



BOARD OF COUNTY COMMISSIONERS

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

June 6, 2022

Scott Knox, Esq.
Wideman 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

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)

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

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)

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

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 arials 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.



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

A handwritten signature in cursive script that reads "Kimberly Powell".

Kimberly Powell, Clerk to the Board

/sm