

Date..... March 12, 2012

WHEREAS, on February 27, 2012 by Roll Call No. 12-0282, it was duly resolved by the City Council that the application of Thomas Yaw (contract purchaser) and Des Moines Metropolitan Wastewater Reclamation Authority (titleholder) to rezone property located in the vicinity of 931 Southeast 21st Street from the M-1 Light Industrial District to a Limited M-2 Heavy Industrial District classification, more fully described below, be set down for hearing on March 12, 2012, at 5:00 P.M., in the Council Chambers at City Hall; and,

WHEREAS, due notice of the hearing was published in the Des Moines Register on March 1, 2012, as provided by law, setting forth the time and place for hearing on the proposed amendment to the Zoning Ordinance; and,

WHEREAS, in accordance with the notice those interested in the proposed rezoning, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council; and,

WHEREAS, the Legal Department has prepared an amendment to the Zoning Ordinance of the City of Des Moines to rezone the following described property:

Commencing as a point of reference at the East ¼ corner of Section 11, Township 78 North, Range 24 West of the 5th P.M., thence North along the East line of said Section 11 647.02 feet, thence West 851.32 feet perpendicular to said East line of Section 11 to the East line of Vacated Southeast 21st Street, thence South along said East line of Vacated Southeast 21st Street 720.76 feet to the Point of Beginning, thence Northwesterly 123.17 feet, thence North 466.45 feet along a line parallel to and 120 feet West of said East line of Vacated Southeast 21st Street, thence Southeasterly to said East line of Vacated Southeast 21st Street, thence South along said East line of Vacated Southeast 21st Street to the Point of Beginning, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

from the M-1 Light Industrial District to a Limited M-2 Heavy Industrial District classification, subject to the following conditions which have been agreed to and accepted by execution of an Acceptance of Rezoning Ordinance in writing by all owners of the property and are binding upon the owners and their successors, heirs and assigns as follows:

- a. Any separate use or development of the subject property for a use requiring the M-2 District zoning shall meet all requirements under Section 134-1122(5).
- b. Any use or development of the subject property as an expansion of an existing non-conforming use on adjoining property requiring the M-2 District zoning shall require that the property and the adjoining property devoted to the same use be brought into conformance with the M-2 District standards, including current Site Plan and landscaping requirements.

Date March 12, 2012


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

1. Upon due consideration of the facts, statements of interested persons and arguments of counsel, the objections to the proposed rezoning of the Property to a Limited M-2 District classification are hereby overruled, and the hearing is closed and the proposed rezoning to a Limited M-2 District Classification is hereby APPROVED.

2. The proposed rezoning is hereby found to be in conformance with the Des Moines 2020 Community Character Land Use Plan.

MOVED by _____ to adopt and approve the rezoning, subject to final passage of the rezoning ordinance.

FORM APPROVED:


 Michael F. Kelley
 Assistant City Attorney

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

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.

MOTION CARRIED APPROVED

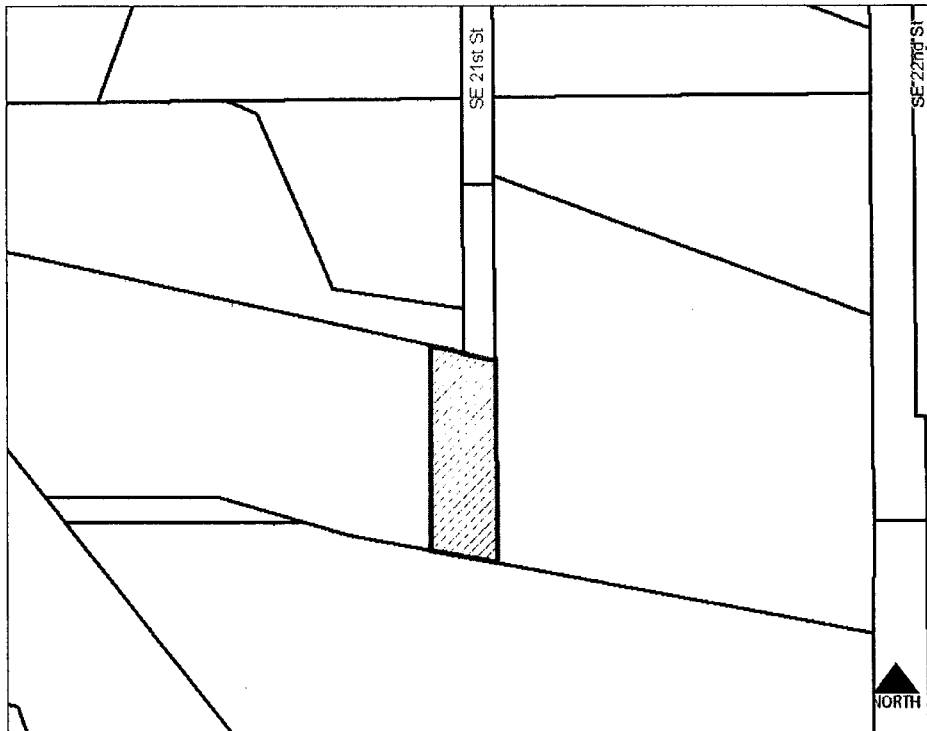
 Mayor

 City Clerk

Request from Thomas Yaw (purchaser) to rezone property at 931 Southeast 21 st Street. The subject property is owned by the Des Moines Metro Wastewater Reclamation Authority (WRA).		File # ZON2012-00002		
Description of Action	Review and approval to rezone the property from "M-1" Light Industrial District to "M-2" Heavy Industrial District, to allow for expansion of the adjoining salvage yard.			
2020 Community Character Plan	General Industrial			
Horizon 2035 Transportation Plan	No Planned Improvements			
Current Zoning District	"M-1" Light Industrial District			
Proposed Zoning District	"M-2" Heavy Industrial District			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Inside Area				
Outside Area				
Plan and Zoning Commission Action	Approval	9-2	Required 6/7 Vote of the City Council	Yes
	Denial			No
				X

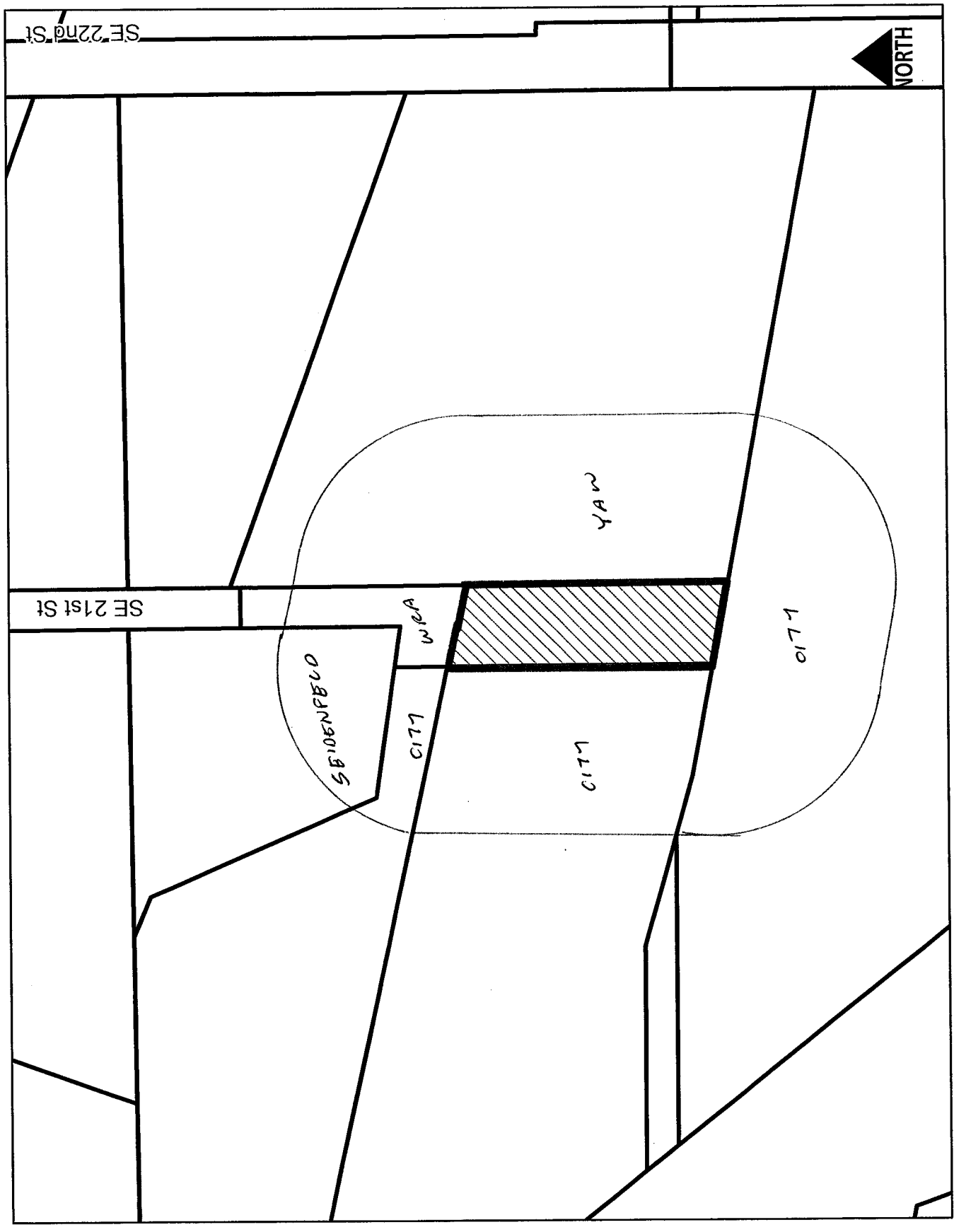
Thomas Yaw. - 931 SE 21st Street

ZON2012-00002



ZON2012-00002

Thomas Yaw. - 931 SE 21st Street



February 14, 2012

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 February 2, 2012, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 11-0 as follows:



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

Commission Action:	Yes	Nays	Pass	Absent
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley	X			
Tim Fitzgerald	X			
Dann Flaherty	X			
John "Jack" Hilmes	X			
Joel Huston	X			
Ted Irvine				X
Greg Jones	X			
William Page	X			
Christine Pardee	X			
Mike Simonson	X			
CJ Stephens				X

APPROVAL of a request from Thomas Yaw (purchaser), to find the requested rezoning for property located at 931 Southeast 21st Street in conformance with the Des Moines' 2020 Community Character Plan future land use designation.

By separate motion Commissioners recommended 9-2 as follows:

Commission Action:	Yes	Nays	Pass	Absent
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley	X			
Tim Fitzgerald	X			
Dann Flaherty		X		
John "Jack" Hilmes	X			
Joel Huston	X			
Ted Irvine				X
Greg Jones	X			
William Page		X		
Christine Pardee	X			
Mike Simonson	X			
CJ Stephens				X

APPROVAL of a request from Thomas Yaw (purchaser) to rezone property at 931 Southeast 21st Street from “M-1” Light Industrial District to “M-2” Heavy Industrial District, subject to the applicant agreeing to the following upon taking ownership of the property:

1. Any separate use or development of the subject property for a use requiring the “M-2” District zoning shall meet all requirements under Section 134-1122(5).
2. Any use or development of the subject property as an expansion of an existing non-conforming use on adjoining property requiring the “M-2” District zoning, shall require that the property and the adjoining property devoted to the same use be brought into conformance with the “M-2” District standards, including current Site Plan and landscaping requirements. (ZON2011-00002)

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the requested rezoning be found in conformance with the Des Moines’ 2020 Community Character Plan future land use designation.

Part B) Staff recommends approval of the rezoning to the “M-2” Heavy Industrial District subject to the applicant agreeing to the following upon taking ownership of the property:

1. Any separate use or development of the subject property for a use requiring the “M-2” District zoning shall meet all requirements under Section 134-1122(5).
2. Any use or development of the subject property as an expansion of an existing non-conforming use on adjoining property requiring the “M-2” District zoning, shall require that the property and the adjoining property devoted to the same use be brought into conformance with the “M-2” District standards, including current Site Plan and landscaping requirements.

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is seeking to have the property rezoned to allow for the property to be developed for a salvage yard expansion. The applicant proposes to take title to the property from the Wastewater Reclamation Authority in exchange for property needed for a public sanitary sewer project New Main Outfall, Phase 17, segments 3 and 4. The terms of the exchange are subject to receiving the necessary Zoning and Conditional Use Permit approval from the City of Des Moines. The permanent easement proposed for the sewer improvements would restrict development over it by the applicant on portions of the existing adjoining salvage yard.
2. **Size of Site:** 1.63 acres.
3. **Existing Zoning (site):** “M-1” Light Industrial District.
4. **Existing Land Use (site):** Vacant undeveloped land.

5. Adjacent Land Use and Zoning:

North – “M-2”, Uses are Southeast 21st Street right-of-way and a recycling operation.

South – “M-1”, Uses are a levee system and City owned floodway.

East – “M-2”, Use is a vehicle salvage yard.

West – “M-1”, Use is vacant City owned land.

6. **General Neighborhood/Area Land Uses:** The subject property is within a primarily industrial developed area southeast of Downtown and east of the Southeast 14th Street major commercial corridor.

7. **Applicable Recognized Neighborhood(s):** N/A.

8. **Relevant Zoning History:** Enforcement action was initiated on June 28, 2008, citing that the applicant was storing vehicles on the subject property. The most recent re-inspection was in February 2011 with vehicle still being kept on the subject property. The case remains open pending legal action.

9. **2020 Community Character Land Use Plan Designation:** General Industrial.

10. **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. **Natural Features:** The site does not have any significant natural features and has been completely disturbed over time.

2. **Drainage/Grading:** Any future development of the subject property will require a storm water management plan and a soil erosion protection and grading plan as part of the Site Plan review. At the present time the site is a collection point for drainage and run-off from the west.

3. **Landscaping & Buffering:** Any expansion of a salvage yard is subject to a Site Plan following Conditional Use Permit approval by the Zoning Board of Adjustment. Landscaping and tree plantings will be required in accordance with the Des Moines Landscape Standards as applicable to “M-2” Districts.

4. **2020 Community Character Plan:** The proposed future development for a salvage yard would be consistent with the General Industrial designation in the Community Character Plan. Any use of land developed that would not be permitted in the existing “M-1” District, such as a salvage yard, will require a Conditional Use permit from the

Board of Adjustment under criteria set forth in the Zoning Ordinance under Section 134-1122(5).

Staff believes there are many aspects of the adjoining salvage yard, to which this property would be assembled, that would be considered non-conforming with respect to these criteria. This includes such requirements as paved maneuvering aisles, dustless storage surfaces as a best practical control technology, and landscaping requirements. Under Sec. 134-1353(a) and Sec. 134-1352(a) a non-conforming use of land in an "M-2" District may not be expanded unless is brought into conformance. Therefore staff recommends that the requested extension of the "M-2" District be made subject to the applicant conforming to these criteria on their existing adjoining Site as well.

SUMMARY OF DISCUSSION

Jason Van Essen presented staff report and recommendation.

Rick Olson 2635 Hubbell, attorney stated that the applicant is in agreement with staff recommendation.

Thomas Yaw 2025 SE 5th Street stated all he wants to do is move the fence out and expand the yard. He has no problem with putting concrete drive for the new property but not the entire property because it would add more to stormwater runoff.

Mike Ludwig clarified that staff recommendation is that the entire property must have paved drive aisles and comply with current Zoning Standards.

Rick Olson stated that would be cost prohibitive.

Jason Van Essen explained that this is a legal non-conforming use and in order to expand it the entire site would need to conform to current standards or the Zoning Board of Adjustment would have to grant a variance.

CHAIRPERSON OPENED THE PUBLIC HEARING

The following spoke in favor of the applicant's request

Tony Holt 2222 E. 31st Street stated that these types of industries are needed and there is a limited amount of "M-2" in Des Moines, it is a needed resource and needs to be supported.

CHAIRPERSON CLOSED THE PUBLIC HEARING

John "Jack" Hilmes stated that he thinks the staff recommendation is very expensive.

Dann Flaherty stated that we have places to store cars with heavy metals. Heavy metals then go into our waterways. Those waterways support people. Flooding will spread pollutions. He will never support "M-2" zoning near a waterway, even though Mr. Yaw is a fine businessman.

John "Jack" Hilmes asked what happens if they bring the whole site into compliance. Dose that increase flooding risks?

Dann Flaherty stated more paving would increase runoff from the site.

Mike Ludwig stated the site development would require a stormwater management plan if rezoning is approved.

John "Jack" Hilmes pointed out the levy to the south of the site.

Will Page stated the WRA needs the deal to go through. Can the property owner be compensated by WRA for the easement in another manner?

Jason Van Essen stated that he would guess that they would negotiate more of a cash deal for the easement and the land would not become part of the process.

Tim Fitzgerald stated that he believes that Mr. Yaw runs one of the best, organized yards.

John "Jack" Hilmes stated that the auto salvage is a massive recycling program which is highly in favor in our community and elsewhere.

COMMISSION ACTION:

Mike Simonson moved staff recommendation to approve Part A) the requested rezoning be found in conformance with the Des Moines' 2020 Community Character Plan future land use designation.

Motion passed 11-0.

Mike Simonson moved staff recommendation to approve Part B) the rezoning to the "M-2" Heavy Industrial District subject to the applicant agreeing to the following upon taking ownership of the property:

1. Any separate use or development of the subject property for a use requiring the "M-2" District zoning shall meet all requirements under Section 134-1122(5).
2. Any use or development of the subject property as an expansion of an existing non-conforming use on adjoining property requiring the "M-2" District zoning, shall require that the property and the adjoining property devoted to the same use be brought into conformance with the "M-2" District standards, including current Site Plan and landscaping requirements.

Motion passed 9-2 (Will Page and Dann Flaherty voted in opposition).

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:clw

Attachment