

SLUP-6  
(2017)

WINDY HILL SELF STORAGE

CONCEPT PLAN

DATE: 05/11/17	BY: [Signature]
SCALE: 1" = 50'	PROJECT: WINDY HILL SELF STORAGE
DATE: 05/11/17	BY: [Signature]
SCALE: 1" = 50'	PROJECT: WINDY HILL SELF STORAGE

NO.	DATE	DESCRIPTION
1	5/11/17	CONCEPT PLAN
2	5/11/17	CONCEPT PLAN
3	5/11/17	CONCEPT PLAN
4	5/11/17	CONCEPT PLAN
5	5/11/17	CONCEPT PLAN
6	5/11/17	CONCEPT PLAN
7	5/11/17	CONCEPT PLAN
8	5/11/17	CONCEPT PLAN
9	5/11/17	CONCEPT PLAN
10	5/11/17	CONCEPT PLAN

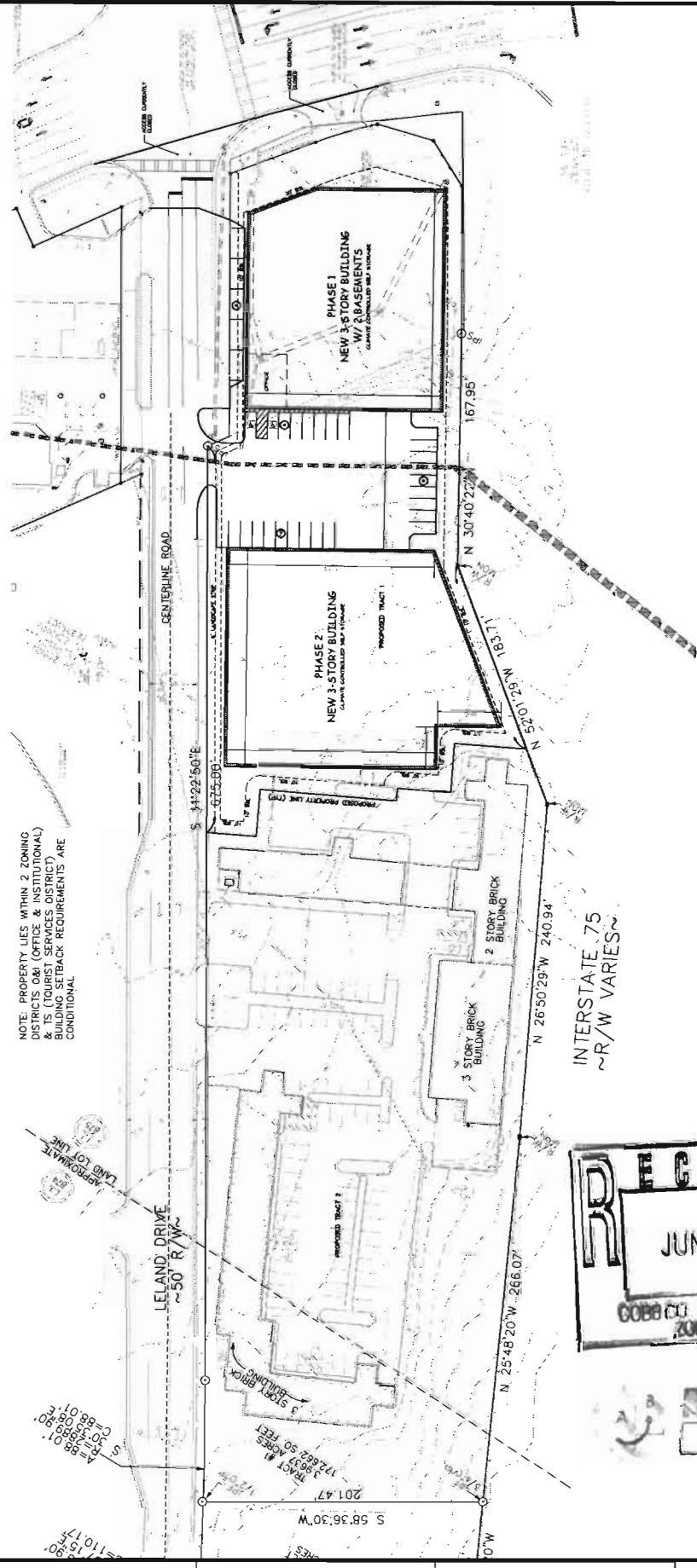
**DEVELOPER**  
WINDY HILL SELF STORAGE, LLC

4377 Park Drive, Suite 800  
Houston, Texas 77040  
Phone: (713) 462-2111  
Fax: (713) 462-2110  
www.windyhillselfstorage.com

**TAX PARCEL ID:** 1707500060  
**SITE ADDRESS:** 2911 West Hill Rd  
**SITE AREA:** 17,262.00 SQ. FT. OF STORAGE SPACE  
**PROPOSED TRACT 1:** 1,977.00 SQ. FT. OF STORAGE SPACE  
**PROPOSED TRACT 2:** 2,840.00 SQ. FT. OF STORAGE SPACE  
**EXISTING SITE ZONING:** O&I & TS  
**PROPOSED SITE ZONING:** RRC  
**FLOOR AREA RATIO:** 0.25  
**BUILDING SETBACK LINES:**  
FRONT: 10.0 FT.  
SIDE: 10.0 FT.  
REAR: 10.0 FT.

- VARIANCES REQUIRED:**
- TO EXCEED THE MAXIMUM HEIGHT OF 35 FEET FOR THE PROPOSED BUILDINGS.
  - TO EXCEED THE MAXIMUM SETBACK REQUIREMENTS FOR THE PROPOSED BUILDINGS.
  - TO EXCEED THE MAXIMUM FLOOR AREA RATIO FOR THE PROPOSED BUILDINGS.
  - TO EXCEED THE MAXIMUM NUMBER OF UNITS PER ACRE FOR THE PROPOSED BUILDINGS.
  - TO EXCEED THE MAXIMUM NUMBER OF UNITS PER ACRE FOR THE PROPOSED BUILDINGS.
  - TO EXCEED THE MAXIMUM NUMBER OF UNITS PER ACRE FOR THE PROPOSED BUILDINGS.
  - TO EXCEED THE MAXIMUM NUMBER OF UNITS PER ACRE FOR THE PROPOSED BUILDINGS.
  - TO EXCEED THE MAXIMUM NUMBER OF UNITS PER ACRE FOR THE PROPOSED BUILDINGS.
  - TO EXCEED THE MAXIMUM NUMBER OF UNITS PER ACRE FOR THE PROPOSED BUILDINGS.
  - TO EXCEED THE MAXIMUM NUMBER OF UNITS PER ACRE FOR THE PROPOSED BUILDINGS.

NOTE: PROPERTY LIES WITHIN ZONING DISTRICTS O&I (OFFICE & INSTITUTIONAL) & TS (TOURIST SERVICES DISTRICT) BUILDING SETBACK REQUIREMENTS ARE CONDITIONAL



**RECEIVED**  
JUN - 8 2017  
GOBB CO COMM DEV AGENCY  
ZONING DIVISION

**REVISED**



**APPLICANT:** Windy Hill Self Storage, LLC

**PHONE #:** (678) 713-1257 **EMAIL:** mcooke@mtc-corp.net

**REPRESENTATIVE:** Garvis L. Sams, Jr.

**PHONE #:** (770) 422-7016 **EMAIL:** gsams@slhb-law.com

**TITLEHOLDER:** Unique Hotel, LLC

**PROPERTY LOCATION:** West side of Leland Drive, east side of I-75, and the north side of Windy Hill Road

**ACCESS TO PROPERTY:** Leland Drive

**PHYSICAL CHARACTERISTICS TO SITE:** Portion of existing two and three story hotel complex amongst three (3) separate buildings

**CONTIGUOUS ZONING/DEVELOPMENT**

**NORTH:** O&I/ Remaining On-site Hotel  
**SOUTH:** I-75 ROW and Access Ramps  
**EAST:** GC, O&I, RM-12/ BP Gas Station, Belmont Place Apartments  
**WEST:** I-75 ROW and Access Ramps

*Adjacent Future Land Use:*

Northwest: Regional Activity Center (RAC/off)  
Northeast: Regional Activity Center (RAC/rs)  
Southeast: Regional Activity Center (RAC/rs)  
Southwest: Regional Activity Center (RAC/off)  
(across I-75)

**OPPOSITION:** NO. OPPOSED **PETITION NO:**        **SPOKESMAN**       

**PLANNING COMMISSION RECOMMENDATION**

**APPROVED**        **MOTION BY**       

**REJECTED**        **SECONDED**       

**HELD**        **CARRIED**       

**BOARD OF COMMISSIONERS DECISION**

**APPROVED**        **MOTION BY**       

**REJECTED**        **SECONDED**       

**HELD**        **CARRIED**       

**STIPULATIONS:**

**PETITION NO:** SLUP-6

**HEARING DATE (PC):** 07-06-17

**HEARING DATE (BOC):** 07-18-17

**PRESENT ZONING:** O&I and TS

**PROPOSED ZONING:** Special Land Use Permit

**PROPOSED USE:** Climate-Controlled Self-Service Storage Facility

**SIZE OF TRACT:** 1.97 acres

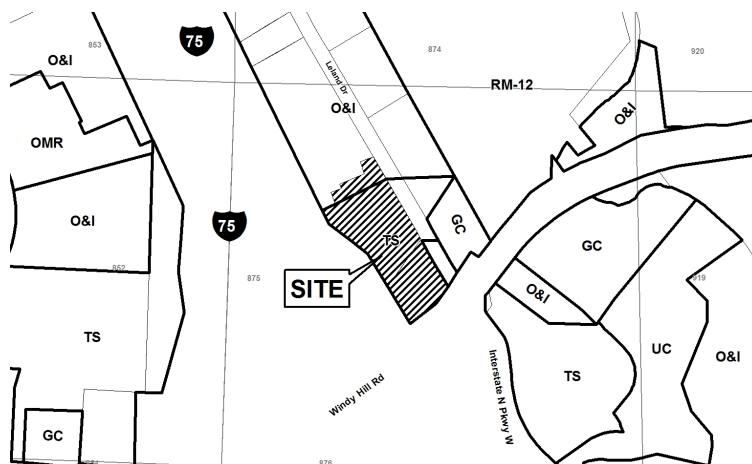
**DISTRICT:** 17

**LAND LOT(S):** 874,875

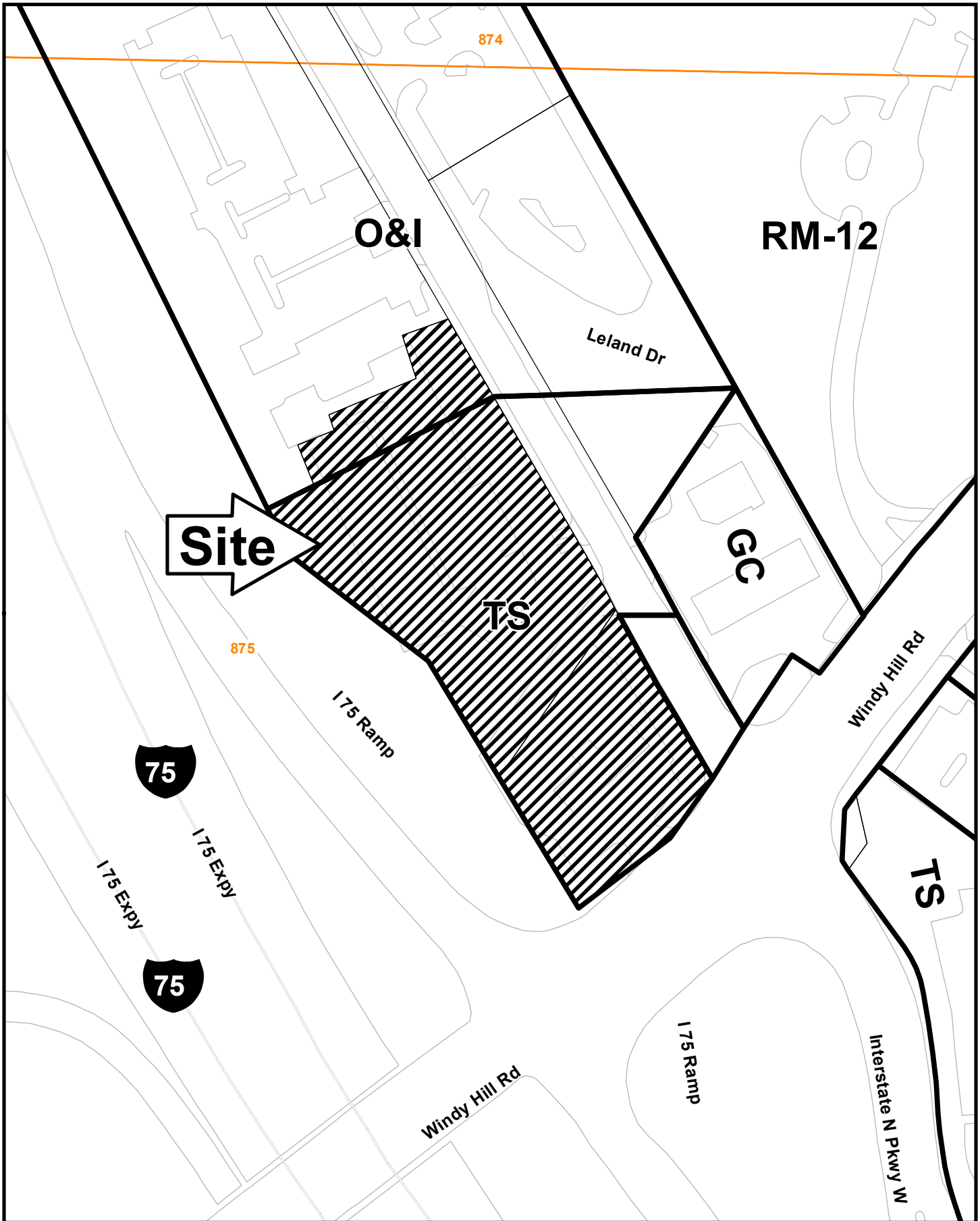
**PARCEL(S):** 7,9

**TAXES: PAID** X **DUE**       

**COMMISSION DISTRICT:** 2



# SLUP-6 2017-GIS



This map is provided for display and planning purposes only. It is not meant to be a legal description.

0 100 200 Feet

City Boundary  
Zoning Boundary

**APPLICANT:** Windy Hill Self Storage, LLC

**PETITION NO.:** SLUP-6

**PRESENT ZONING:** O&I and TS

**PETITION FOR:** SLUP

\*\*\*\*\*

**ZONING COMMENTS:** Staff Member Responsible: Terry Martin, MPA

The applicant is requesting a Special Land Use Permit (SLUP) in order to demolish part of the existing hotel property for the purpose of redeveloping it as a new freestanding climate controlled self-service storage facility with office space. The development will consist of storage facility that will total 189,100 sq. ft. across two (2) three (3) story buildings to be built in two (2) phases with the first phase to total 107,950 sq. ft. which will have 600 storage units plus 5,000 sq. ft. of office space. The second phase will have 81,150 sq. ft. with 500 storage units. The applicant indicates that the buildings will be four-sided brick with cementitious accents. The business will operate Monday through Saturday from 8:00 a.m. until 6:00 p.m. and Sunday from 1:00 p.m. until 6:00 p.m.

The applicant’s proposal adheres to most of the particular requirements for the freestanding climate controlled self-service storage facility use in that it remains in keeping with surrounding properties’ height (three (3) stories) and provides a main or central entrance to all units. As proposed, due to the property’s shape and size as well as the applicant’s site layout which seeks to accommodate an existing stormwater pipe traversing the middle of the site, setback variances on all four (4) sides will be necessary as applicable under the concurrently requested RRC regional retail commercial district (Z-32). Other aspects such as the architectural appearance of the building and lighting and landscaping will be finalized with forthcoming renderings and plans to be approved by the BOC or the District Commissioner before construction begins.

If approved, the following variances will be necessary:

1. Waive the landscape enhancement strip from the required eight (8) feet to zero feet adjacent to Leland Drive;
2. Increase the maximum F.A.R. from 2.00 to 2.5;
3. Waive the front setback from the required 50 feet to 30 feet (adjacent to Windy Hill Road);
4. Waive the rear setback from the required 30 feet to 10 feet; and
5. Waive the major side setbacks from the required 35 feet to 10 feet adjacent to Leland Drive and from the required 25 feet to 10 feet adjacent to Interstate 75.

**Historic Preservation:** No comment.

**Cemetery Preservation:** No comments.

\*\*\*\*\*

**WATER & SEWER COMMENTS:**

No comments. Water and sewer available.

\*\*\*\*\*

**TRAFFIC COMMENTS:**

This request will not have an adverse impact on the transportation network.

\*\*\*\*\*

\*\*\*\*\*

**FIRE COMMENTS:**

\*\*\*\*\*

Modifications will be required to incorporate the Cobb County Fire Marshal’s Office comments.

**ACCESS:** Fire apparatus access roads shall extend to within 150 feet of all portions of the facility or any portion of the exterior wall of the first floor (State Modifications IFC 503.1 2006 Edition).

All access roads shall meet the American Association of State and Highway Transportation Officials (AASHTO) design manual live load standard HS20 (75,000 lbs.) with an unobstructed width of not less than 20 feet, 25 foot inside radius, 50 foot outside turning radius and unobstructed vertical clearance of not less than 13 feet 6 inches.

Maximum slope of the access road in reference to the apparatus is 10% Front to Back and 5% Side to Side. Maximum grade of roadways leading to Fire Access roads refer to the Cobb County Development Standard Section 400: 14% for Non-Residential. Maximum angle of departure is 8.5%.

Dead-end access roads in excess of 150 feet shall be provided with a turn-around (IFC 503.2.5 2006 Edition). Cul-de-sac with or without an island: minimum 60-foot radius to outside curb, measured to inside of curb and a minimum lane width = 24 feet (Cobb County Development Standard 401.09). Single-Family cul-de-sac without island: 38-foot outside radius with island reverts to commercial dimensions. Hammerhead turn-around: total of 110 feet needed (45 feet + 20 feet wide roadway + 45 feet).

APPLICANT: Windy Hill Self Storage, LLC

PETITION NO.: SLUP-6

PRESENT ZONING: O&I, TS

PETITION FOR: SLUP

\*\*\*\*\*

**STORMWATER MANAGEMENT COMMENTS**

FLOOD HAZARD:  YES  NO  POSSIBLY, NOT VERIFIED

DRAINAGE BASIN: Rottenwood Creek FLOOD HAZARD INFO: Zone X

- FEMA Designated 100 year Floodplain Flood.
- Flood Damage Prevention Ordinance DESIGNATED FLOOD HAZARD.
- Project subject to the Cobb County Flood Damage Prevention Ordinance Requirements.
- Dam Breach zone from (upstream) (onsite) lake - need to keep residential buildings out of hazard.

WETLANDS:  YES  NO  POSSIBLY, NOT VERIFIED

Location:

- The Owner/Developer is responsible for obtaining any required wetland permits from the U.S. Army Corps of Engineer.

STREAMBANK BUFFER ZONE:  YES  NO  POSSIBLY, NOT VERIFIED

- Metropolitan River Protection Area (within 2000' of Chattahoochee River) ARC (review 35' undisturbed buffer each side of waterway).
- Chattahoochee River Corridor Tributary Area - County review (       undisturbed buffer each side).
- Georgia Erosion-Sediment Control Law and County Ordinance - **County Review**/State Review.
- Georgia DNR Variance may be required to work in 25 foot streambank buffers.
- County Buffer Ordinance: 50', 75', 100' or 200' each side of creek channel.

DOWNSTREAM CONDITIONS

- Potential or Known drainage problems exist for developments downstream from this site.
- Stormwater discharges must be controlled not to exceed the capacity available in the downstream storm drainage system.
- Minimize runoff into public roads.
- Minimize the effect of concentrated stormwater discharges onto adjacent properties.
- Developer must secure any easements required to receive concentrated discharges where none exist naturally
- Existing Lake Downstream       .  
Additional BMP's for erosion sediment controls will be required.
- Lake Study needed to document sediment levels.
- Stormwater discharges through an established residential neighborhood downstream.
- Project engineer must evaluate the impact of increased volume of runoff generated by the proposed project on receiving system.

APPLICANT: Windy Hill Self Storage, LLC

PETITION NO.: SLUP-6

PRESENT ZONING: O&I, TS

PETITION FOR: SLUP

\*\*\*\*\*

**STORMWATER MANAGEMENT COMMENTS – Continued**

SPECIAL SITE CONDITIONS

- Provide comprehensive hydrology/stormwater controls to include development of out parcels.
- Submit all proposed site improvements to Plan Review.
- Any **spring activity** uncovered must be addressed by a qualified geotechnical engineer (PE).
- Structural fill \_\_\_\_\_ must be placed under the direction of a qualified registered Georgia geotechnical engineer (PE).
- Existing facility.
- Project must comply with the Water Quality requirements of the CWA-NPDES-NPS Permit and County Water Quality Ordinance.
- Water Quality/Quantity contributions of the existing lake/pond on site must be continued as baseline conditions into proposed project.
- Calculate and provide % impervious of project site.
- Revisit design; reduce pavement area to reduce runoff and pollution.

ADDITIONAL COMMENTS

1. This site is located between Leland Drive and I-75 just north of Windy Hill Road. The site is currently occupied by a portion of the Country Hearth Inn & Suites.
2. There is an existing large diameter stormwater line (54”-60” RCP) that traverses this parcel. The line is approximately 30 feet deep and drains a significant portion of the North x Northwest Office Park to the west of I-75. This will significantly impact the site design of this parcel. Although the existing hotel building is currently located over this pipe, the Stormwater Management Division cannot support the construction of a new, much larger building over existing stormwater infrastructure.

THIS

PAGE

INTENTIONALLY

LEFT

BLANK



## STAFF RECOMMENDATIONS

### SLUP-6      WINDY HILL SELF STORAGE, LLC

There are fifteen criteria that must be considered for a Special Land Use Permit. The criteria are below in italics, with the Staff analysis following in bold.

- (1) *Whether or not there will be a significant adverse effect on the neighborhood or area in which the proposed use will be located.*  
**As identified by Staff, with nearby commercial development and the project's location immediately adjacent to the Interstate 75 right-of-way, the project should not result in any adverse effects.**
- (2) *Whether or not the use is otherwise compatible with the neighborhood.*  
**Commercial development in the immediate area includes the remaining hotel property and a nearby gas station. Coupled with an apartment community in the area, the proposed development may, not only be compatible with, but provide an amenity to the neighborhood.**
- (3) *Whether or not the use proposed will result in a nuisance as defined under state law.*  
**The proposed use will not result in a nuisance as defined under state law.**
- (4) *Whether or not quiet enjoyment of surrounding property will be adversely affected.*  
**The property's location within an established commercial area and within an RAC land use category in addition to being directly adjacent to Interstate 75 means that it will not adversely affect the quiet enjoyment of surrounding property**
- (5) *Whether or not property values of surrounding property will be adversely affected.*  
**Property values of surrounding property will not be adversely affected.**
- (6) *Whether or not adequate provisions are made for parking and traffic considerations.*  
**The site plan demonstrates intent to provide the minimum required number of parking spaces.**
- (7) *Whether or not the site or intensity of the use is appropriate.*  
**The applicant's proposal should be less intense than the existing hotel used and surrounding commercial uses drawing less daily patrons.**
- (8) *Whether or not special or unique conditions overcome the board of commissioners' general presumption that residential neighborhoods should not allow noncompatible business uses.*  
**The proposed use is appropriate for this area that is already an established commercial area.**
- (9) *Whether or not adequate provisions are made regarding hours of operation.*  
**The hours of operation will be appropriate for the proposed use.**
- (10) *Whether or not adequate controls and limits are placed on commercial and business deliveries.*  
**Deliveries to the property will not adversely impact adjacent commercial uses.**
- (11) *Whether or not adequate landscape plans are incorporated to ensure appropriate transition.*  
**Landscaping will be addressed at the Plan Review stage and be subject to District Commissioner approval.**

**SLUP-6 WINDY HILL SELF STORAGE, LLC (Continued)**

*(12) Whether or not the public health, safety, welfare or moral concerns of the surrounding neighborhood will be adversely affected.*

**The public health, safety, welfare and moral concerns of the surrounding area will not be adversely affected by the applicant's proposal.**

*(13) Whether the application complies with any applicable specific requirements set forth in this chapter for special land use permits for particular types of uses.*

**While all concerns specific to climate controlled self-service storage facilities regarding parking, landscaping, and architectural style are expected to adhere to the Code's requirements, the applicant's proposal exceeds FAR limitations as well as setback requirements set by the ordinance. The FAR, at 2.5, will exceed the set limit of 2.0 though the Code does acknowledge that the Board may vary this as deemed appropriate. Also, the setbacks for the site will require variances due in no small part to the stormwater pipe which traverses the site.**

*(14) Whether the applicant has provided sufficient information to allow a full consideration of all relevant factors.*

**Landscape plans and architectural renderings will be submitted prior to permitting and be subject to the District Commissioner's approval.**

*(15) In all applications for a special land use permit the burden shall be on the applicant both to produce sufficient information to allow the county fully to consider all relevant factors and to demonstrate that the proposal complies with all applicable requirements and is otherwise consistent with the policies reflected in the factors enumerated in this chapter for consideration by the county.*

**The use is appropriate for the property's existing RAC land use category and will be a fitting addition to the established commercial center while providing a potential amenity to nearby apartment residents. Though the applicant has proposed a facility that results in an FAR of 2.5, exceeding the Code established limit of 2.0, and must also seek setback variances for the planned site layout, these are consequences of an attempt to develop the site while accommodating the remaining, adjacent hotel as well as the stormwater pipe traversing the center of the property.**

Based on the above analysis, Staff recommends **APPROVAL** subject to the following conditions:

1. Site plan dated May 16, 2017, with the District Commissioner approving minor modifications;
2. Architectural elevations to be approved by the District Commissioner including "one way" opaque windows and screened rooftop utilities;
3. Landscape plan to be approved by the District Commissioner;
4. Fire Department comments and recommendations;
5. Sewer and Water Division comments and recommendations;
6. Stormwater Management Division comments and recommendations; and
7. Department of Transportation comments and recommendations.

**The recommendations made by the Planning and Zoning Staff are only the opinions of the Planning and Zoning Staff and are by no means the final decision. The Cobb County Board of Commissioners makes the final decisions on all Rezoning and Land Use Permits at an advertised public hearing.**



**STATEMENT OF INTENT**

**OF**

**WINDY HILL SELF STORAGE, LLC**

**Special Land Use Permit Application  
For an 3.96 Acre Tract of Land located in  
Land Lots 874 & 875, 17<sup>th</sup> District, 2<sup>nd</sup> Section,  
Cobb County, Georgia**

**Submitted for the Applicant by:**

**Garvis L. Sams, Jr.  
Sams, Larkin, Huff & Balli, LLP  
Suite 100  
376 Powder Springs Street  
Marietta, GA 30064  
(770) 422-7016  
[gsams@slhb-law.com](mailto:gsams@slhb-law.com)**

## **I. INTRODUCTION**

This Application seeks both a Rezoning and a Special Land Use Permit (“SLUP”) to allow the construction and development of a Climate Control Self-Service Storage Facility (“CCSSSF”) on the subject property. The property at issue is situated on a tract of land approximately 3.96 acres in size located on the south of Leland Drive, is directly contiguous to and located on the north side of I-75. The subject property is presently zoned with split zoning classifications of O&I and TS and consists of a “grandfathered” non-conforming use of the property as a hotel. Under Cobb County’s Future Land Use Map (“FLUM”) the property is located within the confines of a Regional Activity Center (“RAC”) which contemplates the type of use sought and is surrounded by other non-residential uses along a heavily traveled interstate corridor. The existing portion of the hotel development on the subject property shall be demolished and replaced with the new CCSSSF state-of-the art buildings proposed by the Applicant.

## **II. CRITERIA TO BE APPLIED TO SPECIAL LAND USE PERMITS**

### **A. Whether or not there will be a significant adverse effect on the neighborhood or area in which the proposed use will be located.**

The subject property is bordered by other properties zoned TS, GC, O&I and RM-12. The entirety of the southwestern property line of the subject property has direct contiguity to I-75 which is a heavily traveled transit corridor. The “neighborhood” or area in which the proposed development will be located is specifically designed to accommodate heavy commercial uses and traffic; however, the proposed CCSSSF will produce little if any AM/PM peak hour traffic, the operations of which will be totally contained within the buildings. Therefore, the proposal will have no adverse impact upon neighborhoods or adjacent properties.

**B. Whether or not the use is otherwise compatible with the neighborhood.**

The neighborhood around the subject property is zoned in a multiplicity of non-residential or high-density residential zonings and within a Regional Activity Center (“RAC”) under the County’s Future Land Use Map. Given these facts and the reality that the area already consists of a preponderance of commercial uses, the proposed use is compatible with the commercially-oriented neighborhood in which it will be located.

**C. Whether or not the use proposed will result in a nuisance as defined under state law.**

The proposed use will not result in a nuisance, either public or private, as that term is defined under Georgia law. In fact, the proposed construction of CCSSSF buildings in this location with direct contiguity to I-75, will eliminate potential nuisances as defined under state law.

**D. Whether or not the quiet enjoyment of surrounding property will be adversely affected.**

The surrounding properties consist exclusively, except for high density residential developments across Leland Drive, of heavy commercial uses which are more intense and less restrictive than the CCSSSF proposed by the Applicant. Further, the proposed use is located with direct contiguity to I-75 and adjacent to the Windy Hill Road arterial corridor.

**E. Whether or not property values of surrounding property will be adversely affected.**

The surrounding properties consist primarily of commercially-oriented properties or multi-family uses. Therefore, the values of surrounding properties will not be adversely affected.

**F. Whether or not adequate provisions are made for parking and traffic considerations.**

The proposal will meet the needs of the traffic generated both by users and staff of the CCSSSF. The Regional Activity Center area in which the subject property is located was specifically designed for uses which generate heavy traffic; however, the current proposal will generate significantly less traffic than most any other non-residential use in general and specifically less in AM and PM peak hours.

**G. Whether or not the site or intensity of the use is appropriate.**

The subject property consists of 3.96 acres of land. The size of the property is more than adequate to accommodate the proposed CCSSSF use and the proposed floor area ratio (“FAR”).

**H. Whether or not special or unique conditions overcome the Board of Commissioners’ general presumption that residential neighborhoods not allow non-compatible businesses.**

The sub-area at issue is commercially-oriented except with respect to high-density residential developments located northeast of the subject property. Even if the CCSSSF proposal was located adjacent or contiguous to a residential neighborhood (which it is not), it would have little if any effect upon residential use or values in view of the fact the proposed use is compatible and complementary in nature.

**I. Whether or not adequate provisions are made regarding hours of operation.**

The hours of operation shall be from 8:00 a.m. until 6:00 p.m. Monday-Saturday and from 1:00 p.m. until 6:00 p.m. on Sundays.

**J. Whether or not adequate controls and limits are placed on commercial and business deliveries.**

Deliveries to the subject property will be commensurate in number and type to existing deliveries or visits to other CCSSSF facilities within this sub-area and in other parts of Cobb County.

**K. Whether or not adequate landscape plans are incorporated to ensure an appropriate transition.**

The Applicant will be submitting a landscape plan during the Plan Review Process subject to review and approval by the County's Arborist and the Community Development Department, with final review and approval by the District Commissioner.

**L. Whether or not the public health, safety, welfare or moral concerns of the surrounding neighborhood will be adversely affected.**

The surrounding "neighborhood" consists of commercially-oriented uses or high density residential uses, all of which are compatible to the CCSSSF use proposed.

**M. Whether the Application complies with any applicable specific requirements set forth in this chapter for a Special Land Use Permit for particular types of uses.**

This Application meets all of the requirements for a Special Land Use Permit and all required information has been supplied within the SLUP Application and the Rezoning Application packages, respectfully.

**N. Whether the Applicant has provided sufficient information to allow a full consideration of all relevant factors.**

The Applicant has addressed all issues raised by law. The Applicant also remains available to respond to additional questions or issues raised by the County's professional staff, Members of the Planning Commission or Members of the Board of Commissioners.

**III. PRESERVATION OF CONSTITUTIONAL RIGHTS**

The Zoning Ordinance of Cobb County, Georgia lacks adequate standards for the Board of County Commissioners to exercise its power to issue Special Land Use Permits. In essence, the standards are not sufficient to contain the discretion of the Board of Commissioners and to provide the Courts with a reasonable basis for judicial review. Because the stated standards (individually and collectively) are too vague and uncertain to provide reasonable guidance to the Board of Commissioners, the Zoning Ordinance violates the Fifth and Fourteenth Amendments of the Constitution of the United States in matters of zoning. The Zoning Resolution also violates Article I, Section III, Paragraph 1; and Article 1, Paragraphs 1 and 2 of the Constitution of the State of Georgia, 1983.

The Board of Commissioners is granted the power to zone pursuant to Article IX, Section II, Paragraph 4 of the Constitution of the State of Georgia, 1983. It is a power which must be fairly exercised. Based on this element of fairness, the Zoning Ordinance of Cobb County, Georgia violates Article IX, Section II, Paragraph 4 of the Constitution of the State of Georgia, 1983.

The Zoning Ordinances presently in effect is contrary to the best interests of the health and welfare of the citizens of Cobb County, Georgia, and constitutes an arbitrary and capricious act. As a result, the Zoning Ordinance is in violation of Article I, Section III, Paragraph 1 of the



Constitution of the State of Georgia; and Article I, Section II, Paragraph 3 of the Constitution of the State of Georgia, 1983. Furthermore, the Zoning Ordinance violates the due process clause and equal protection clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

In addition, the Zoning Ordinance is unconstitutional in that it renders the subject property unusable and destroys its marketability. Therefore, the Zoning Ordinance constitutes a taking of the Applicant's property without just and adequate compensation and without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and in violation of Article I, Section I, Paragraph 1 and Article I, Section III, Paragraph 1(a) of the Constitution of Georgia.

The failure to approve the requested Special Land Use Permit for the subject property would constitute the taking of property without due process and without the payment of adequate compensation in violation of Article I, Section I, Paragraph 1 of the Constitution of the State of Georgia, 1983; and the Fifth and Fourteenth Amendments of the Constitution of the United States.

Failure to grant the Application for the Special Land Use Permit would be contrary to the best interests of the health and welfare of the citizens of Cobb County, Georgia, and would further constitute an arbitrary and capricious act. As such, failure to grant the application would constitute a violation of Article I, Section I, Paragraph 1 of the Constitution of the State of Georgia, 1983; and Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia; and Article I, Section II, Paragraph 3 of the Constitution of the State of Georgia, 1983, together with the due process clause and equal protection clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

Any limitation on the time for presentation of the issues before the Board of Commissioners who have the power to zone and rezone is a violation of the guarantees of free speech under Article I, Section I, Paragraph 5 of the Constitution of the State of Georgia, 1983 and the First Amendment of the Constitution of the United States of America. Further, said limitations are in violation of the right to petition and assemble, in violation of Article I, Section I, Paragraph IX of the Constitution of the State of Georgia, 1983 and the First Amendment of the Constitution of the United States of America as well as the due process clauses of the Constitution of Georgia, 1983 and the Constitution of the United States of America.

The Zoning Ordinance of Cobb County, Georgia is unlawful, null and void in that its adoption and map adoption/maintenance did not comply with the requirements of its predecessor ordinance and/or the Zoning Procedures Law, O.C.G.A. § 36-66-1, et seq.

**IV. CONCLUSION**

Based upon the foregoing reasons, the Applicant respectfully requests that the Special Land Use Permit at issue be approved with the Applicant soliciting any comments from staff or other officials of Cobb County so that such recommendations or input may be incorporated as conditions of approval of the Application.

Respectfully submitted, this the 4<sup>th</sup> day of May, 2017.

SAMS, LARKIN, HUFF & BALLI, LLP

By: 

GARVIS L. SAMS, JR.  
Attorney for Applicant  
Georgia Bar No. 623950

376 Powder Springs Street, Suite 100  
Marietta, GA 30064  
(770) 422-7016