

Meeting Date
February 20, 2018



AGENDA	
Section	New Business
Item No.	V.L.A.1

**AGENDA REPORT**  
**BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**

SUBJECT:	WAIVER OF SUBDIVISION ACCESS RE: 4710 SUGAR CREEK DRIVE - 17WV00020 DEVELOPER: JEROME WRIGHT FISCAL IMPACT: NONE DISTRICT 5
DEPT/OFFICE:	PLANNING & DEVELOPMENT DEPARTMENT/PUBLIC WORKS

**Requested Action:**  
The applicant is requesting a waiver of code Sections 62-2887(c) and 62-2897, of the subdivision requirements to allow a driveway to be located on the exterior of the subdivision, and for a common lot to be used for other than what was platted on the subdivision.

**Summary Explanation & Background:**  
The applicant owns a vacant lot at 4710 Sugar Creek Drive within the recorded subdivision of Brandywine Estates. The lot frontage is on Sugar Creek Drive, a public street and the only legal access of this lot. The lot is a corner lot at the intersection of Sugar Creek Drive and Brandywine Lane. There is a 30 foot common lot tract separating this property from Brandywine Lane. There is an existing right turn lane along Brandywine Lane, into the subdivision adjacent to the common lot, which separates the applicant's property from the right-of-way on Brandywine.

There are several large trees on the lot, and the front of the lot would need some re-grading and clearing to accommodate the driveway. The Brandywine HOA has denied the applicant access to the lot frontage of Sugar Creek Drive, due to concerns about the location of the driveway within the landscaping at entryway of the subdivision. The HOA has stated that they would make provisions for access through a portion of the 30 foot common lot, by exchanging 900 sf. of property along the applicants' frontage, for an area of the common lot along Brandywine Lane. They would also require the applicant to maintain the HOA landscaping on Sugar Creek Lane at the front of his lot.

This location on Brandywine Lane is within the limits of the existing right turn lane onto Sugar Creek Drive. Because Brandywine Lane is wider due to the turn lane in this area, a vehicle exiting the driveway turning right would need to weave across the turn lane to get into the travel lane. This weaving maneuver can interfere with vehicles travelling on Brandywine Lane. Vehicles turning left out of the driveway would have an additional lane to cross to get to the driving lane. These vehicle movements occur in an area where drivers travelling on Brandywine are deciding whether to be in the turn lane or the travel lane near the intersection with Sugar Creek Drive.

In addition, many vehicles exit residential driveways by backing out onto the street. Backing out onto Brandywine is a maneuver that in the opinion of staff would be less safe than backing out of the driveway onto Sugar Creek Drive. For these reasons, staff believes that constructing a driveway from this lot onto Brandywine Lane is less safe for the travelling public than constructing a driveway from this lot onto Sugar Creek Drive, as the code requires. Therefore staff does not support the waiver request to allow the driveway to be constructed onto Brandywine Lane.

Contact: Rebecca Ragain, Assistant Director 321-633-2072 Ext. 5-2362

Clerk to the Board Instructions:

Exhibits Attached: Location map, application, letters, and plans

Contract /Agreement (If attached): Reviewed by County Attorney Yes  No  PR

County Manager	Assistant County Manager John Denninghoff	Department Director / Extension #52070 Tad Calkins, Planning & Development Department
Frank Abbate	Interim Assistant County Manager Jim Liesenfelt	Andrew Holmes, Public Works

Sections 62-2887(c), of the subdivision code requires all lot access to be internal to a final plat, and 62-2897 requires that a platted property shall only be developed in the manner and for the purpose shown on the plat unless a modification is approved by the Board with notice to any affected property owners. The plat was not designed to anticipate private access across a common lot for private use.

Staff has denied the waiver request #17WV00020 due to safety concerns of locating a driveway within the right turn lane on Brandywine Lane, and Board approval is required for a modification to the plat. The HOA has notified all of the property owners within the Brandywine Estates plat of the proposed modification.

Section 62-3207 outlines the criteria that the Board should consider (below). The applicant's response is shown in **bold** and staff observations are *italicized*:

**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.

**I am in the process of selling my lot, but the Brandywine Estates HOA is denying driveway access onto Sugar Creek Drive due to traffic hazards. We would like to relocate driveway access onto Brandywine Lane for a safer location with excellent visibility.**

*Staff finds that the legal access to this lot is on Sugar Creek Drive and that the driveway would be approved by staff to access Sugar Creek Drive, as this is the legal access and lot frontage. There is no legal access to Brandywine Lane, furthermore, there is a right turn lane into the subdivision in the location of the requested driveway. There is currently one driveway for an individual parcel to the north of this property on Brandywine, and an additional driveway within the turn lane..*

**Criteria 2:** The granting of the waiver will not be injurious to the other adjacent property.

**Relocation of the driveway will not be injurious to the other adjacent property. There is an existing driveway adjacent to the proposed relocation onto Brandywine Lane.**

*Staff finds that the proposed location of a driveway onto Brandywine Lane would be located within a right turn lane into the subdivision where this lot is located. The location presents a safety concerns for an additional driveway. Brandywine Lane traffic counts exceed the internal traffic counts to the subdivision. Staff recommends ingress and egress internal to the subdivision where the traffic counts are less, and the speed of vehicles entering and leaving the subdivision are less than on Brandywine Lane.*

**Criteria 3:** The conditions upon which a request for waiver 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.

**Because of the location of 4710 Sugar Creek Drive near the close proximity to the entrance of Brandywine Estates, proposed driveway access relocation onto Brandywine Lane provides excellent visibility for traffic flowing north and south.**

*Staff finds that the property was developed in a manner according to code, and defers to the Board of County Commissioners.*

**Criteria 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.

**The waiver is consistent with the intent and purpose of the county rules and regulation.**

*Staff does not find the request consistent with the purpose of the Land Development Regulation and defers to the Board of County Commissioners.*

**Criteria 5 & 6:** Delays attributed to state or federal permits & natural disasters.

**None foreseen for state and federal permits. Just delaying the ability to get lot sold due to denial of driveway access.**

*Criteria is not applicable to this application.*

**Criteria 7:** County land development engineer and affected agencies concur that undue hardship was placed on the applicant.

*Staff defers to the Board of County Commissioners.*



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

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

February 21, 2018

MEMORANDUM

TO: Tad Calkins, Planning and Development Director Attn: Rebecca Ragain

RE: Item VI.A.1., Waiver of Subdivision Access for 4710 Sugar Creek Drive – 17WV00020 – Jerome Wright

The Board of County Commissioners, in regular session on February 20, 2018, granted the waiver of Code Sections 62-2887(c) and 62-2897 of subdivision access requirements for 4710 Sugar Creek Drive – 17WV00020 by Jerome Wright, allowing for a driveway to be constructed onto Brandywine Lane, to be located as close to the existing driveway as possible on the exterior of Brandywine Estates, subject to the owner not backing out onto Brandywine Lane; driveway access shall be designed so that a vehicle can turn around within the property and exit facing Brandywine Lane, and backing a vehicle from the driveway onto Brandywine Lane is prohibited.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/ds

cc: Commissioner Isnardi  
Public Works Director

# BREVARD COUNTY 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 specifically to Unpaved Roads, Subdivisions, Minor Subdivisions, and Site Plans.

## APPLICATION TYPE

- SUBDIVISION WAIVER
- UNPAVED ROAD WAIVER
- SITE PLAN WAIVER
- OTHER

<b>Land Development Use Only</b>	
Request Date: _____	Fees \$ <u>775.00</u> Board Date: _____
Original Project # _____	Waiver # <u>17WV00020</u>
Coordinator Initials: _____	Reference Files: _____
County Manager/Designee approval _____	

Tax Parcel Identification: Twp 28 Rng 36 Sec. 10 S/D 03 Blk/Par 1 Lot(s) 57 (List all parcels)

Tax Account # ('s): 2801478 (List all account numbers)

Project Name: PITA Project Property Owner: JEROME D. WRIGHT

Site Address: 4710 SUGAR CREEK DRIVE MELBOURNE, FL 3290

### ALL CORRESPONDENCE TO BE PROVIDED TO APPLICANT AT THIS ADDRESS:

Name: JEROME WRIGHT Company: \_\_\_\_\_  
Address: 7717 GREENBORO DRIVE E-Mail BEEBEE6972@CFI.FL.COM  
City: WEST MELBOURNE State FL Zip 32904  
Phone 321-525-1661 Fax \_\_\_\_\_ Cell 321-525-1661

### ENGINEER/CONTRACTOR (if different from applicant):

Company Name: \_\_\_\_\_ Eng. or Proj. Mgr.: \_\_\_\_\_  
Address: \_\_\_\_\_ Ph # (\_\_\_\_) \_\_\_\_\_ Fax (\_\_\_\_) \_\_\_\_\_

### DESCRIPTION OF WAIVER REQUEST AND CODE SECTION:

Section 62-2887(c) Lot access.  
Section 62-2897(c) modifications to approved final plat.

Owner/Applicant Signature: Jerome D. Wright Print Name: JEROME D. WRIGHT

I am attempting to relocate driveway access onto Brandywine Lane instead of Sugar Creek Drive due to denial of driveway access onto Sugar Creek Drive by Brandywine Estates HOA for concerns pertaining to aesthetics and traffic safety.

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. Their decision approving or disapproving the waiver or interpretation is final.

Fees for Waivers are \$775.

APPLICATION FEES: A schedule of fees and charges for review is established and adopted by the Board of County Commissioners of Brevard County, Florida, and may, from time to time, be amended.

PLEASE MAKE CHECKS PAYABLE TO: THE BOARD OF COUNTY COMMISSIONERS

**LAND DEVELOPMENT APPLICATIONS – DOCUMENT SUBMITTAL REQUIREMENTS**

Application type	Application	Waiver Criteria below	Alternative Plan Design				8 1/2 x 11 vicinity map		Fees
Waiver - Site Plan	1	Y	-			-	1	-	Y
Waiver - Subdivision	1	Y	-				1		Y

**WAIVER CRITERIA (SUBDIVISION, UNPAVED ROADS & 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:

- 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 in the process of selling my lot, but Brandywine Estates HOA is denying driveway access onto Sugar Creek Drive due to traffic hazards. We would like to relocate driveway access onto Brandywine Lane for a safer location with excellent visibility.*
- The granting of the waiver will not be injurious to the other adjacent property.

*Relocation of driveway will not be injurious to the other adjacent property. There is an existing driveway adjacent to the proposed relocation onto Brandywine Lane.*
- The conditions, upon which a request for waiver 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.

*Because of the location of 4710 Sugar Creek Drive near the close proximity to the entrance of Brandywine Estates, proposed driveway access relocation onto Brandywine Lane provides excellent visibility for traffic flowing both ways.*
- The waiver is consistent with the intent and purpose of the county zoning regulations, the county land use plan of the county and the requirements of this article.

*The waiver is consistent with the intent and purpose of the county rules and regulation*
- Delays attributed to state or federal permits.

*None foreseen for state and federal permits. Just delay in ability to get lot sold due to denial of driveway access.*
- Natural disasters.

*Not applicable.*
- County development engineer and affected agencies concur that an undue hardship was placed on the applicant. (To be filled out by County staff)



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

BOARD OF COUNTY COMMISSIONERS

August 1, 2016

Reference: 4710 Sugar Creek Drive, Melbourne, FL 32904

Dear Mr. Jerome Wright,

This is in response to your request for information regarding the location of the driveway to access to lot 57, block 1, of plat book 31, and page 75-76, Brandywine Estates subdivision plat.

The subdivision plat was recorded meeting the County code requirement of the access being internal to the subdivision, and given the appropriate address on Sugar Creek Drive. If a building permit is submitted for a house on this lot, the county will require the driveway to be located on Sugar Creek Drive, which is the frontage internal to the subdivision as platted.

Brevard County Code requirement:

Section 62-2887 (c) Lot access: Except for a minor subdivision, all lot access is to be internal within the final plat boundary.

Section 62-2897 – Modifications to approved final plat. After a final subdivision plat approval is granted by the board and recorded in the public records, the platted property shall only be developed in the manner and for the purpose shown on the plat unless a modification is approved by the board with notice to any affected property owners. However, nothing herein shall prevent more than one residential lot from being used in connection with a single residential structure.

Access by easement is not allowed thus, access to Brandywine would not be an option unless the common lot between your lot and Brandywine is combined with your lot, and a replat recorded to remove the lot and common lot from the Brandywine Estates subdivision. Zoning staff would need to confirm the requirements of the Brandywine PUD subdivision are still being met, should the common lot be considered for relinquishment.

I hope this answers your question regarding the property. If you need further clarification, please call me at 321-633-2065 ext# 52632.

Sincerely,

Rebecca Ragain, AICP, Special Projects Coordinator  
Brevard County Planning and Development Department

December 4, 2017



Jerome Wright  
7717 Greensboro Drive  
West Melbourne, FL 32904

Re: Lot 57 Block 1 Brandywine Estates

Dear Jerome,

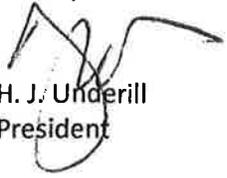
Per your request, this letter is to address the Brandywine Estates Homeowners Association's position on the issue you raised pertaining to driveway access to your lot 57. Prior to you purchasing the home on lot 56, , the developer of Brandywine Estates sold lot 57 to the owner of lot 56 at a steep discount with the understanding it would never be built upon. It was the parties understanding the lot would continue to be conveyed with the home on lot 56. This was as a response to the concerns of the residents of Brandywine pertaining to the aesthetics and safety for the community in the event of construction on lot 57. Unfortunately, there was no restriction in the deed prohibiting a future sale of the lot.

Although we understand that it is a platted lot and you have every right to sell or build upon it, the association still has serious concerns for the safety for those residents and others entering the community if the lot is accessed off Sugar Creek Drive. This is due in part to the close proximity of the intersection of Brandywine Lane and the entryway landscaping which hinders visibility for vehicles turning on to Sugar Creek. In addition, we are concerned that a driveway will significantly degrade our landscaped entrance and negatively affect home values in the community.

The association has a 20-foot landscape easement along the southern portion of your lot adjacent to Sugar Creek Drive. Because of our concerns, we will not allow you to construct a driveway through our easement. We will, however, make provision for you to access your lot off Brandywine Lane through a portion of the 30 foot strip between your lot and the Brandywine Lane right-of-way owned by the association. Not only will this preserve the integrity of our entryway, but it is also a much safer location for a driveway as there is excellent visibility for traffic travelling both north and south on Brandywine Lane. Precedent has been set with a similar driveway immediately north of the boundary of your lot. This will also allow you to sell or utilize your lot.

Jerome, I hope this clearly outlines our concern and position on this matter. As we have in the past, we will be happy to work with you and Brevard County to access your lot off Brandywine Lane.

Sincerely,  
Brandywine Estates Homeowners Association, Inc.

  
H. J. Underhill  
President

January 19, 2018

Jerome Wright  
7717 Greensboro Drive  
West Melbourne, FL 32904

Re: Lot 57 Block 1 Brandywine Estates

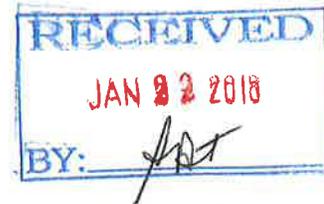
Dear Jerome,

This letter is to confirm that the board of directors for Brandywine Estates Homeowners Association in its meeting of January 16<sup>th</sup> agreed to deed to you a 30' x 30' (900 Sq. Ft.) parcel located on the northern portion of the associations property located between your lot and the Brandywine Lane right-of-way. We are willing to do this to allow you to meet Brevard County's requirement for the construction of a driveway to access your lot. In exchange, you agree to deed to the association a similar sized parcel of 900 Sq. Ft. (20' x 45') on the southern portion of your lot located within our association's landscape easement and agree to maintain the balance of the association's property located between your lot and Brandywine Lane.

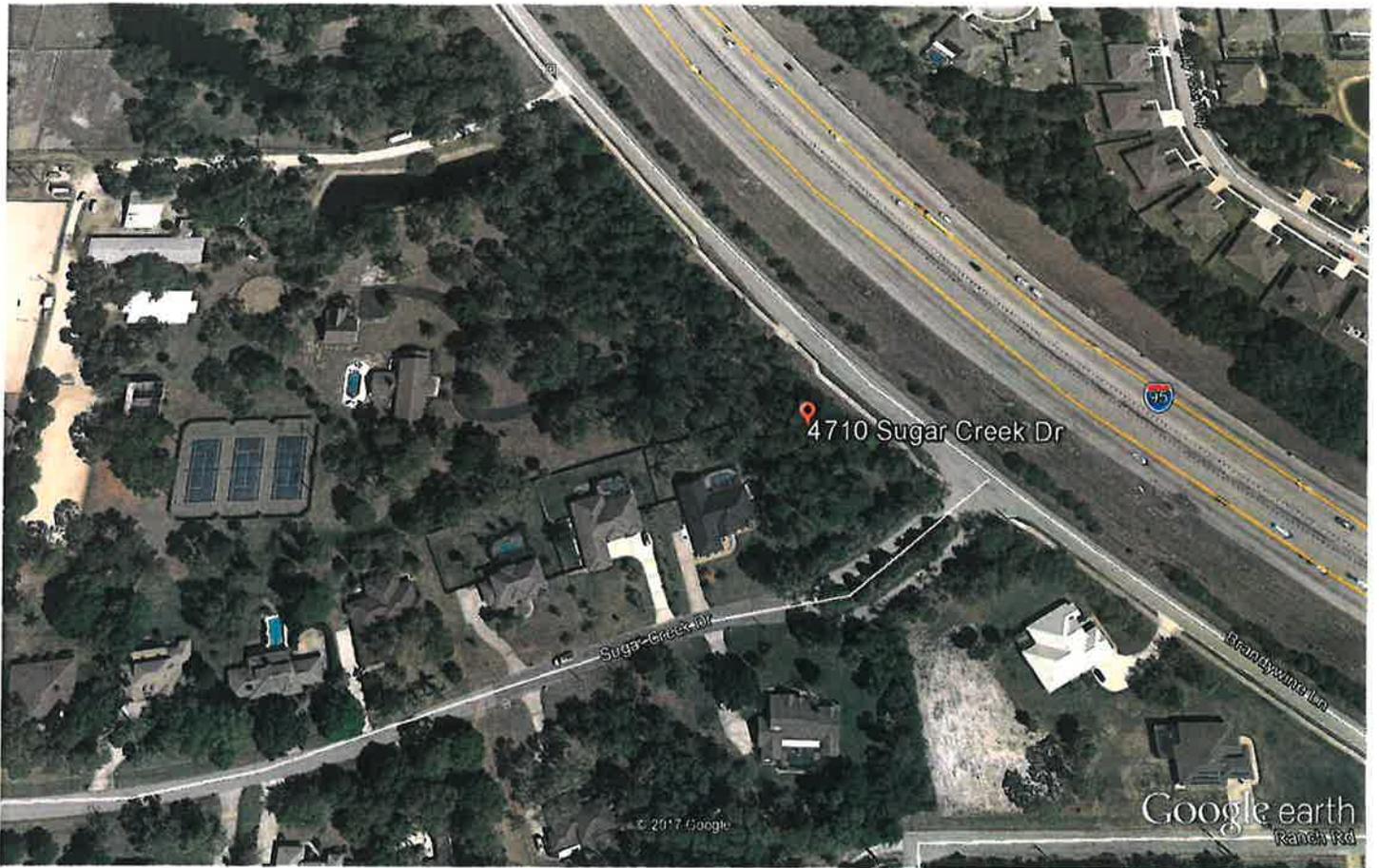
The locations of the various parcels are depicted in the attached drawing. We hope this will resolve any issues Brevard County may have regarding granting you access to your property off Brandywine Lane. Should you or Brevard County have any questions, please feel free to contact me.

Sincerely,  
Brandywine Estates Homeowners Association, Inc.

  
Paul Mouritsen  
President







Google earth

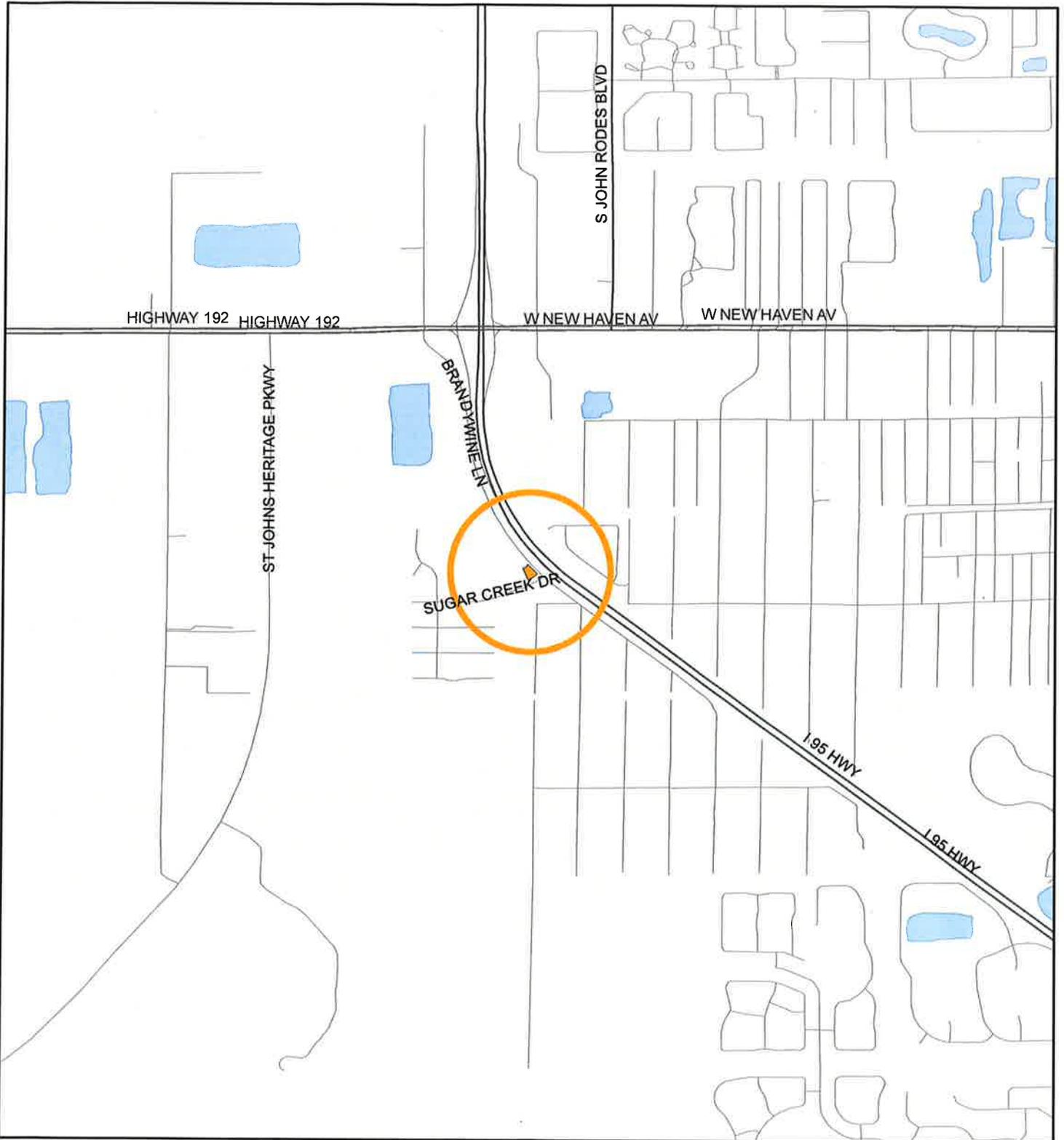
feet  
meters



# LOCATION MAP

4710 SUGAR CREEK DRIVE

17VV00020



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 the Brevard County Planning and Zoning Office - GIS Section Date: 1/24/2018

