



# 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

If other, please indicate

Tax Parcel Identification:

Township Range Section Subdivision Block/Parcel Lot

Tax Account Numbers (list all)

Project Name Property Owner

**Site Address:**

\_\_\_\_\_  
Street City State Zip Code

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

\_\_\_\_\_  
Applicant Name Company

\_\_\_\_\_  
Street City State Zip Code

\_\_\_\_\_  
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:**

\_\_\_\_\_  
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.



5. Delays attributed to state or federal permits.

6. Natural disasters.

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	FI	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	FI	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).



Owner/Applicant Signature

**Lawrence Stewart**

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.



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

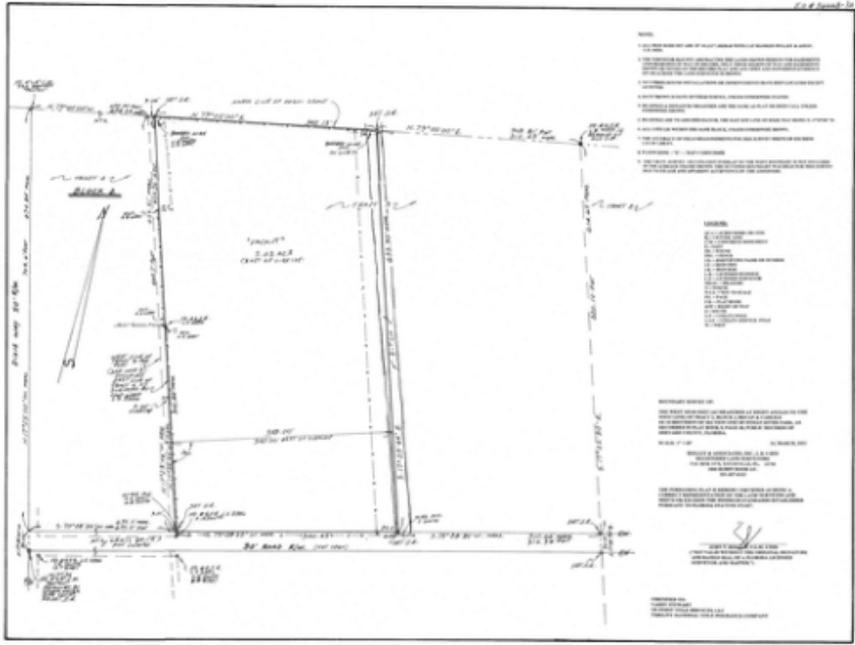
section.

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 Blickey, CFA  
Brevard County Property Appraiser



**263**



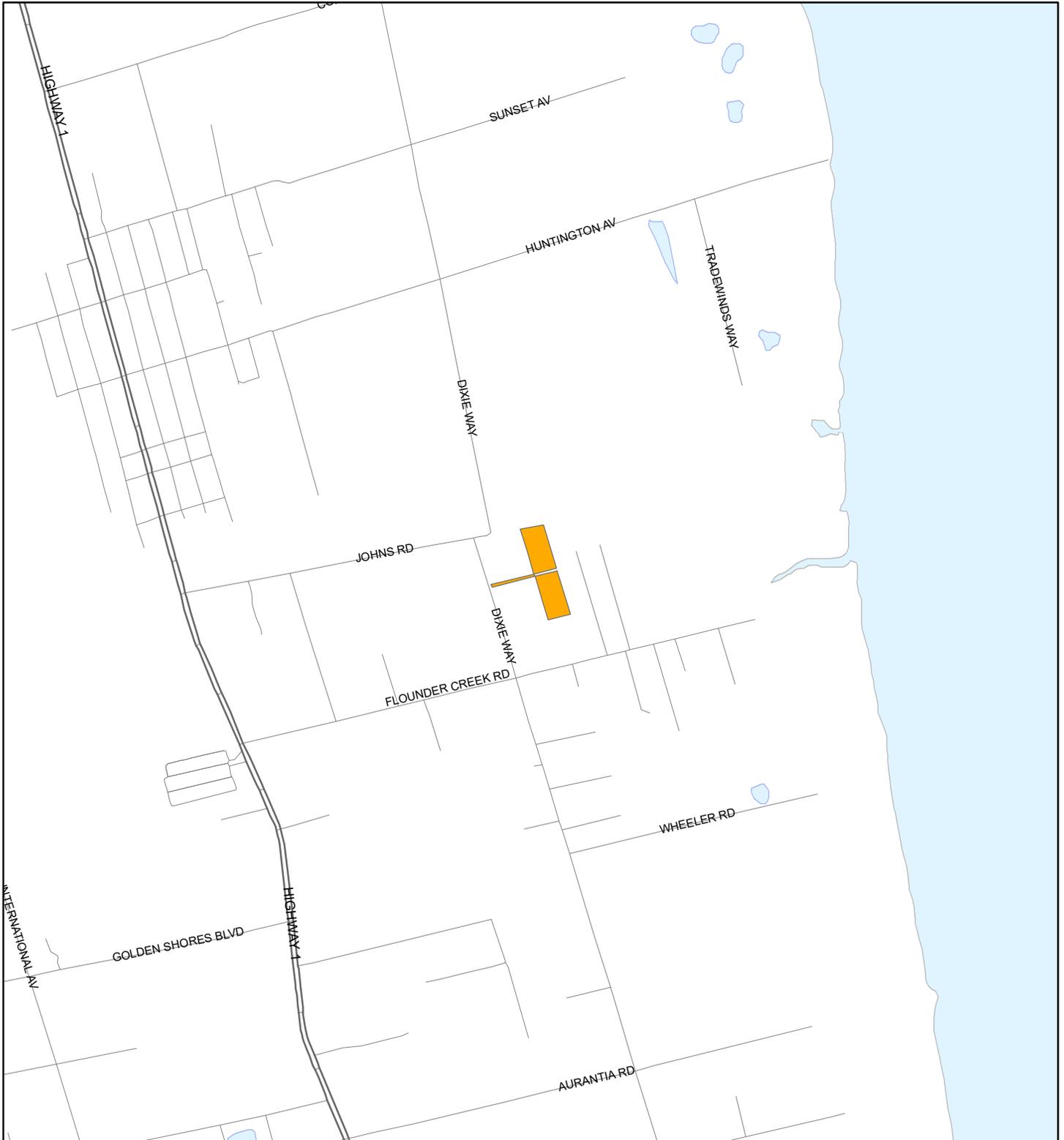






# LOCATION MAP

UNPAVED ROAD WAIVER - UNPAVED RIGHT-OF-WAY TO DIXIE WAY  
21WV00016



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.

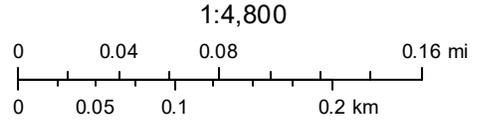
Produced by BoCC - GIS Date: 10/4/2021

# ArcGIS Web Map



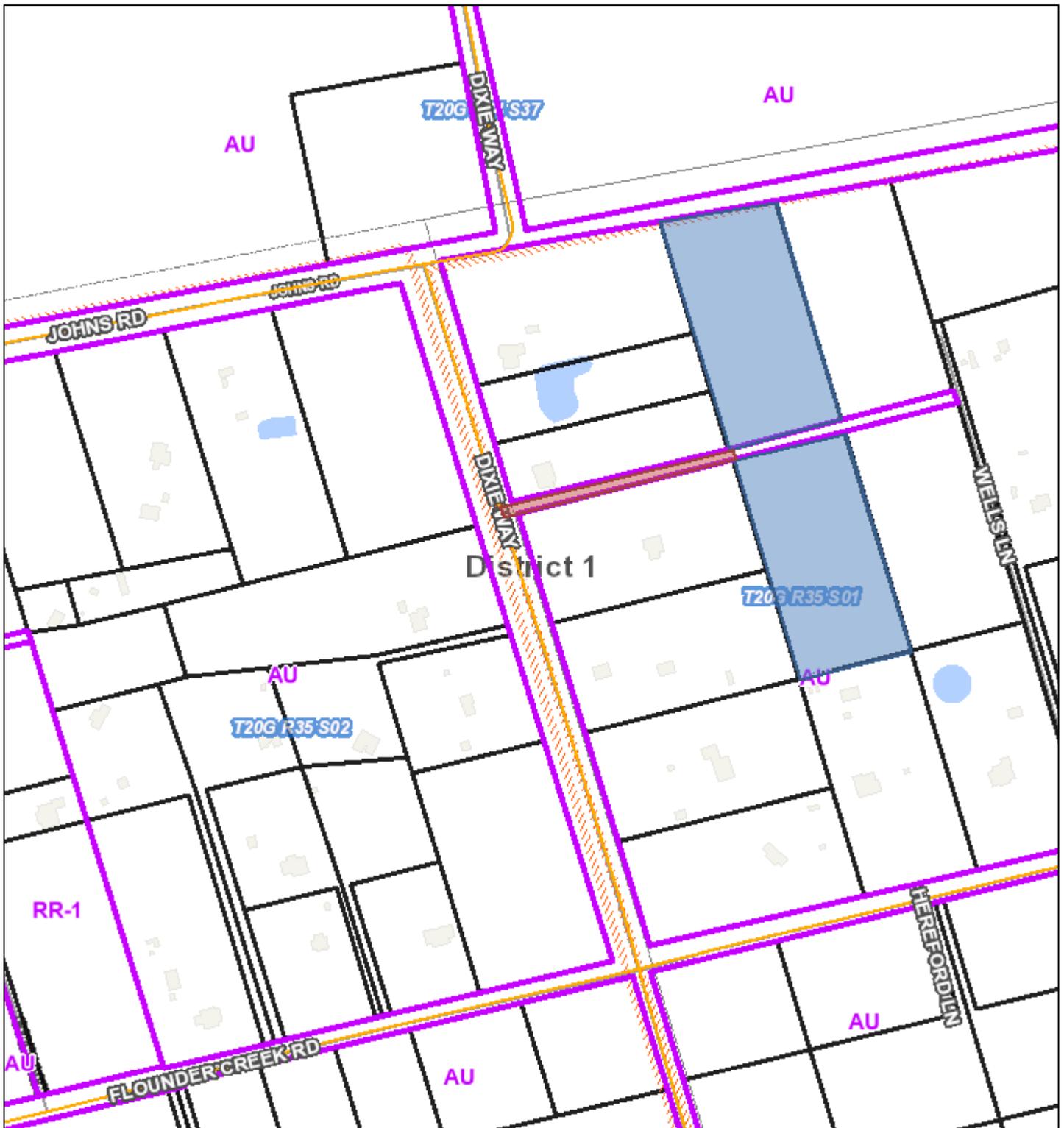
- Street Label (S4800\_S2400)
- █ County Maintained
- Roadway**
- █ County
  - █ County ROW/Non-Maintained
  - █ Non-County (Bonded)

- PW Maintained Properties**
- █ Facilities
  - █ Heavy Equipment Fleet
  - █ Road & Bridge
  - █ Traffic Ops
  - █ Commissioner Districts
  - Section



Brevard County Property Appraiser Office

# ArcGIS Web Map



- |                            |                                 |
|----------------------------|---------------------------------|
| Street Label (S4800_S2400) | <b>PW Maintained Properties</b> |
| County Maintained          | Facilities                      |
| <b>Roadway</b>             | Heavy Equipment Fleet           |
| County                     | Road & Bridge                   |
| County ROW/Non-Maintained  | Traffic Ops                     |
| Non-County (Bonded)        | Zoning                          |
|                            | Commissioner Districts          |

