cmecf_flmd_notification@flmd.uscourts.gov>
**Sent:** Thursday, March 6, 2025 12:46 PM
**To:** cmecf_flmd_notices@flmd.uscourts.gov
**Subject:** Activity in Case 6:23-cv-02326-JSS-DCI Stewart v. Brevard County, Florida Order on Motion to Dismiss

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*****NOTE TO PUBLIC ACCESS USERS*** There is no charge for viewing opinions.**

**Board Meeting Date**

5/20/25

**Item Number:** I.3.

**Motion By:** TG To Deny

**Second By:** KA

**Nay By:**

| Commissioner | DISTRICT | AYE | NAY |
|---|---|---|---|
| Commissioner Delaney | 1 | | ✓ |
| Vice Chair Goodson | 2 | ✓ | |
| Commissioner Adkinson | 3 | ✓ | |
| Commissioner Altman | 5 | ✓ | |
| Chairman Feltner | 4 | ✓ | |