

**F. Consent Agenda - Planning and Development  
ITEM 5.**



**AGENDA REPORT  
July 10, 2018**

**Acceptance, Re: Binding Development Plan - Powell-Geary Services, LLC (17PZ00150) (District 1)**

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**SUBJECT:**

Acceptance, Re: Binding Development Plan - Powell-Geary Services, LLC (17PZ00150) (District 1)

**FISCAL IMPACT:**

None

**DEPT/OFFICE:**

Planning and Development

**REQUESTED ACTION:**

In accordance with Section 62-1157, it is requested that the Board of County Commissioners accept and authorize the Chair to sign the Binding Development Plan.

**SUMMARY EXPLANATION and BACKGROUND:**

On April 5, 2018, the Board of County Commissioners approved an amendment to an existing BDP (Binding Development Plan). The BDP is a voluntary agreement presented by a property owner to self-impose limits upon development of a property in support of a change of zoning or conditional use permit. Pursuant to 62-1157, a BDP shall be recorded in the public records within 120 days of approval of the zoning application by the Board. Following staff and legal review, a BDP is routinely presented to the Board in recordable form as a Consent Agenda item in order to finalize the zoning action.

The limitations in the amended BDP include, but are not limited to, the following:

- A 25-foot buffer, along with a fence/wall, shall be placed along the east residential property border.
- The self-storage buildings shall be located along the east side of the property, and the main building on the west side to limit noise effect on residential properties.
- The self-storage hours of operation shall be 8:00 a.m. to 8:00 p.m.
- Repair shops in the self-storage spaces shall be prohibited.
- The developer/owner shall be limited to uses such as professional offices, mini-warehouses and self-storage mini-warehouses, workshops/hobby shops for wood working, welding, ceramics and potter, upholstery, leather work, art work, antiques, photography, repair and storage of golf carts, bicycles, auto, lawn and farm equipment, and plant nursery.
- Sales of good from the property include ceramics, crafts, furniture, golf carts, lawn and farm equipment, plants, and building materials.
- Additional activities permitted inside the main building to include electrical appliance and lighting fixture repair, sharpening and grinding, welding, fabrication, sales, storage, ceramic productions and firing, office activities, and repair and fabrication.
- Activities outside shall be limited to include parking, automobile washing, picnic and playground, and plant nursery.
- No trucks with more than six wheels will be parked or stored on the property, and no sludge, used drain field material, or any other unauthorized material will be dumped on the site.

The property is located on the south side of Broadway Blvd., and east side of Industrial Dr., approx. 0.47 mile west of U.S. Hwy 1.

**CLERK TO THE BOARD INSTRUCTIONS:**

After recordation, please forward two certified copies to Planning and Development.

**ATTACHMENTS:**

**Description**

- ▢ **BDP Package**

**REVIEWERS:**

<b>Department</b>	<b>Reviewer</b>
<b>Planning and Development</b>	<b>Calkins, Tad</b>
<b>ACM Development</b>	<b>Denninghoff, John</b>
<b>County Manager</b>	<b>Abbate, Frank</b>



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

July 11, 2018

MEMORANDUM

TO: Jennifer Jones, Zoning

RE: Item F.5., Binding Development Plan with Powell-Geary Services, LLC

The Board of County Commissioners, in regular session on July 10, 2018, executed Binding Development Plan with Powell-Geary Services, LLC. Said Binding Development Plan was recorded in OR/BK 8211/1151. Enclosed for your necessary action are two certified copies of the recorded document.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/dt

Encls. (2)

cc: Contracts Administration

**RESOLUTION NO. 17PZ00150**

On motion by Commissioner Smith, seconded by Commissioner Barfield, the following resolution was adopted by a unanimous vote:

**WHEREAS, POWELL-GEARY SERVICES, LLC** has requested an amendment to an existing Binding Development Plan (BDP) in a Planned Industrial Park (PIP) zoning classification, on property described as Tax Parcel 1, as recorded in ORB 8013, Pages 484 – 486, of the Public Records of Brevard County, Florida. (2.79 acres) Located on the south side of Broadway Blvd., and east side of Industrial Dr., approx. 0.47 mile west of U.S. Hwy 1. (No assigned address. In the Cocoa area.)

**Section 25,**

**Township 23 S,**

**Range 35 E, and,**

**WHEREAS,** a public hearing of the Brevard County Planning & Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning & Zoning Board recommended that the application be denied; and

**WHEREAS,** the Board, after considering said application and the Brevard County Planning & Zoning Board’s recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be Approved with a BDP; now therefore,

**BE IT RESOLVED** by the Board of County Commissioners of Brevard County, Florida, that the requested amendment to an existing BDP be APPROVED with a BDP, recorded in ORB 8211, Pages 1151- 1155, dated July 13, 2018, with the following stipulations: Developer/Owner shall develop the property to include a 25-foot setback/buffer along with a fence/wall in accordance with County approval along the east residential property border; a concept illustration is included in the BDP to depict the planned structures consisting of mini self-storage buildings and a main building to use as offices, warehouses, and workshops; the self-storage buildings will be along the east side of the property and the main building on the west side to limit noise effect on the residential properties; self-storage access hours of operation are envisioned as 8 AM to 8 PM and there will be provisions to prohibit operating repair shops out of the self-storage spaces; lighting will be in accordance with County requirements and will be oriented to minimize effect on residential properties; Developer/Owner will be limited to the following land uses: Professional offices; mini-warehouses and self-storage mini-warehouses; workshops/hobby shops for wood working, welding, ceramics and pottery, upholstery, leather work, art work, antiques, photography; repair and storage of golf carts, bicycles, auto, lawn and farm equipment; plant nursery. Sales of goods such as ceramics, crafts, furniture, golf carts, lawn and farm equipment, plants, building material. Additional activities permitted inside the main building to include electrical appliance and lighting fixture repair, sharpening and grinding, welding, fabrication, sales, storage, ceramic productions and firing, office activities, repair and fabrication. Activities outside shall be limited to include, parking, automobile washing, picnic and playground, and plant nursery; Developer/Owner shall insure that no trucks more than six wheels will be parked or stored on the property and that no sludge, used drain field material, or any other un-authorized material is dumped on this site; gopher tortoises on the property shall be protected, and an area reserved for them; development shall minimize the removal of trees to only what is necessary and replant in accordance with county approval.

The zoning classification relating to the above described property shall remain unchanged, and the Planning & Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

**BE IT FURTHER RESOLVED** that this resolution shall become effective as of July 13, 2018.

BOARD OF COUNTY COMMISSIONERS  
Brevard County, Florida



by Rita Pritchett, Chair  
Brevard County Commission

As approved by Brevard County Commission on July 10, 2018.

ATTEST:



SCOTT ELLIS, CLERK  
(SEAL)

(P&Z Hearing – January 22, 2018)  
(BCC Zoning Hearing – April 5, 2018)

Please note: A Conditional Use Permit will generally expire on the three year anniversary of its approval if the use is not established prior to that date. Conditional Use Permits for Towers and Antennas shall expire if a site plan for the tower is not submitted within one (1) year of approval or if construction does not commence within two years of approval. A PUD Preliminary Development Plan expires if a final development plan is not filed within three years. THE GRANTING OF THIS ZONING DOES NOT GUARANTEE PHYSICAL DEVELOPMENT OF THE PROPERTY. AT THE TIME OF DEVELOPMENT, SAID DEVELOPMENT MUST BE IN ACCORDANCE WITH THE CRITERIA OF THE BREVARD COUNTY COMPREHENSIVE PLAN AND OTHER APPLICABLE LAWS AND ORDINANCES.

Prepared by: Richard L Powell  
Address: 4745 Ivan St, Cocoa, FL 32927

### **BINDING DEVELOPMENT PLAN**

THIS AGREEMENT, entered into this 10 day of JULY, 2018 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Powell-Geary Services, LLC, a Florida company (hereinafter referred to as "Developer/Owner").

### **RECITALS**

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer/Owner has requested retention of the Planned Industrial Park (PIP) zoning classification (Sec. 62-1542) and desires to develop the Property as an office, warehouse and mini storage facility, and pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impact on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property.

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.

2. The Developer/Owner shall develop the property in accordance with Brevard County codes and guidelines for commercial property which abuts residential property to include a 25-foot setback/buffer along with a fence/wall in accordance with county approval along the east residential

property border. A concept illustration (Exhibit "B") is being provided to depict the planned structures consisting of mini self-storage buildings and a main building to use as offices, warehouses, and workshops. The self-storage buildings will be along the east side of the property and the main building on the west side to limit noise effect on the residential properties. Self-storage access hours of operation are envisioned as 8 AM to 8 PM and there will be provisions to prohibit operating repair shops out of the self-storage spaces. Lighting will be in accordance with county requirements and will be oriented to minimize effect on residential properties.

3. The Developer/Owner will be limited to the following land uses: Professional offices; mini-warehouses and self-storage mini-warehouses; workshops/hobby shops for wood working, welding, ceramics and pottery, upholstery, leather work, art work, antiques, photography; repair and storage of golf carts, bicycles, auto, lawn and farm equipment; plant nursery. Sales of goods such as ceramics, crafts, furniture, golf carts, lawn and farm equipment, plants, building material. Additional activities permitted inside the main building to include electrical appliance and lighting fixture repair, sharpening and grinding, welding, fabrication, sales, storage, ceramic productions and firing, office activities, repair and fabrication. Activities outside shall be limited to include, parking, automobile washing, picnic and playground, and plant nursery.

4. The Developer/Owner shall insure that no trucks more than six wheels will be parked or stored on the property and that no sludge, used drain field material, or any other un-authorized material is dumped on this site.

5. There appear to be gopher tortoise on the property which shall be protected, and an area reserved for them. Development shall minimize the removal of trees to only what is necessary and replant in accordance with county approval.

6. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This agreement provides no vested rights against changes to the Comprehensive Plan or land development regulations as they may apply to this Property.

7. Developer/Owner, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in the Public Records of Brevard County, Florida.

8. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on 4/5/18. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

9. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as may be amended.

10. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 7 above.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST:

  
\_\_\_\_\_  
Scott Ellis, Clerk  
(SEAL)

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA  
2725 Judge Fran Jamieson Way  
Viera, FL 32940

  
\_\_\_\_\_  
Rita Pritchett, Chair  
As approved by the Board on July 10, 2018

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(Please note: You must have two witnesses and a notary for each signature required. The notary may serve as one witness.)

WITNESSES:

Cherronda J. Pitt  
Cherronda J. Pitt  
(Witness Name typed or printed)

D. Carias  
D. Carias  
(Witness Name typed or printed)

DEVELOPER/OWNER

R. L. Powell, Managing Member  
4745 Evan St, Cocoa, FL 32927  
(Address)

R. L. Powell, Managing Member  
(President)  
Richard L. Powell  
(Name typed, printed or stamped)

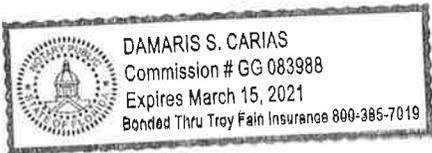
STATE OF FLORIDA §

COUNTY OF LABRADOR §

The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
, 2019, by Richard Powell, President of D. Carias, who is personally  
known to me or who has produced FLD as identification.

My commission expires  
SEAL  
Commission No.:

D. Carias  
Notary Public  
D. Carias  
(Name typed, printed or stamped)



D

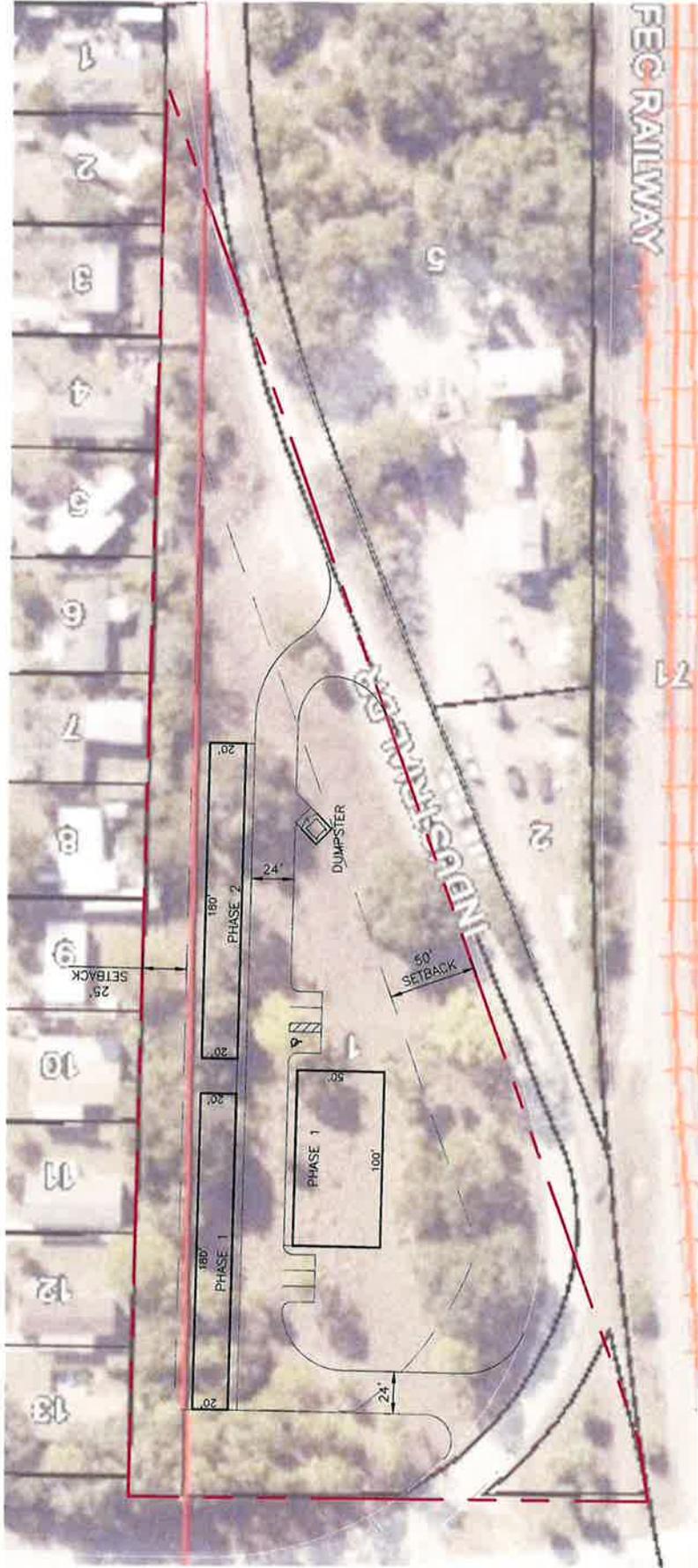
**EXHIBIT 'A'**  
File No. 17-6973

**A parcel of land lying in the Northeast 1/4 of the Northeast 1/4 of Section 25, Township 23 South, Range 35 East, Brevard County, Florida, described as follows:**

**Commencing at the Northeast corner of Section 25, Township 23 South, Range 35 East; thence S 01 degrees 12'23" W., along the East line of said section 25, a distance of 430.75 feet to a point lying on the South right of way line of Broadway Boulevard as currently occupied and said point being the Point of Beginning of the land herein described; thence continue S 01 degrees 12'23" W., along said East line of Section 25, a distance of 806.72 feet to the intersection with the Easterly boundary line of a public road referred to in Official Records Book 2615, Page 0291, Deed Book 00, Page 287, Deed Book U, Page 104, and Deed Book E, Page 117, of the Public Records of Brevard County, Florida; thence N. 19 degrees, 23'57" W., along said boundary line, 821.79 feet to the intersection with the Easterly right of way line of the Florida East Coast Railway right of way and said right of way line being a circular curve, concave Westerly, having a radius of 2914.93 feet and to which point, a radial line bears N. 82 degrees 23'50" E., thence Northerly along said right of way line. Through a central angle of 00 degrees, 39'59" 33.90 feet to a point lying on the aforementioned South right of way line of Broadway Boulevard; thence S 89 degrees, 34'45" E., along said right of way line 294.63 feet to the point of beginning.**

**Less Rights of Ways.**

Exhibit "B" Concept Illustration



CONCEPTUAL SITE PLAN

1"=60'

2/23/18 CP-3



STATE OF FLORIDA  
COUNTY OF BREVARD

Richard L Powell, after being duly sworn, deposes and says:

The undersigned is the owner of the real property described as follows:

Tax Parcel 1, as recorded in ORB 8013, Pages 484 – 486, of the Public Records of Brevard County, Florida. **Section 25, Township 23, Range 35.** (2.79 acres) Located on the south side of Broadway Blvd., and east side of Industrial Dr., approx. 0.47 mile west of U.S. Hwy 1. (No assigned address. In the Cocoa area.)

There are no mortgages on the above described property

Dated this 31st day of May, 2018.

Richard L Powell  
Signature Managing Member

STATE OF FLORIDA  
COUNTY OF BREVARD

The foregoing instrument was sworn to before me this 31st day of May, by Richard Powell, who is personally known to me or who has produced FL DL as identification, and who did take an oath.

Notary Public:

Jennifer Jones  
State of Florida at Large  
My Commission Expires:

(SEAL)



LOCAL PLANNING AGENCY/  
PLANNING AND ZONING BOARD  
**Monday, January 22, 2018 at 3:00 p.m.**  
&  
BOARD OF COUNTY COMMISSIONERS  
**Thursday, February 1, 2018 at 5:00 p.m.**  
Both at the  
BREVARD COUNTY GOVERNMENT CENTER  
2725 Judge Fran Jamieson Way, Bldg. C, Viera, Florida

The Board of County Commissioners may approve or deny the requested classification, or may approve a classification of lesser intensity than that requested.

IV.D. Change of Zoning Classification, Re: AU to EU-1. Frank E. Jones, Jr., Trustee (Raonel Jesus Barrial). The property is .64 acre, located on the south side of Jones Trail, approx. 560 ft. west of N. Tropical Trail. (17PZ00140) (District 2)

NMI Recommendation of 01/11/18: Ratterman/Lindhorst – Approved as SR. The vote was 5:2, with Balke and Carbonneau voting nay.

IV.I. (This item was tabled from the 01/08/18 P&Z meeting) Amendment, Re: Existing Binding Development Plan. Powell-Geary Services, LLC (Richard Powell). The property is 2.79 acres, located on the south side of Broadway Blvd., and east of Industrial Dr., approx. 0.47 mile west of U.S. Hwy 1. (17PZ00150) (District 1)

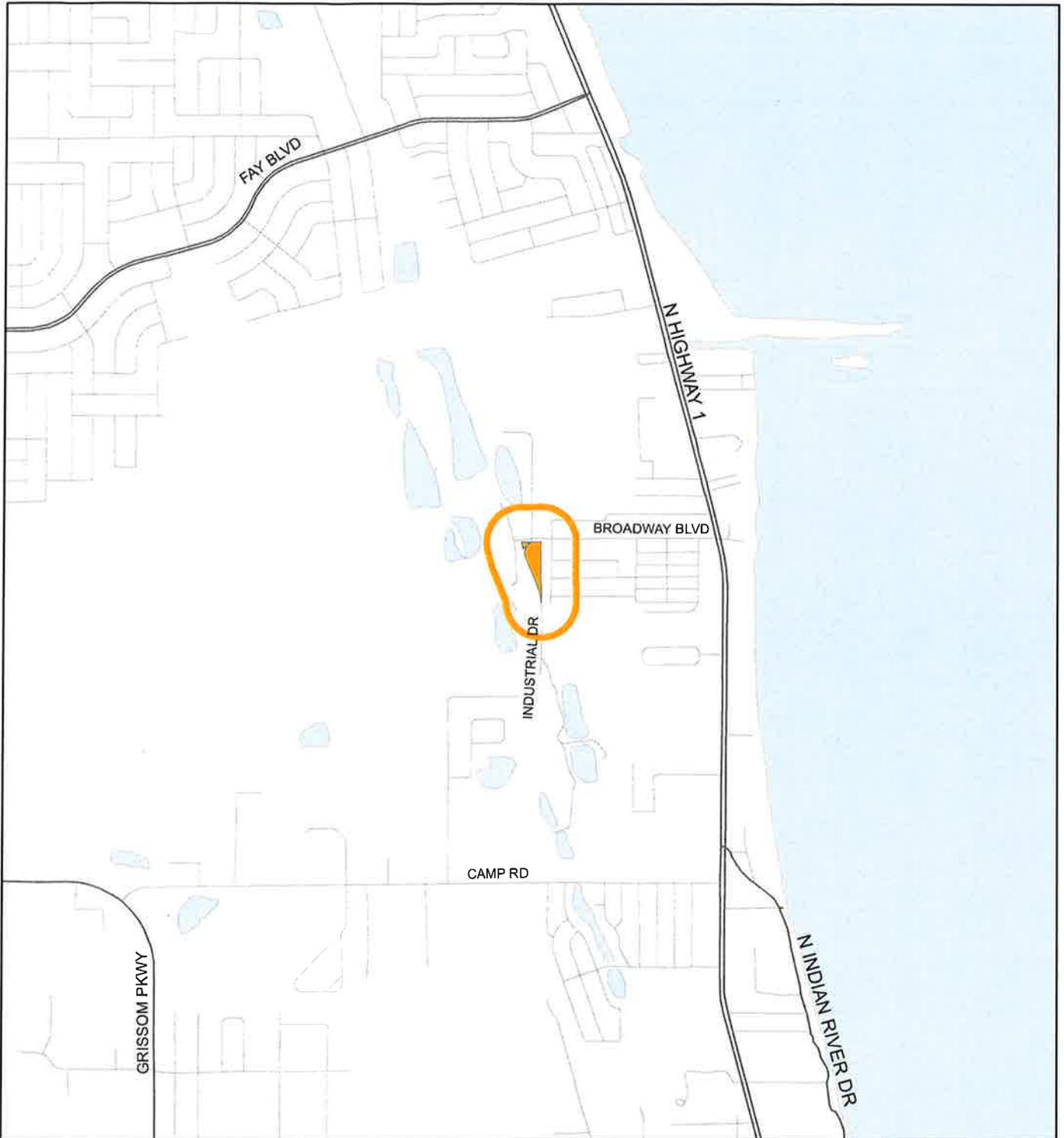
P&Z Recommendation: Barber/Lawandales – Denied. The vote was unanimous.

PUBLIC COMMENT

## **PLANNING AND ZONING BOARD RECOMMENDATIONS**

- Item IV.A.** Powell-Geary Services, LLC. Isnardi/Barfield. Approved amendment to existing BDP in a PIP zoning classification.
  
- Item IV.B.** W. K. & R. Groves, Inc. Barfield/Tobia. Approved the applicants request to table to the May 3, 2018 Zoning meeting.

LOCATION MAP  
POWELL-GEARY SERVICES, LLC  
17PZ00150



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

Buffer Distance: 500 feet

-  Buffer
-  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: 12/6/2017

