

**POLK COUNTY  
LAND USE HEARING OFFICER  
STAFF REPORT**

<b>DRC Date:</b>	<b>July 13, 2023</b>	<b>CASE #:</b>	<b>LDLSE-2023-15 (Tabbitha Way 1 SE)</b>
<b>Hearing Date:</b>	<b>March 28, 2024</b>	<b>LDC Section:</b>	<b>216.D</b>

**Request:** The applicant is requesting a Special Exception to park a commercial vehicle on residential property.

**Applicant:** Gabriel Gutierrez

**Property Owner:** Gabriel & Diana Gutierrez

**Location:** 5051 Tabbitha Way, west of US Highway 27, east of North Avon Park Cutoff, south of SR 17, south of Frostproof in Section 30, Township 32, Range 28.

**Parcel ID#:** 283230-000000-013240

**Size:** 1.11 ± acres

**Land Use Designation:** Agricultural/Residential Rural-X (A/RRX)  
Southeast Polk Selected Area Plan (SAP)

**Development Area:** Rural Development Area (RDA)

**Case Planner:** Ian Nance

**Summary:**

The applicant is requesting a special exception to park a commercial vehicle on residential property within an Agricultural/Residential Rural (A/RRX) land use district south of Frostproof. The subject property has frontage along US 27 with access to that roadway through a private easement. Section 216.D of the Land Development Code (LDC) allows Commercial Vehicle Parking on residential properties pursuant to the rules detailed in this section and approval from the Land Use Hearing Officer following an advertised public hearing.

According to the application, the subject vehicle is a 2009 International semi-truck. The subject property is approximately 1.11 acres with the necessary space to park the vehicle to the rear of the home, as presented on the site plan (*Exhibit 5*). There is insufficient room to park the vehicle to the sides of the property. The abutting uses are single-family residential homes on large properties with an overall low rural density. The parking area will be buffered according to LDC standards. With the proposed conditions, staff recommends approval of this application.

## **Development Review Committee**

The Development Review Committee, based on the criteria for granting Special Exceptions, finds that LDLSE-2023-15 **IS CONSISTENT** with Section 216.D of the Polk County Land Development Code.

**Development Review Committee Recommendation:** Based upon the application and a recent site visit, the Development Review Committee recommends **APPROVAL of LDLSE-2023-15.**

### **CONDITIONS OF APPROVAL:**

1. This Special Exception shall be limited to parking the truck, or its functional equivalent, as described in the application and staff report. No other commercial vehicles, trailers, heavy machinery equipment, or tractor/trailer rigs shall be parked on the site.
2. Approval shall not be transferable to any other owner/occupant of the property. In the event the property is sold, or the operator ceases to reside on the property, the special exception approval shall not “run with the land” and shall be null and void.
3. No commercial vehicle maintenance shall be performed on the site, and no outside storage of any commercial vehicle parts or equipment is allowed.
4. Parking the commercial vehicle on the operator’s lot shall be limited to empty weight only (no load or cargo).
5. This special exception does not authorize any encroachments into easements, and the applicant shall be responsible to make certain there are no encroachments unless approval is granted by the easement holder and/or any applicable permitting agencies. The property owner(s) is also responsible for compliance with any restrictions of record pertaining to lots and/or land and this approval shall not be used to supersede authority over those restrictions.
6. The commercial vehicle shall only be parked in the area to the side of the home as generally designated on the site plan (*Exhibit 5*) and shall continuously meet the screening and buffering requirements listed in Section 216.D, Commercial Vehicle Parking and Storage, of Polk County’s Land Development Code.
7. Approval of the Special Exception shall be valid for one year. Approvals may be renewed by the Land Development Division with a proper application submitted by the applicant 30 days prior to the expiration date (TBD by LUHO). Noncompliance with any of the conditions of approval will render LDLSE-2023-15 null and void. All conditions of approval, unless otherwise specified, must be met prior to parking the commercial vehicle on the property.

## **GENERAL NOTES**

*NOTE: This staff report was prepared without the benefit of testimony and evidence submitted by the public and other interested parties at a public hearing.*

*NOTE: Approval of this special exception shall not constitute a waiver or an additional variance from any applicable development regulation unless specifically noted in the conditions of approval and consistent with the LDC.*

*NOTE: All conditions of approval, unless otherwise specified, shall be met prior to the effectiveness and validity of the special exception approval.*

*NOTE: All written commitments made in the application and subsequent submissions of information made during the application review process, which are on file with the Land Development Division, shall be considered to be binding upon the applicant, provided such commitments are not at variance with the Comprehensive Plan, LDC or other development regulations in effect at the time of development.*

*NOTE: Issuance of a development permit by the county does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the county for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law.*

## **APPLICATIONS FOR COMMERCIAL VEHICLE PARKING AND STORAGE SHALL DEMONSTRATE COMPLIANCE WITH SECTION 216 OF THE LAND DEVELOPMENT CODE. DEMONSTRATION OF THE CRITERIA FOR GRANTING SPECIAL EXCEPTIONS FOR COMMERCIAL VEHICLES IS SUMMARIZED BELOW:**

1. *Only one commercial vehicle, as regulated by this Section 216, shall be permitted on any residential lot;*

According to the application, the subject vehicle is a 2009 International semi-truck that the driver wishes to park at his residence in an A/RR land use district. It will be 28 feet long and 11 feet in height. The size of the property is sufficient to accommodate a vehicle such as this and meet the standards required in Section 216. The vehicle will be parked to the rear of the principal structure and buffered and screened from neighboring properties. No other commercial vehicles will be parked onsite.

2. *Commercial vehicle shall be currently registered and licensed;*

The applicant has supplied a current registration.

3. *The parking of said vehicle does not have a negative impact to the health, safety, or welfare of adjacent properties;*

Staff finds this request will not have a negative impact to the health, safety, or welfare of adjacent properties. Due to the standards in Section 216 of the LDC, the applicant is not able to park the vehicle in the front of the home, but there is space on which to park the subject vehicle in the rear yard while maintaining a 20-foot setback from the property lines. A survey was provided by the applicant. There is no room to the sides of the home to park

the vehicle and maintain the setback requirements. Staff does not recommend the inclusion of a trailer in this request. The application/site plan calls out 54 feet of vehicle. The width of the back yard is 100 feet, per survey. When applying the setbacks, this leaves six (6) feet of space without creating a violation.

This area is rural, but the site has direct frontage and access to US 27. Since this is a state road, the County has no jurisdiction requiring commercial driveway standards; however, it appears the property will access US 27 via a commercial driveway already in place. No local roads are necessary to reach the highway. From the edge of pavement to the parking area will exceed 360 feet. The abutting property to the west is approximately 19.48 acres with a mobile home placed approximately 570 feet from the proposed parking area. Other homes are located further west but still exceed 200 feet from the structures to the parking area. The site is well-screened and buffered, meeting the Type "B" landscaping requirements in Section 216.

4. *The applicant can demonstrate that denial of said request would place an unnecessary hardship on the property prohibiting the use of land in a manner otherwise allowed under this Land Development Code;*

The applicant uses the commercial vehicle as a source of income. This truck will be parked here on an as-needed basis. This property is in an area of the County where other options to park commercial vehicles are limited. In addition, this is an ideal location with direct access to US Highway 27.

On January 4, 2022, the BoCC approved LDCT-2021-15 (Ordinance No. 22-002) which incorporated language into Section 216.C of the LDC that exempted application from needing a Special Exception approval for any vehicle or heavy equipment parked or stored within an enclosed structure. In the event this vehicle could be stored in such a manner, the applicant would not be required to provide the landscaping/screen or a commercial driveway.

5. *Commercial vehicles must park on the same lot occupied by the owner/operator of the vehicle.*

The vehicle will be parked on the same lot occupied by the operator of the vehicle.

6. *The vehicle shall not be parked in the front yard of the principal residence.*

The applicant's site plan (*Exhibit 5*) indicates the proposed parking area is not located in the front yard of the property.

7. *The parking area shall be at least 20 feet from all property boundaries.*

The site plan (*Exhibit 5*) calls out the parking area in the rear yard with at least 20 feet of separation from the property lines.

8. *The vehicle shall park in a manner so that the minimum amount of vehicle surface is facing the road adjacent to the property unless the vehicle is screened or buffered as provided.*

The vehicle will be parked in a manner which exposes minimal view of the truck from the road. The truck will be screened from offsite view by existing vegetation and the existing mobile home. From the edge of pavement to the parking area will exceed 360 feet.

9. *When the vehicle parking area is less than 200 feet from a residentially designated or used property, it shall be buffered from the adjacent residential property with a Type B Buffer as outlined in Section 720. A fence with a minimum height of six feet may be used in lieu of, or in conjunction with, a vegetative buffer yard.*

The proposed parking area shall meet the buffer and screening requirements of LDC Section 216.D. The applicant has been made aware of this requirement. The home blocks the view of the parking area from US 27. As described above, existing landscaping and structures contribute to meet this requirement.

10. *Refrigerator units on vehicles shall not be operated on the site.*

The subject commercial vehicle does not include a refrigerator unit.

11. *Approvals shall be valid for one year, or for a shorter period as specified by the Land Use Hearing Officer. Approvals may be renewed, with proper application following notice provided by the Land Development Division Director 30 days prior to the expiration date, if the commercial vehicle location is consistent with the Land Development Code. The applicant shall bear the burden in demonstrating that the vehicle parking still meets the criteria of the approved Special Exception and Section 216.*

This has been included in the conditions of approval.

**Surrounding Future Land Use Designations and Existing Land Use Activity:**

The table below lists the Future Land Use designation and the existing uses surrounding the site. The information in the table is based on a site visit by the case planner and observation of the Future Land Use map to note the surrounding uses.

<p><b>Northwest:</b> A/RRX Mobile Home +/- 1.10 Acres</p>	<p><b>North:</b> A/RRX Mobile Home +/- 1.10 Acres</p>	<p><b>Northeast:</b> A/RRX US Highway 27</p>
<p><b>West:</b> A/RRX Mobile Home +/- 19.48 Acres</p>	<p><b>Subject Property:</b> A/RRX Mobile Home +/- 1.11 Acres</p>	<p><b>East:</b> A/RRX US Highway 27</p>
<p><b>Southwest:</b> A/RRX Mobile Home</p>	<p><b>South:</b> A/RRX Vacant</p>	<p><b>Southeast:</b> A/RRX US Highway 27</p>

+/- 19.48 Acres	+/- 0.98 Acres	
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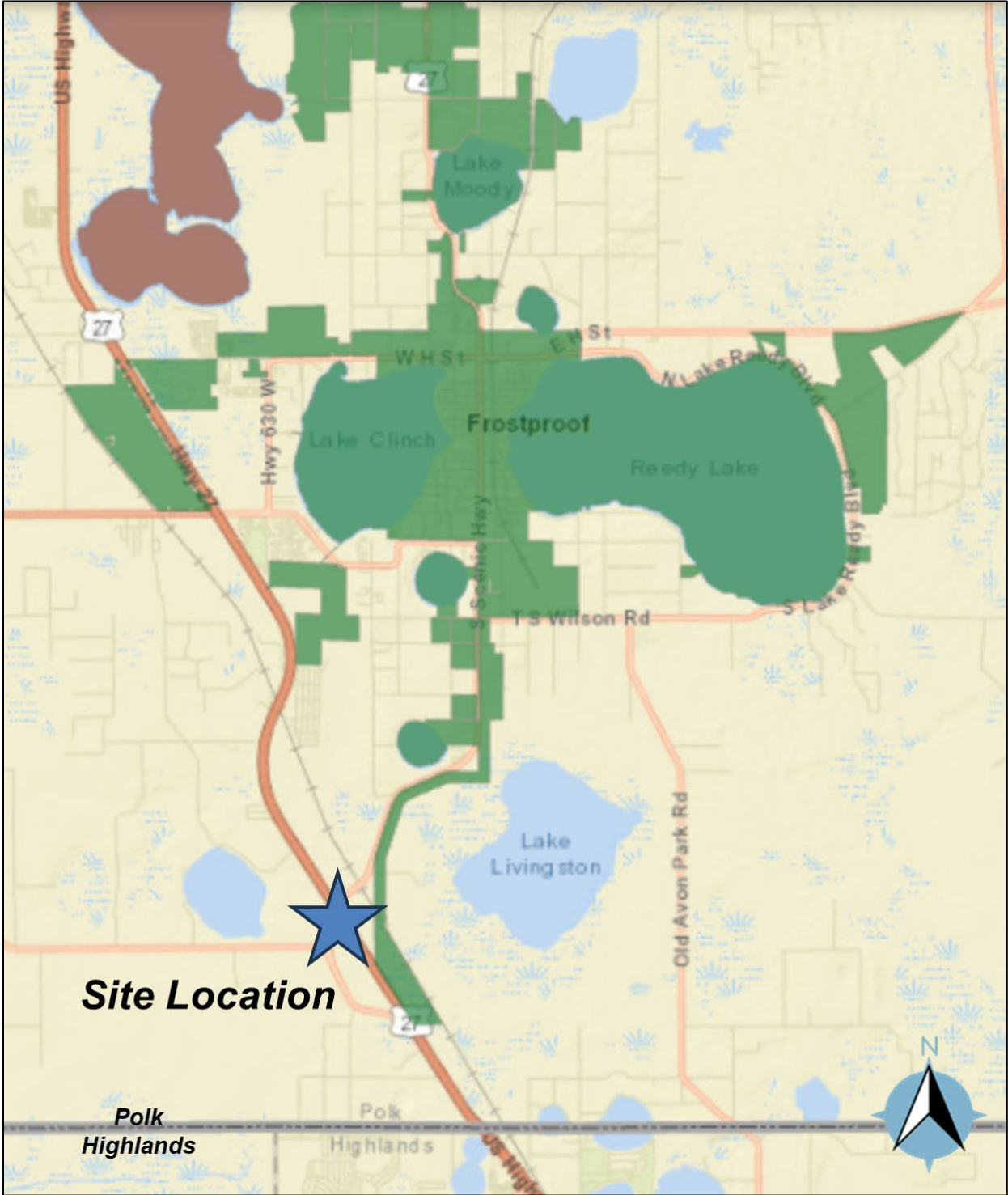
This site is approximately 1.11 acres and located within an A/RRX land use district (*Exhibit 2*). The property was originally part of an unrecorded subdivision created prior to the Comprehensive Plan and LDC. It has retained its vesting as a lot of record. A mobile home was once onsite but demolished in 2022 under BT-2021-8654. A new Mobile Home Set-Up permit was approved, and a Certificate of Occupancy issued in October 2023 for the mobile home currently onsite (BR-2022-2963). Documentation with the building permit shows the MH is 16 x 70' or 1,120 sq. ft. It was placed in approximately the same location as the previous mobile home, set almost 270 feet from the frontage of US 27. The property depth is 330', which leaves little space for parking a vehicle much larger than the subject semi-truck.

The size of the property is important in evaluating this case. If the property was 5-acres or larger, the minimum lot size in A/RR, it would be permitted to have one commercial vehicle without having to apply for a Special Exception. However, this property was created prior to the adoption of the LDC and these standards. Staff has not found any other SE approvals in Range 28, Township 32, Section 30, though LDLSE-2023-16 was approved in December 2023 on the property to the west at 5151 Tabbitha Way.

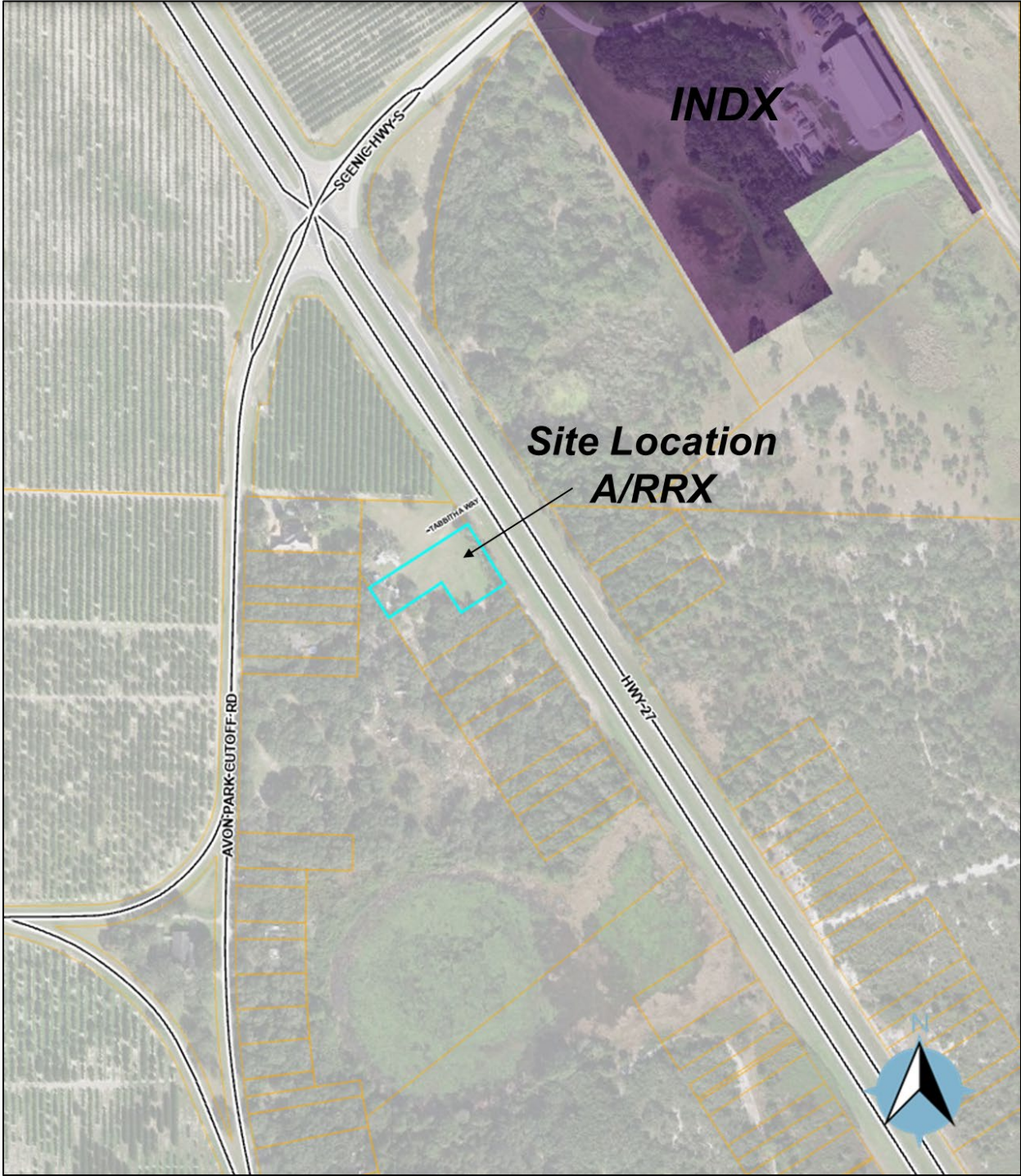
**Comments from other Governmental Agencies:**     None

**Exhibits:**

- Exhibit 1     Location Map
- Exhibit 2     Future Land Use Map
- Exhibit 3     Aerial Image (Context)
- Exhibit 4     Aerial Image (Close)
- Exhibit 5     Site Plan
- Exhibit 6     Commercial Vehicle

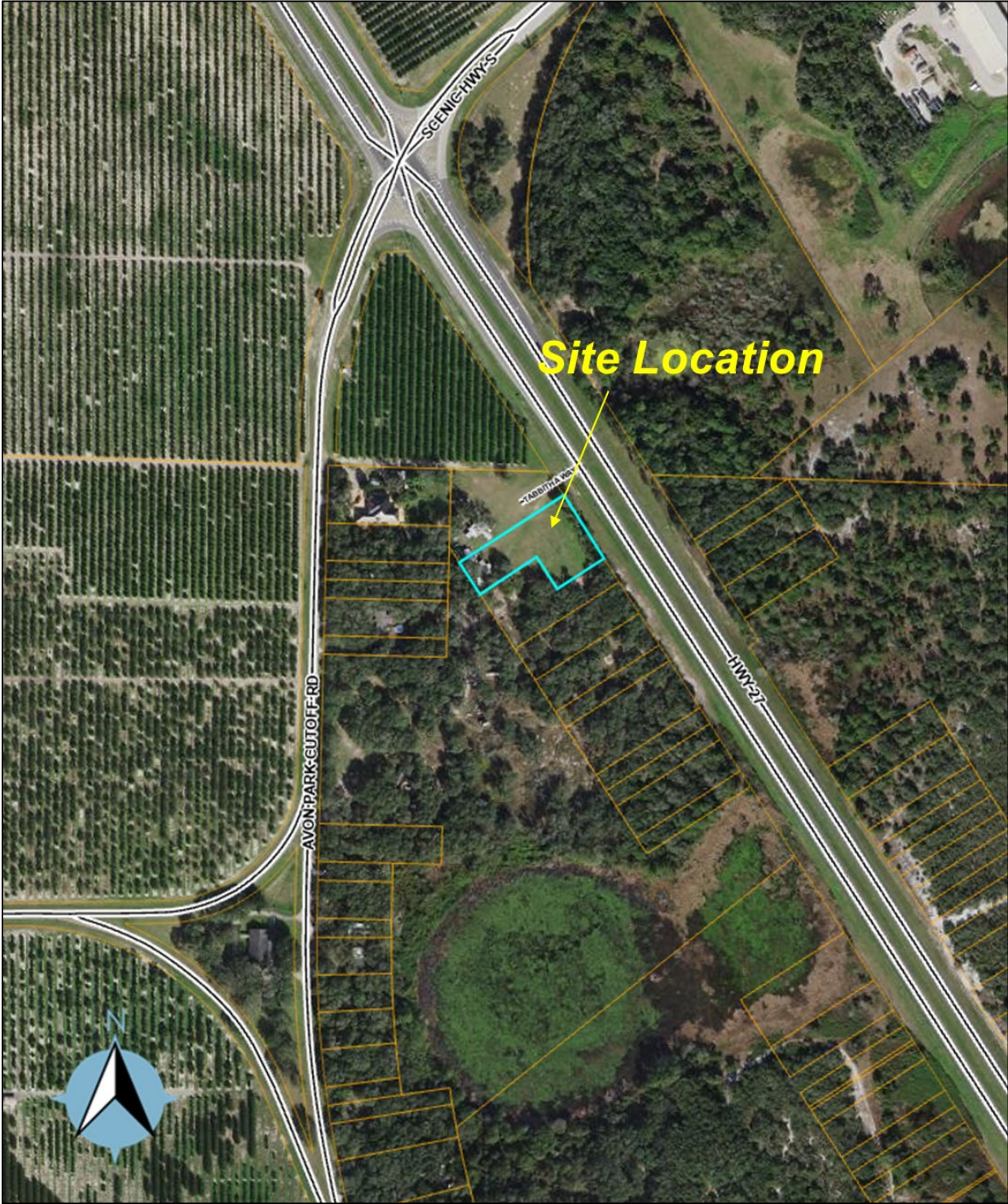


Site Location

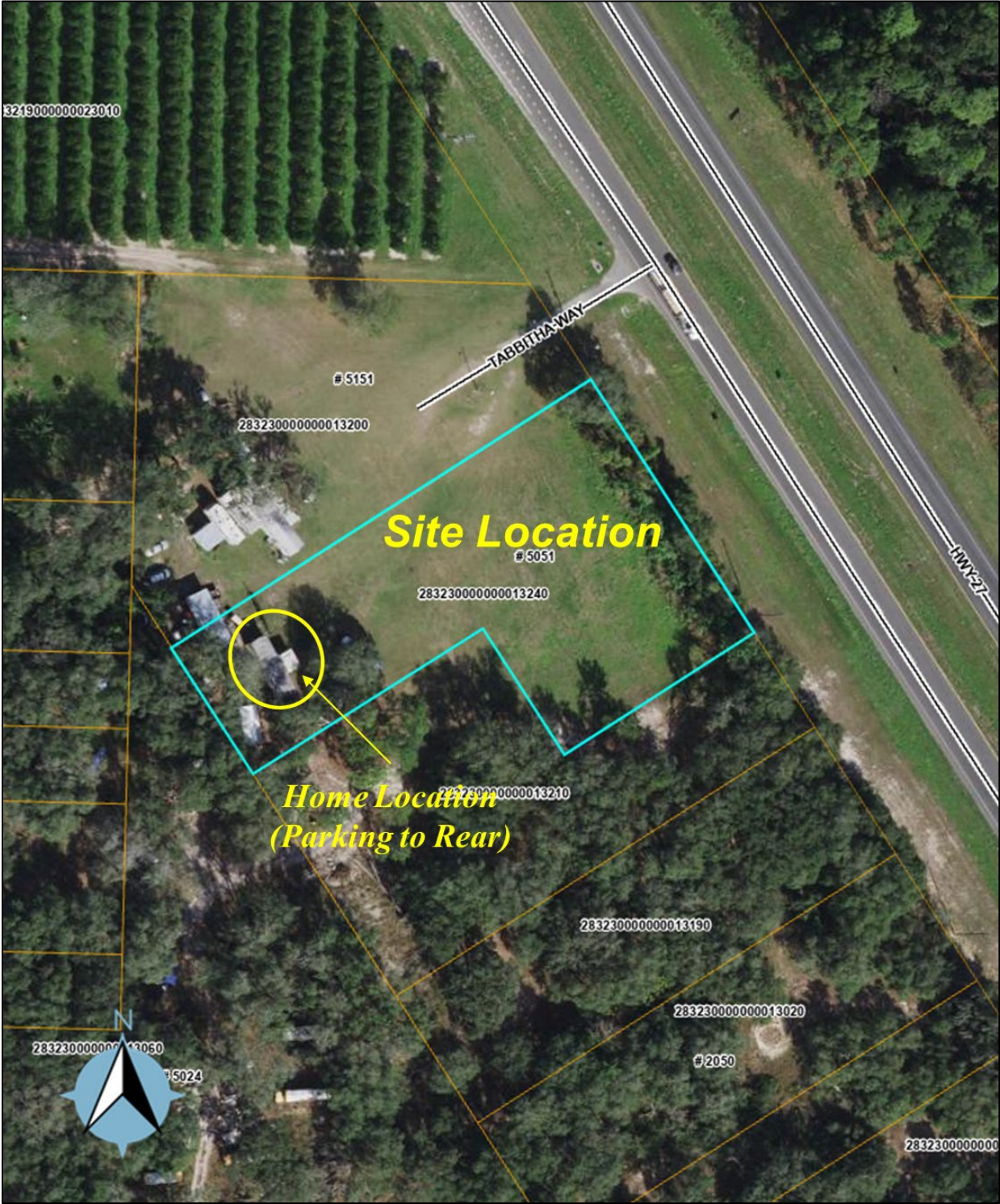


Future Land Use Map

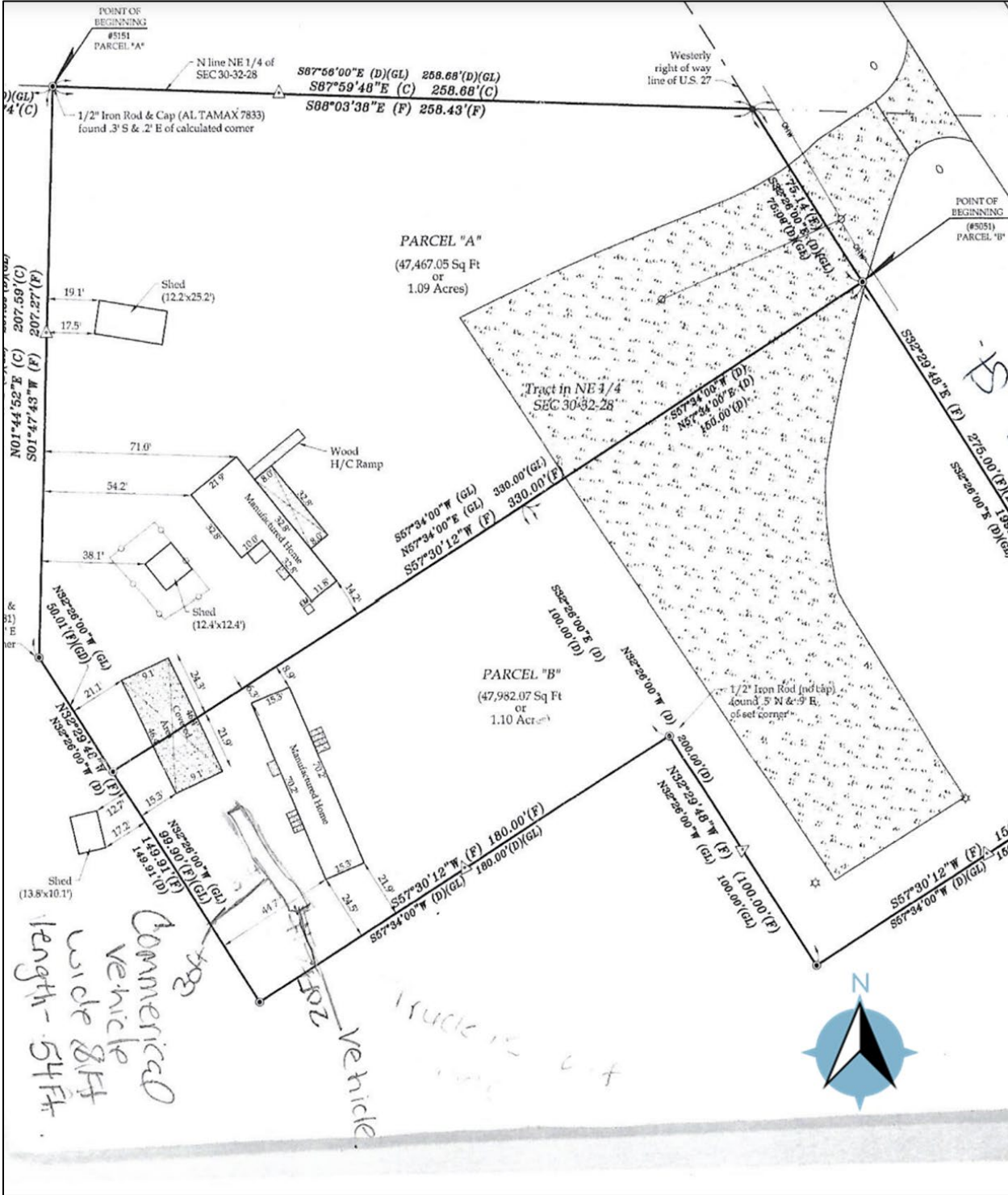




Aerial Image – Context



Aerial Image – Close



Site Plan



Commercial Vehicle (Trailer not Included)