



STAFF REPORT

LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: 321-733-3042

landdevelopmentweb@palmbayflorida.org

Prepared by

Patrick J. Murphy, Assistant Growth Management Director

CASE NUMBER

CU-31-2020

PLANNING & ZONING BOARD HEARING DATE

November 4, 2020

PROPERTY OWNER & APPLICANT

WJJ Land Holdings, LLC
Jacob Bynum, Member

PROPERTY LOCATION/ADDRESS

2726 Kirby Circle NE 32905. Located at the SE corner
of Kirby Circle NE and Taylor Avenue NE

SUMMARY OF REQUEST

Conditional Use Approval for an Automotive Fuel Dispensary

Existing Zoning

LI, Light Industrial and Warehousing District

Existing Land Use

Industrial Use

Site Improvements

The site is presently under construction

Site Acreage

1.6 acres, more or less

SURROUNDING ZONING & USE OF LAND

North

LI, Light Industrial District; (across Taylor) UPS Distribution Center

East

LI, Light Industrial District; Undeveloped Land

South

LI, Light Industrial District; Undeveloped Land

West

LI, Light Industrial District; (across Kirby) Warehouse

COMPREHENSIVE PLAN

COMPATIBILITY

Yes

BACKGROUND:

The subject property is located at 2726 Kirby Circle NE 32905, which is at the SE corner of Kirby Circle NE and Taylor Avenue NE. Specifically, the property is Parcel 3.0 of the Falls Commerce Park subdivision; located in Section 23, Township 28 south, Range 37 east, Brevard County, Florida. The size of the property is approximately 1.6 acres.

The property is presently under construction. Falls Commerce Park, which was recorded in the Brevard County Public Records on December 19, 2018, will consist of three (3) parcels for future industrial uses. Parcel 2 is being developed for the Lanta Industrial Park and Parcel 1 is currently for sale. The east 0.91 acres of the subject property (Parcel 3) contains a wetland area with a conservation easement recorded atop.

The applicant, WJJ Land Holdings, LLC. is requesting conditional use approval for an automotive fuel dispensary, as required by Section 185.045(D)(1) of the Palm Bay Code of Ordinances. The applicant is represented by a member of the LLC., Mr. Jacob Bynum.

ANALYSIS:

WJJ Land Holdings owns the property and has established a land lease with the Big Johnson Concrete Placement, LLC. Big Johnson is a family owned and operated provider of concrete pumps, laser screeds, and finishing services based in Stuart, Florida. The Kirby Circle facility is being developed to provide concrete pumping services to Brevard County, and beyond. They are seeking approval to install a 10,000 gallon above ground fuel tank that will provide fuel to their fleet of vehicles. This is not a retail automotive fuel facility that will be open to the public, the on-site fueling apparatus is solely for Big Johnson operations.

CODE REQUIREMENTS:

To be granted conditional use approval, requests are evaluated upon items (A) through (I) of the General Requirements and Conditions of Section 185.087 of the Code of Ordinances. A review of these items is as follows:

Item (A): Adequate ingress and egress may be obtained to and from the property, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of emergency.

Sole access to the site is via the existing driveway onto Kirby Circle. There are no other driveways proposed or anticipated at this time.

Item (B): Adequate off-street parking and loading areas may be provided, without creating undue noise, glare, odor or other detrimental effects upon adjoining properties.

Based upon the uses of the property, which are considered as Industrial Activities in the City's Parking Code, one (1) parking space shall be provided for every employee, or one (1) space for each 1,000 square feet of gross floor area, whichever is greater, plus one (1) space for each company vehicle operating from the premises. Site plan approval for Big Johnson was granted on November 20, 2019 (Sp #1354). Proposed site improvements indicate a 3,600 square foot operations building with four (4) paved parking spaces. In addition, a 36,000 square foot stabilized area will be provided for vehicle and equipment storage.

Item (C): Adequate and properly located utilities are available or may be reasonably provided to serve the proposed development.

The proposed building will be connected to the City's water distribution and sewer collection systems. The property has both electric and phone services.

Item (D): Adequate screening and/or buffering will be provided to protect and provide compatibility with adjoining properties.

The proposed use is considered an allowable business service use in the LI zoning district. Per discussions with staff a 6' tall security fence will enclose the storage yard. As this site is located in the Kirby Industrial area, additional screening does not appear warranted.

Item (E): Signs, if any, and proposed exterior lighting will be so designed and arranged to promote traffic safety and to eliminate or minimize any undue glare, incompatibility, or disharmony with adjoining properties.

Lighting and signage were not indicated on the approved site plans. It shall be noted that City codes require all lighting to be shielded and/or directed downward to avoid creating a nuisance to adjacent properties. Only one (1) detached sign would be allowed and it must meet all applicable location and dimension criteria.

Item (F): Yards and open spaces will be adequate to properly serve the proposed development and to ensure compatibility with adjoining properties.

The yards and open space requirements of the Zoning Code have been met.

Item (G): The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use the facility, or because of vehicular movement, noise, fume generation, or type of physical activity.

Per City Code Section 185.045(D)(1)(a): All pumps, storage tanks and other service island equipment shall be at least twenty (20) feet from all property lines, fifteen (15) feet from any building and one hundred (100) feet from the nearest residentially owned land. No pump, storage tank or other equipment shall be located closer than one thousand (1,000) feet from

any municipal or public supply well. Upon review of the conceptual site plan, the proposed above ground tank location is approximately 660' west of the nearest residentially-owned land, 31' west of the nearest building, 27' north of the nearest property line, and almost 2 miles due north from the nearest municipal or public supply well.

Item (H): The use as proposed for development will be compatible with the existing or permitted uses of adjacent properties.

As stated above, the facility is an allowable use in the LI zoning district. To ensure compatibility with adjacent properties, staff recommends that the project is supplied with the latest safety protocols, to include: protection bollards on all sides of the tank that are adjacent to vehicular areas, employment of a leak detection system, and that a double-walled steel tank is used.

Item (I): Development and operation of the proposed use will be in full compliance with any additional conditions and safeguards which the City Council may prescribe, including, but not limited to, a reasonable time limit within which the action for which special approval is requested shall be begun or completed, or both.

The Board and Council have the authority and right to impose any additional and justifiable safeguards, and/or conditions, to ensure that the facility operates safely and harmoniously with its surroundings.

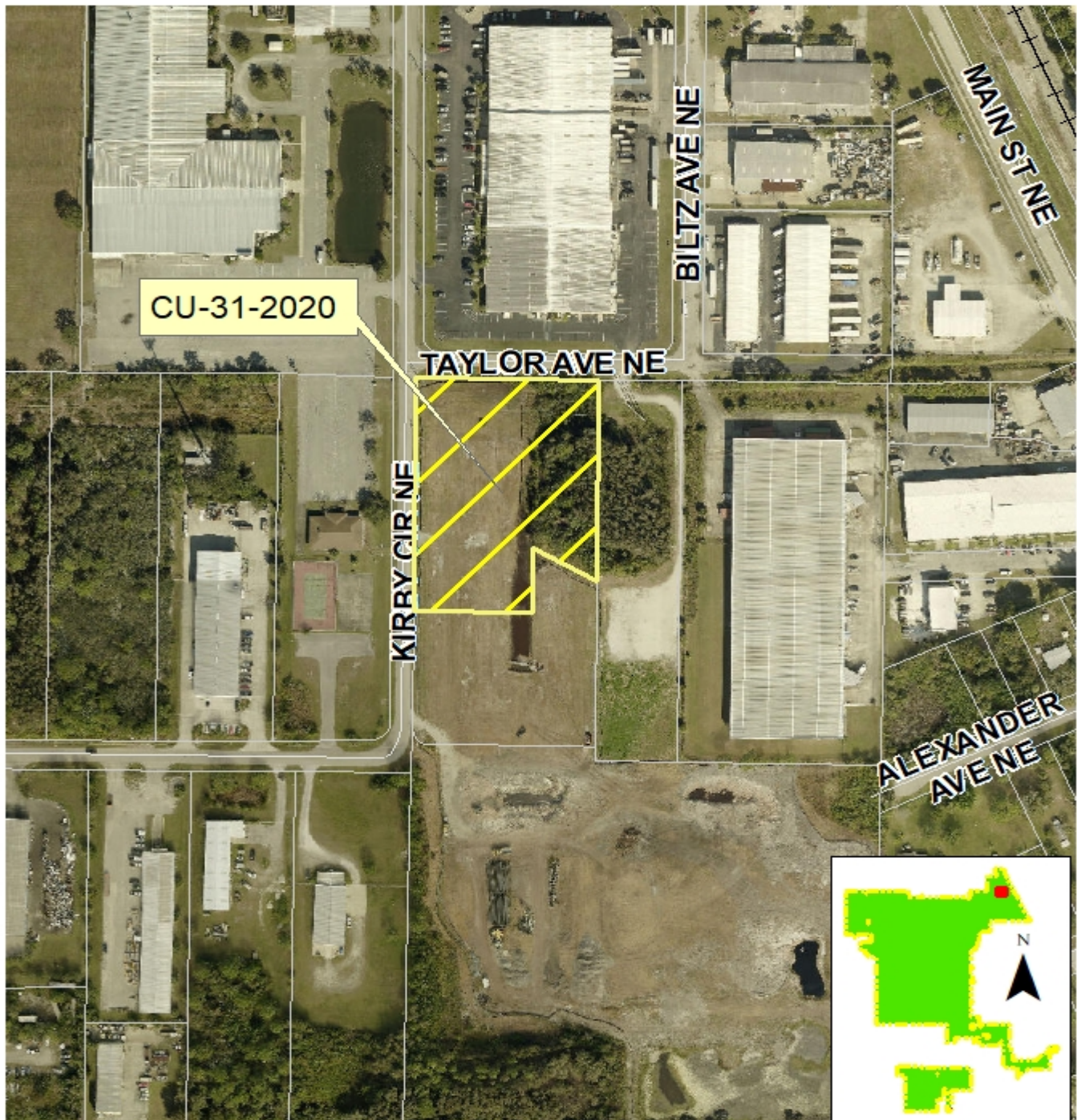
Additional Staff Comments:

The Public Works Department (PWD) has identified the Brevard County Natural Resources Management Department as the responsible party for ensuring compliance with Chapter 62-761 and 62-762, of the Florida Administrative Code, which regulates petroleum storage facilities. Big Johnson must submit the above-ground storage tank specifications to the County for review and inspection of the facility. The PWD has requested copies of the compliance documentation, once provided by the County, and that all inspection records be kept on-site.

STAFF CONCLUSION:

The Planning and Zoning Board and City Council must determine if the request meets the criteria of Section 185.087 of the Palm Bay Code of Ordinances.

Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



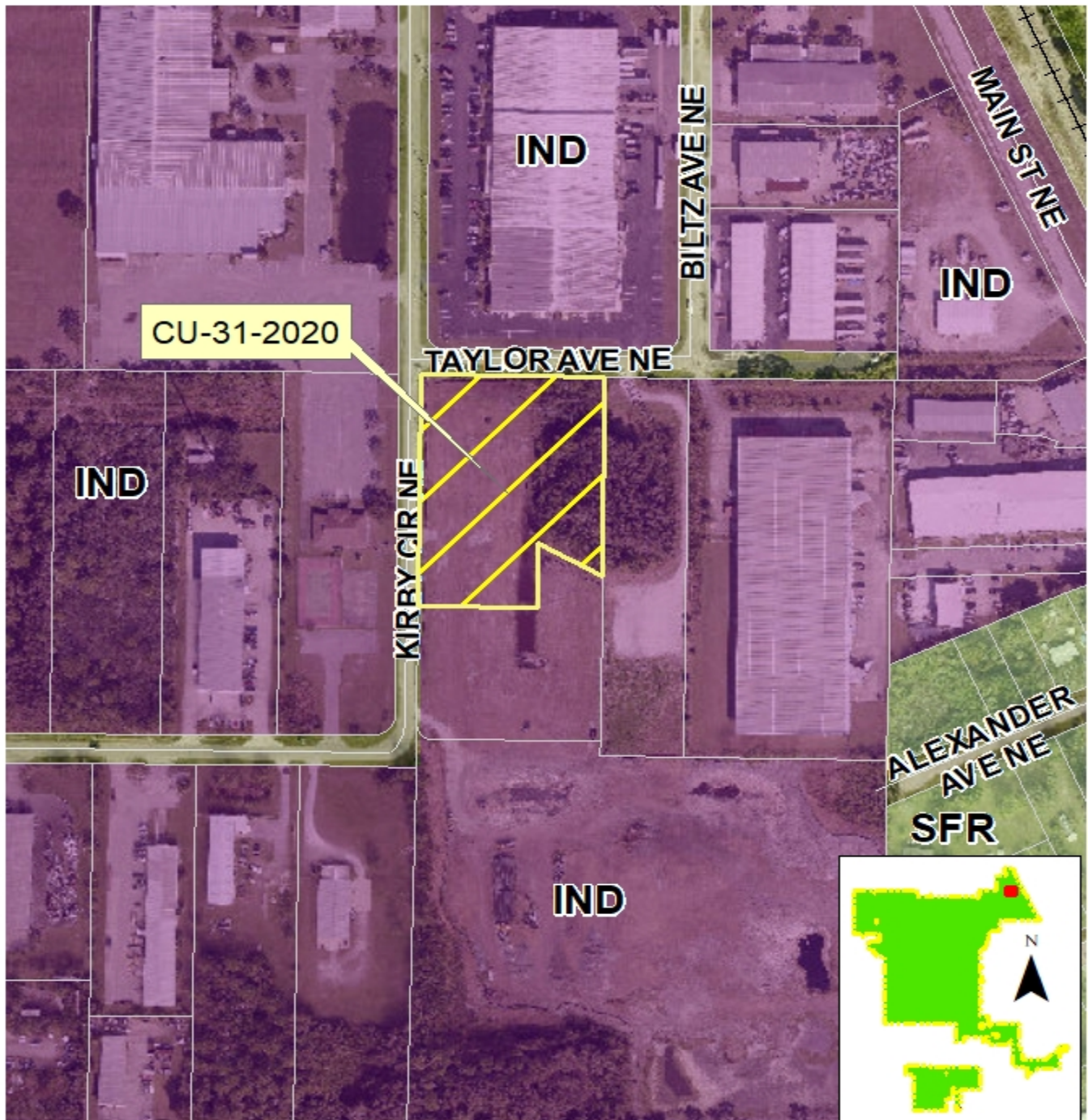
AERIAL LOCATION MAP CASE CU-31-2020

Subject Property

Southeast corner of Taylor Avenue NE and Kirby Circle NE



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



FUTURE LAND USE MAP

CASE CU-31-2020

Subject Property

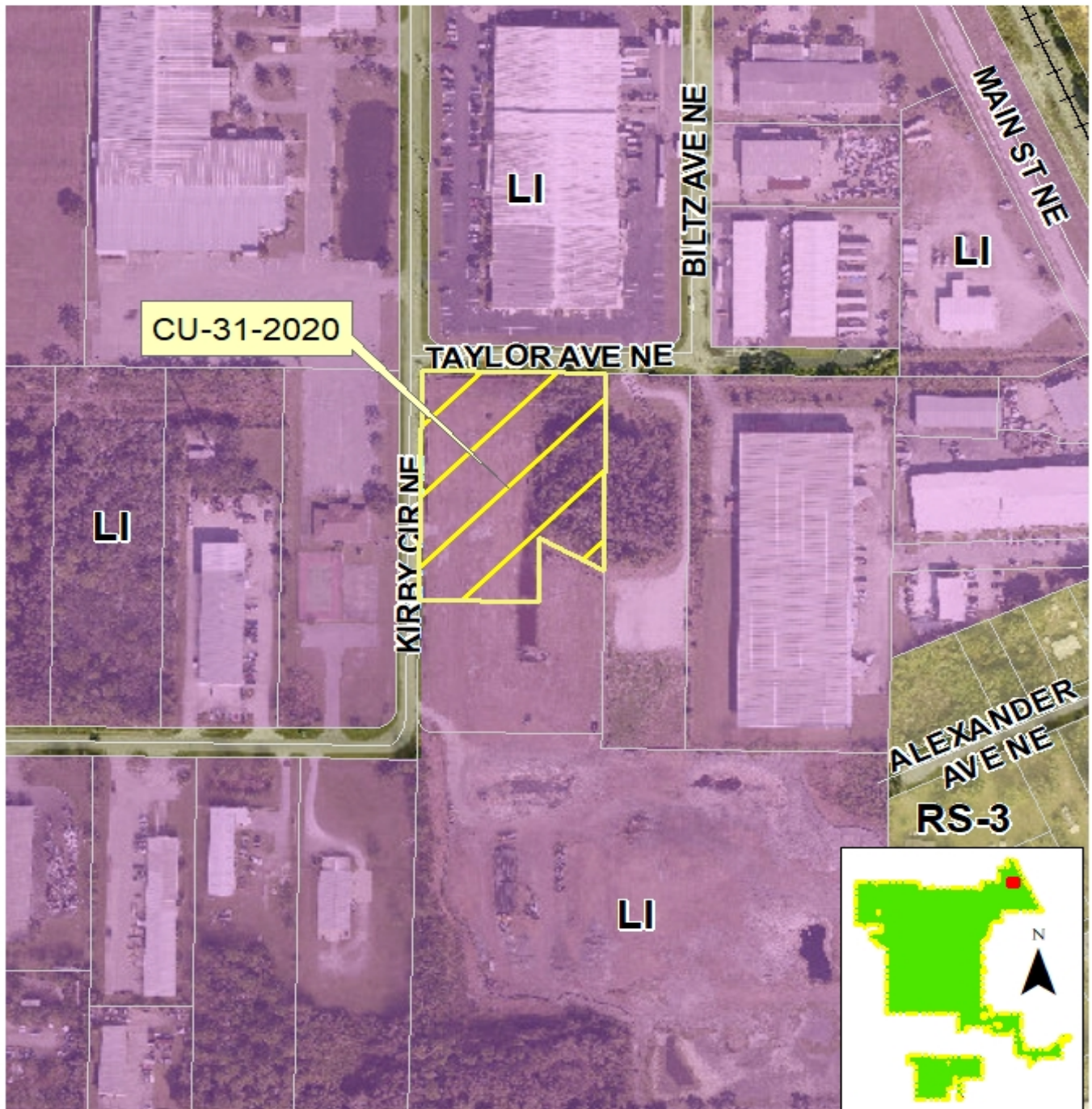
Southeast corner of Taylor Avenue NE and Kirby Circle NE

Future Land Use Classification

IND – Industrial Use



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



ZONING MAP

CASE CU-31-2020

Subject Property

Southeast corner of Taylor Avenue NE and Kirby Circle NE

Current Zoning Classification

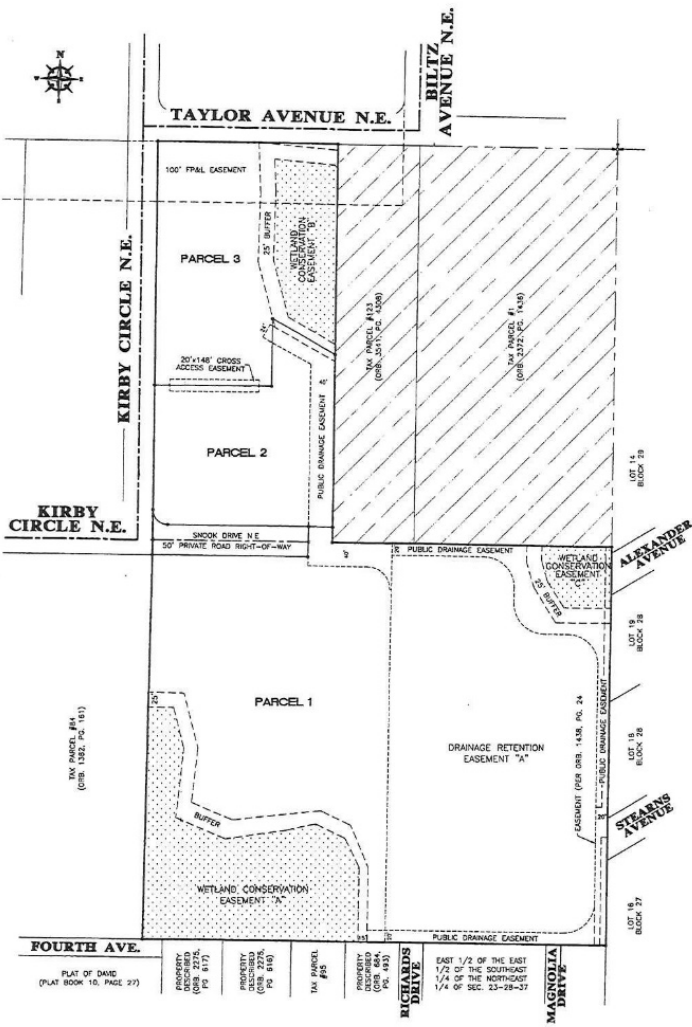
LI – Light Industrial and Warehousing District

PLAT OF FALLS COMMERCE PARK

LYING IN BREVARD COUNTY, FLORIDA SECTION 23, TOWNSHIP 28 SOUTH, RANGE 37 EAST AND IN THE CITY OF PALM BAY, FLORIDA.

LEGAL DESCRIPTION:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 23, TOWNSHIP 28 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA; THENCE SOUTH 00°36'41" WEST ALONG THE EAST LINE OF SAID NORTHEAST 1/4 OF SECTION 23 A DISTANCE OF 663.06 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PROPERTY; THENCE CONTINUE SOUTH 00°36'41" WEST A DISTANCE OF 663.07 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF AFORESAID SECTION 23; THENCE NORTH 89°11'24" WEST ALONG THE SOUTH LINE OF AFORESAID NORTHEAST 1/4 OF SECTION 23, A DISTANCE OF 708.46 FEET TO THE SOUTHEAST CORNER OF PROPERTY DESCRIBED IN OFFICIAL RECORDS BOOK 1382, PAGE 181, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE NORTH 01°19'09" EAST ALONG THE EAST LINE OF SAID LAST REFERENCED PROPERTY A DISTANCE OF 839.10 FEET TO THE SOUTHEAST CORNER OF KIRBY CIRCLE N.E.; A 50 FEET WIDE RIGHT-OF-WAY; THENCE NORTH 00°37'23" EAST ALONG THE EAST RIGHT-OF-WAY LINE OF KIRBY CIRCLE N.E., A DISTANCE OF 688.57 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF TAYLOR AVENUE N.E.; THENCE SOUTH 89°04'31" EAST ALONG SAID SOUTH RIGHT OF WAY LINE A DISTANCE OF 287.00 FEET TO THE NORTHWEST CORNER OF PROPERTY DESCRIBED IN OFFICIAL RECORDS BOOK 3541, PAGE 4308; THENCE SOUTH 00°36'41" WEST, A DISTANCE OF 663.36 FEET TO THE SOUTHWEST CORNER OF AFORESAID PROPERTY DESCRIBED IN OFFICIAL RECORDS BOOK 3541, PAGE 4308; THENCE SOUTH 89°06'45" EAST A DISTANCE OF 483.43 FEET TO THE POINT OF BEGINNING. CONTAINS 16.17 ACRES, MORE OR LESS.



SITE DEVELOPMENT NOTES:

Zoning: U
Light Manufacturing, Small Equipment
Manufacturing Plants, Small Machine Shops,
Instrument Manufacturing.

Total Acreage: 16.17
Total No. of Parcels: 3

Notice: This plat, as recorded in its graphic form, is the official depiction of the subdivided lands described herein and will in no circumstances be supplanted in authority by any other graphic or digital form of the plat. There may be additional restrictions that are not recorded on this plat that may be found in the public records of this county.

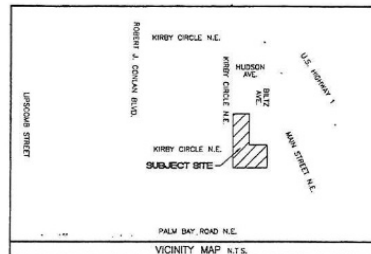
The consent and joinder of the mortgage to this plat is recorded in Official Records Book 1113, Page 1241 Public Records of Brevard County, Florida.

The declaration of covenants, conditions and restrictions to this plat is recorded in Official Records Book 1113, Page 1241 Public Records of Brevard County, Florida.

The Stormwater Agreement to this plat is recorded in Official Records Book _____ Page _____ Public Records of Brevard County, Florida.

SURVEYORS NOTES:

- The bearings shown hereon (on Sheet 2) are based on the plat bearing being S00°35'41"E along the east line of the Northeast 1/4 of Section 23, being a grid bearing of the Florida Plane Coordinate System.
- The Drainage Easements shown hereon are dedicated for the purpose of a drainage system for the entire site. The consent of each of the numbered parcels shall have responsibility for maintenance, in accordance with the approved drainage plan and St. Johns River Water Management District permit, of that portion of the drainage system improvements located within their respective parcels. Parcels 2 and 3 shall have easement rights within all drainage easements for the purpose of discharge of drainage waters through and into the system.
- Wetland Conservation Easement A is hereby dedicated to the St. Johns River Water Management District. Wetland Conservation Easements B and C shall be maintained by the owners of the respective parcels in accordance with the requirements and restrictions as specified in the St. Johns River Water Management District Easement recorded in Official Records Book 5821, Page 8368.
- The Cross Access Easements are dedicated for the purpose of common driveways serving the respective Parcels in accordance with approved Site Plans.



OVERALL MAP

SCALE IN FEET
1 INCH = 100 FEET

PLAT BOOK 666 PAGE 67

SHEET 1 OF 2

SECTION 23 TWP. 28 S., RANGE 37 E.

DEDICATION

KNOW ALL MEN BY THESE PRESENTS, That the Limited Liability Corporation named below, being the owner in fee simple of the lands described in:

FALLS COMMERCE PARK

hereby dedicates said lands and plot for the uses and purposes therein expressed and dedicates all roads, streets, alleys, thoroughfares, drainage easements, utility easements and rights of way easements shown hereon to the perpetual use of the public, and in WITNESS WHEREOF, has caused these presents to be signed and attested to by its officers named below and its corporate seal to be affixed hereto on Dec 5, 2018

By KIRBY CIRCLE, LLC, 13000 50TH WAY N. CLEARWATER, FL 33760

Attest: _____

Signed and sealed in the presence of:

STATE OF FLORIDA COUNTY OF BREVARD

THIS IS TO CERTIFY, That on Dec 5, 2018

before me, an officer duly authorized to take oaths in and for the State and County aforesaid, personally appeared _____

_____ and _____ President and _____

of the above named corporation incorporated under the laws of the State of Florida _____ to me known to be the individuals

and officials who executed the foregoing Dedication and severally acknowledged the execution thereof to be their free act and deed as such officers thereto duly authorized; that the official seal of said corporation is duly affixed thereto; and that the said Dedication is the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the _____ day of _____ 2018.

My Commission Expires 9/24/2022

My Commission Expires 9/24/2022

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PLAT OF **FALLS COMMERCE PARK**

LYING IN BREVARD COUNTY, FLORIDA SECTION 23, TOWNSHIP 28 SOUTH, RANGE 37 EAST
AND IN THE CITY OF PALM BAY, FLORIDA.

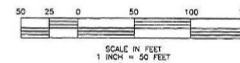
LEGEND:

P.C. = POINT OF COMMENCEMENT
P.O.B. = POINT OF BEGINNING
P.M. = PERMANENT REFERENCE MONUMENT
P.L.P. = PERMANENT REFERENCE POINT
P.T. = POINT OF TANGENCY
P.C. = POINT OF CURVATURE
P.C. = POINT OF COMPOUND CURVATURE
P.C. = POINT OF REVERSE CURVATURE
R.A. = RADIUS POINT
S = SLOPE
D = DELTA (CENTRAL ANGLE)
S/R = RIGHT-OF-WAY
C = CENTERLINE
W = RECORD
M = MORE OR LESS
C = CALCULATED
C.P. = CORNER PLANT GRID BEARING & DISTANCE
O.R.B. = OFFICIAL RECORDS BOOK
P.S. = PLAT BOOK

F.P. & L. = FLORIDA POWER AND LIGHT
N.T.S. = NOT TO SCALE
O/S = OFFSET
D.B. = DEED BOOK
P.G. = PAGE
L.B. = LAND SURVEYING BUSINESS
● = 1/2" IRON ROD WITH PLASTIC CAP
MARKED WITH "A", SMITH LB 7438"
PERMANENT REFERENCE MONUMENT
▲ = N.B. & S.B. MARKED "A", SMITH LB 7438"
PERMANENT REFERENCE MONUMENT
▲ = PERMANENT CONTROL POINT

TAX PARCEL #84
O.R.B. 1382, PAGE 161

PREPARED BY:
SMITH & SONS
SURVEYING & ENGINEERING, INC.
100 N.W. 10th St., Suite 1
Palm Bay, FL 32909
CERTIFICATE OF AUTHORIZATION L.B. 7428
JOB NUMBER: 08-0087 PLAT.DWG

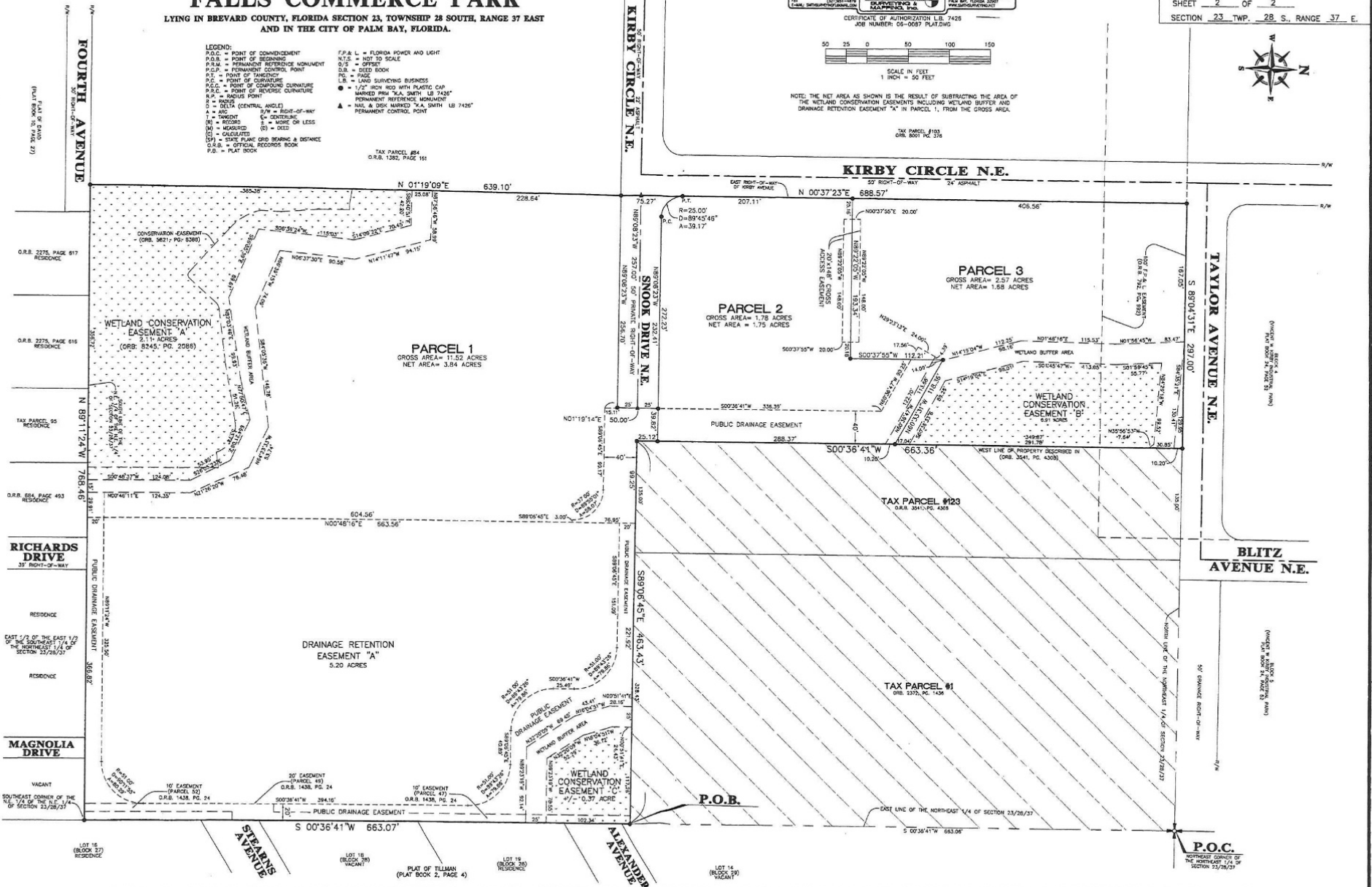


NOTE: THE NET AREA AS SHOWN IS THE RESULT OF SUBTRACTING THE AREA OF THE WETLAND CONSERVATION EASEMENTS INCLUDING WETLAND BUFFER AND DRAINAGE RETENTION EASEMENT "A" IN PARCEL 1, FROM THE GROSS AREA.

TAX PARCEL #193
O.R.B. 8001 PG. 378

PLAT BOOK 66 PAGE 68

SHEET 2 OF 2
SECTION 23 TWP. 28 S., RANGE 37 E.





LAND DEVELOPMENT DIVISION
120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: (321) 733-3042
Landdevelopment@palmbayflorida.org

CONDITIONAL USE APPLICATION

This application must be deemed complete and legible, and must be returned by the first day of the month during division office hours, with all enclosures referred to herein, to the Land Development Division, Palm Bay, Florida, to be processed for consideration the following month at the earliest by the Planning and Zoning Board. The application will then be referred by the Planning and Zoning Board for study and recommendation to the City Council. You or your representative are required to attend the meeting(s) and will be notified by mail of the date and time of the meeting(s). The Planning and Zoning Board holds their regular meeting the first Wednesday of every month at 7:00 p.m. in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida, unless otherwise stated.

PARCEL ID 28-37-23-02-3

TAX ACCOUNT NUMBER 3019273

LEGAL DESCRIPTION OF THE PROPERTY COVERED BY THIS APPLICATION:

Parcel 3, Falls Commerce Park, book 66, page 67 and 68, Brevard County, Florida

SIZE OF AREA COVERED BY THIS APPLICATION (calculate acreage): 1.6

ZONING CLASSIFICATION AT PRESENT (ex.: RS-2, CC, etc.) LI

CONDITIONAL USE SOUGHT Automotive Fuel

CONDITIONAL USE REQUIREMENTS FOR SUBMITTAL ([Section 185.087](#)):

The use as proposed for development will be compatible with the existing or permitted uses of adjacent properties per [Section 185.085](#).

A SITE SKETCH TO SCALE MUST BE PROVIDED, AND ALSO PROVIDED ON MEMORY DRIVE, OF THE FOLLOWING:

- (A) Adequate ingress and egress may be obtained to and from the property, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or other emergency.
- (B) Adequate off-street parking and loading areas may be provided, without creating undue noise, glare, odor, or other detrimental effects upon adjoining properties.

**CITY OF PALM BAY, FLORIDA
CONDITIONAL USE APPLICATION
PAGE 2 OF 3**

- (C) Adequate and properly located utilities that are available or may be reasonably provided to serve the proposed development.
- (D) Adequate screening and/or buffering will be provided to protect and provide compatibility with adjoining properties.
- (E) Signs, if any, and proposed exterior lighting will be so designed and arranged so as to promote traffic safety and to eliminate or minimize any undue glare, incompatibility, or disharmony with adjoining properties.
- (F) Yards and open spaces will be adequate to properly serve the proposed development and to ensure compatibility with adjoining properties.
- (G) The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use the facility, or because of vehicular movement, noise, fume generation, or type of physical activity.
- (H) Development and operation of the proposed use will be in full compliance with any additional conditions and safeguards which the City Council may prescribe, including, but not limited to, reasonable time limit within which the action for which special approval is requested shall be begun or completed, or both.

ADDITIONAL CONDITIONS MUST BE MET AND INCORPORATED INTO THE SITE SKETCH FOR THE SPECIFIC CONDITIONAL USE.

Additional criteria is listed in Section 185.088 and available from staff (check all that apply):

- ☐ **Church** (Sec. 185.088(A))
- ☐ **Club or Lodge** (Sec. 185.088(B))
- ☐ **Commercial Dog Kennel** (Sec. 185.088(C))
- ☐ **Planned Industrial Development** (industrially zoned site over 5 acres) (Sec. 185.088(D))
- ☐ **Public or Private School** (Sec. 185.088(E))
- ☐ **Self-Storage Facility** (Sec. 185.088(F))
- ☐ **Communication Tower and Facilities** (Sec. 185.088(G))
- ☐ **Dance Club** (Sec. 185.088(H))
- ☐ **Security Dwelling Unit** (Sec. 185.088(I))
- ☐ **Wedding Venue** (Sec. 185.088(J))
- ☐ **Event Hall** (Sec. 185.088(K))

CITY OF PALM BAY, FLORIDA
CONDITIONAL USE APPLICATION
PAGE 3 OF 3

THE FOLLOWING PROCEDURES AND ENCLOSURES ARE REQUIRED TO COMPLETE THIS APPLICATION:

- ☐ *\$650.00 Application Fee. Make Check payable to "City of Palm Bay."
- ☐ List of legal descriptions of all properties within a 500-foot radius of the boundaries of the property covered by this application, together with the names and mailing addresses (including zip codes) of all respective property owners within the above referenced area. (This should be obtained for a fee from the Brevard County Planning and Zoning Department at (321) 633-2060.)
- ☐ Site Sketch (See page 1 for requirements). Site Sketch must also be provided on Memory Drive.
- ☐ Sign(s) posted on the subject property. Refer to [Section 51.07\(C\)](#) of the Legislative Code for guideline.
- ☐ Citizen Participation Plan. Refer to [Section 169.005](#) of the Land Development Code for guidelines.
- ☐ **Where the property owner is not the representative for the request, a [LETTER](#) must be attached giving the notarized consent of the property owner(s) to a representative.**

Name of Representative _____

I, the undersigned understand that this application must be complete and accurate before consideration by the Planning and Zoning Board/Local Planning Agency and certify that all the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my knowledge and belief.

Under penalties of perjury, I declare that I have read the foregoing Conditional Use application and that the facts stated in it are true.

Owner Signature



Date September 15, 2020

Printed Name Jacob Bynum, Member WJJ Land Holdings, LLC

Full Address PO BOX 340, Palm City FL 34991

Telephone 7722203435 **Email** jacob@bigjohnsonconcreteplacement.com

***NOTE: APPLICATION FEE IS NON-REFUNDABLE UPON PAYMENT TO THE CITY**