

.....
Date
 February 8, 2010

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on January 21, 2010, its members voted 9-0 in support of a motion to recommend **DENIAL** of a request from Kingston Properties, LLC (owner) to rezone property located at 5101 SE 40th Street from "A-1" Agricultural District to "M-1" Light Industrial District, to allow retention of a contractor's outdoor storage yard.

The subject property is more specifically described as follows:

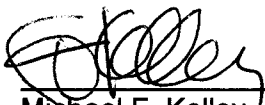
The North 990 feet of the NE ¼ of the NW ¼ (except the East 16 ½ feet of the West 33 feet, and the North 436 feet of the West 325 feet of said North 990 feet), and (except Parcel "A" as described in the Plat of Survey recorded in Book 8865, Page 417 of the Polk County, Iowa, Recorder's Office Records), and (except Parcel "B" as described in the Plat of Survey recorded in Book 11534, Page 334 of the Polk County, Iowa, Recorder's Office Records), Section 29, Township 78 North, Range 23, West of the 5th P.M., all now included in and forming a part of the City of Des Moines, Polk and Warren County, Iowa

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. That the meeting of the City Council at which the proposed rezoning is to be considered shall be held in the Council Chambers, City Hall, Des Moines, Iowa at 5:00 p.m. on February 22, 2010, at which time the City Council will hear both those who oppose and those who favor the proposal.
2. That the City Clerk is hereby authorized and directed to cause notice of said proposal in the accompanying form to be given by publication once, not less than seven (7) days and not more than twenty (20) days before the date of hearing, all as specified in Section 362.3 and Section 414.4 of the Iowa Code.

FORM APPROVED:

MOVED by _____ to adopt.



Michael F. Kelley
 Assistant City Attorney

(ZON2009-00227)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				
MOTION CARRIED		APPROVED		

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

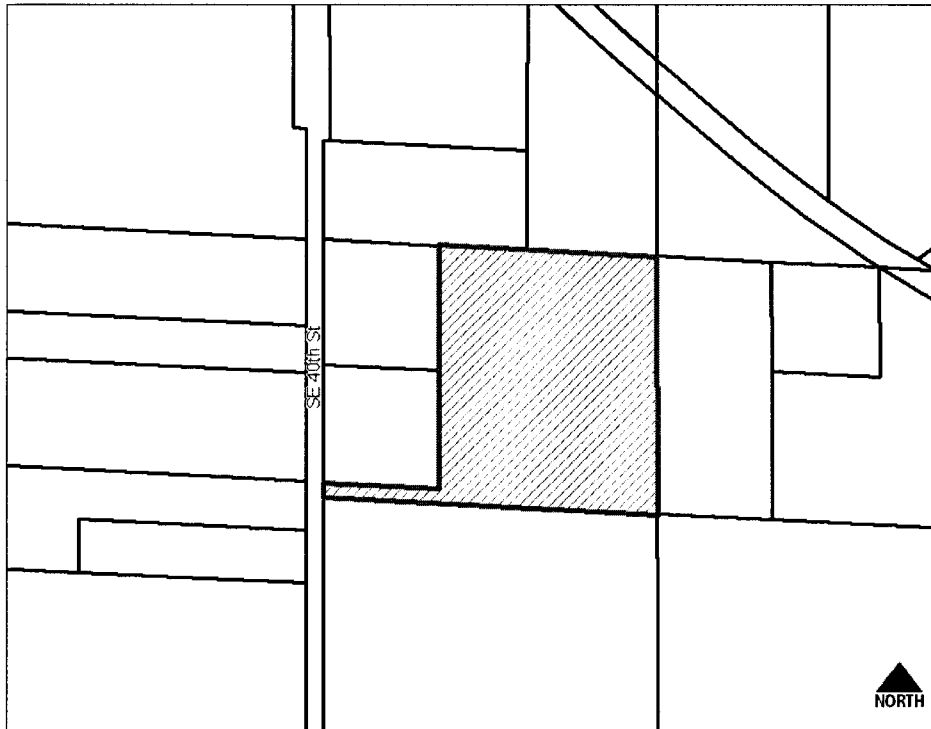
_____ Mayor

_____ City Clerk

Request from Kingston Properties, LLC (owner) represented by Jeff Nolan to rezone property at 5101 SE 40 th Street.			File #		
			ZON2009-00227		
Description of Action	Rezone property at 5101 SE 40 th Street from "A-1" Agricultural District to "M-1" Light Industrial District, to allow retention of a contractor's outdoor storage yard.				
2020 Community Character Plan	Agricultural				
Horizon 2025 Transportation Plan	No Planned Improvements				
Current Zoning District	"A-1" Agricultural District				
Proposed Zoning District	"M-1" Light Industrial District				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	1	2			
Outside Area					
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes	X
	Denial	9-0		No	

Kingston Properties LLC - 5101 SE 40th Street

ZON2009-00227



January 27, 2010

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held January 21, 2010, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 9-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Leisha Barcus				X
JoAnne Corigliano	X			
Shirley Daniels				X
Jacqueline Easley				X
Dann Flaherty	X			
Ted Irvine				X
Jeffrey Johannsen	X			
Greg Jones	X			
Jim Martin	X			
Brian Millard	X			
William Page	X			
Mike Simonson	X			
Kent Sovern	X			

APPROVAL of a request from Kingston Properties, LLC (owner) for property located at 5101 SE 40th Street to find the requested rezoning not in conformance with the existing Des Moines' 2020 Community Character Plan; and **deny** the requested land use plan amendment and rezoning. ZON2009-00227 & 21-2009-4.13

Written Responses

- 0 In Favor
- 2 In Opposition

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the Commission find the requested rezoning not in conformance with the existing Des Moines' 2020 Community Character Plan.

Part B & C) Staff recommends denial of the requested land use plan amendment and rezoning.

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is proposing to rezone the property to the "M-1" District to allow the retention of a contractor storage yard. It is staff's understanding that the property was used by a previous owner for a similar business prior to the property being annexed. However, the use did not conform



CITY PLAN AND ZONING COMMISSION
ARMORY BUILDING
602 ROBERT D. RAY DRIVE
DES MOINES, IOWA 50309-1881
(515) 283-4182

ALL-AMERICA CITY
1949, 1976, 1981
2003

to the Polk County Zoning Ordinance and therefore was not legally established. As a result the property has no non-conforming rights to a contractor storage yard use.

The property contains three metal outbuildings and an office building that appears to be a converted single-family dwelling. The subject property is located approximately 0.8 miles north of East Army Post Road and 0.8 miles west of the Hwy 65 Bypass. This area is generally made up of undeveloped land with large lot single-family residences along the few streets in the area.

2. **Size of Site:** 860,266 square feet or 19.75 acres.

3. **Existing Zoning (site):** "A-1" Agricultural District.

4. **Existing Land Use (site):** Illegal contractor's storage yard and undeveloped land.

5. **Adjacent Land Use and Zoning:**

North – "A-1", Uses are a single-family dwelling and undeveloped land.

South – "A-1", Use is undeveloped land.

East – "A-1", Use is undeveloped land.

West – "A-1", Uses are single-family dwellings.

6. **Applicable Recognized Neighborhood(s):** None.

7. **Relevant Enforcement History:** The subject property and the two parcels to the west were subdivided without City approval between 2001 and 2004. A Plat of Survey that meets the City's requirements must be submitted and approved by the City to legitimize this subdivision once the zoning issues have been resolved. Relief of the Zoning Ordinance's bulk regulations may be necessary for the plat to be approved depending on what uses are legally established for the property and which district the property is zoned.

8. **Applicable Regulations:** The Commission reviews all proposals to amend zoning regulations or zoning district boundaries within the City of Des Moines. Such amendments must be in conformance with the comprehensive plan for the City and designed to meet the criteria in §414.3 of the Iowa Code. The Commission may recommend that certain conditions be applied to the subject property if the property owner agrees in writing, prior to the City Council Hearing. The recommendation of the Commission will be forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

1. **Utilities:** Sanitary sewer is not available in the area.

2. **Traffic/Street System:** The subject property is accessed by a single drive to SE 40th Street. The surrounding street system consists of narrow 2-lane rural cross sections and is not suitable for intense commercial and industrial development.

3. **Site Development Requirements:** Any future development of the site must conform to the City's site plan requirements including storm water management, landscaping, and screening.

The subject property contains trees along its south and east property lines. Any future development of the site must comply with the City's Tree Removal and Mitigation Ordinance.

4. **2020 Community Character Plan:** The proposed "M-1" Light Industrial District is not in conformance with the existing "Agricultural" designation on the 2020 Community Character Plan Future Land Use Map. A Land Use Map amendment to the "General Industrial" designation is necessary for the proposed "M-1" zoning to be found in conformance with the 2020 Community Character Plan.

The Community Character Plan generally states that industrial areas should be concentrated and well separated from residential uses (Chapter 5, Pages 96-97). Staff believes that the subject property does not meet the goals set out for industrial development in the Community Character Plan. The subject property does not have the level of access to major transportation corridors or utilities that are necessary to support industrial development. Therefore, staff does not recommend approval of the requested amendment to the Des Moines 2020 Community Character Plan or the rezoning.

The applicant could seek a Use Variance should the requested rezoning be denied by the City Council. The Board of Adjustment cannot consider a Use Variance request until the applicant has been denied the required zoning by the City Council. A Use Variance would give the City greater control than conditional zoning because the Variance would lapse after discontinuance of the use for a period over a year [Section 134-1297(b)] and could be terminated if the business is not operated in accordance with any conditions of the Use Variance.

SUMMARY OF DISCUSSION

Erik Lundy presented staff report and recommendation.

Wayne Martens representative of Kingston stated they inherited the property through loan default and are not proposing any change of use.

CHAIRPERSON OPENED THE PUBLIC HEARING

There was no one in the audience to speak in opposition


CHAIRPERSON CLOSED THE PUBLIC HEARING

COMMISSION ACTION

Greg Jones moved staff recommendation that the requested rezoning be found not in conformance with the existing Des Moines' 2020 Community Character Plan and to deny the requested land use plan amendment and rezoning.

Motion passed 9-0.

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:clw

Attachment

Item ZON2009-00227

Date 1/20/10

19

I (am) (am not) in favor of the request.

(Circle One)
RECEIVED

Print Name Robert Hodson

JAN 21 2010

Signature Robert Hodson

COMMUNITY DEVELOPMENT
DEPARTMENT

Address 5100 SE 40th

Reason for denying or approving this request may be listed below:

DMS IA: 60320

COMMUN

DEPARTMENT

Dear Planning and Zoning Commission,


Regarding ZON2009-00227; I am NOT in favor of the proposed re-zoning at 5101 SE 40th St. This is a residential road with acreages that are well maintained by their owners. This re-zoning would allow for a junk yard or even worse. This re-zoning would enable a wide variety of business operations to be conducted right in my back yard. Most light industrial parcels are also made to be fenced in. This not only creates many drainage issues, but would be a horrific eyesore that would be detrimental to the value of all properties surrounding 5101. As strict as you are with your zoning requirements, I cannot understand how this could even be allowed considering how many things are not in line with the parcel.

Kingston Properties has also misrepresented the property they are trying to re-zone. The property known as 5101 owned by Kingston Properties has the parcel advertised under my address (5085).

Allow me to share a little bit of the parcel's history with you. Before the city annexed this area, 5101 did not even exist. The property (5085 & 5101) was split by a previous owner and that owner gave the parcel the address 5101. According to the county it was an illegal split. The troubling issue is that the county did not catch this at the time and proceeded to make the split official. That being said, this property is in no way, shape, or form conducive for any commercial or industrial zoning. The proposed reason for the re-zoning as expressed by Kingston Properties was to retain the commercial usage that the property has been used for in the past. This in itself is untrue. The property has not been used "commercially for years" as Kingston claims. 5101 has NEVER been a commercial property nor has it been used as one. The original owner of the property sold due to not being able to run his business from there. The previous owners used the property as a tree nursery which is permitted under the agricultural zoning. Neither of which caused any neighbors concern.

The 5101 property drains water into my well and pond from the east and the south. For that reason alone I am completely against being in favor for a re-zoning that would allow a company to operate in such a fashion that could contaminate my well and pond. These are acreages with families and children around this area. I fear for not only the safety of my family but the well being of everybody in our community. The 5101 parcel has so little road frontage with a one lane road to enter and exit. The traffic alone would make this very unsafe for my family. I have an easement for using this lane and do so quite often.

Finally I would like to thank you for your time to hear my dispute. I am working very hard to create a safe and healthy environment to raise my family. I have always believed that the city appreciates homeowners who are willing to improve the likes of their property. A light industrial re-zoning would have a huge negative effect on this entire area and is completely unwanted. I hope you can come to a reasonable conclusion based upon the wants and needs of the people affected by this, not by a financial institution that didn't do its homework before financing it. Attached is the letter from Union State Bank that was sent to my neighbors and I explaining their intentions and reasons for re-zoning.

Sincerely,

Reggie Smith
5085 SE 40th St
Des Moines, IA 50320

1/20/10
RECEIVED
COMMUNITY DEVELOPMENT
JAN 21 2010
DEPARTMENT

UNION STATE BANK
Your Hometown Financial Advantage

201 W. Court, P.O. Box 110
Winterset, Iowa 50273
515-462-2161 888-322-3690
515-462-2468 Fax
USB^{IOWA}.com Member FDIC

January 4, 2010

Resident
5085 SE 40TH ST.
Des Moines, Iowa 50320

Dear Resident,

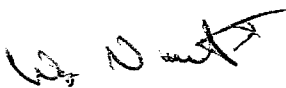
We acquired the property located at 5085 SE 40th Street that formerly was occupied by Dirtworks, Inc. Since our acquisition last spring, we have rented the property to a small business owner. He utilizes the property for storing his vehicles and equipment. Our intent has been, and continues to be, to sell the property. Peoples Company has been retained to market the property for us.

In the course of researching the property's history, zoning and use, Peoples Company discovered that the property does not have the proper zoning under the City of Des Moines zoning ordinance to continue as a commercial property. This poses a problem for us to sell the property "as is," since the property has been used commercially for years. We are attempting to correct this by talking to City officials about either a zoning change or a zoning variance.

Our first step to resolve this problem will be a hearing before the City of Des Moines Plan and Zoning Commission. Prior to the meeting we want to have an opportunity to share our plans with you and answer any questions you might have. Therefore, we invite you to an informational meeting on Monday, January 11. It will be held at our bank office at 6305 Mills Civic Parkway, West Des Moines at 5:00 P.M. I will be available to answer any questions you might have.

We appreciate your cooperation and look forward to working with you. If you cannot attend the meeting but have questions or concerns, do not hesitate to contact me at the number below.

Sincerely,



Wayne N. Martens
Sr. Vice President
(515) 462-2161

