

.....  
Date..... December 17, 2012

WHEREAS, on December 3, 2012 by Roll Call No. 12-1835, it was duly resolved by the City Council that the application of Available Materials Handling, LLC (owner) represented by Anthony Holt (officer) to rezone property located at 607 Southeast 21<sup>st</sup> Street from M-1 Light Industrial District to a limited M-2 Heavy Industrial District, more fully described below, be set down for hearing on December 17, 2012, at 5:00 p.m., in Council Chambers at City Hall; and

WHEREAS, due notice of the hearing was published in the Des Moines Register on December 6, 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 published 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:

Part of Lot 1 Official Plat of Lot 58 lying Easterly of railroad Right-of-Way, Brooks & Cos Addition, an Official Plat, also Lots 18 through 34, Block 7, Jack's Plat, an Official Plat, and also Lots 17, 18, & 19, Block 8, lying East of railroad Right-of-Way, Jack's Plat, and vacated Southeast 21<sup>st</sup> Court Right-of-Way lying west of and adjoining said Lots 18 through 34, Block 7, Jack's Plat, and also vacated Shaw Street Right-of-Way lying South of and adjoining Lot 18, Block 7, Jack's Plat, and vacated Shaw Street Right-of-Way lying South of and adjoining vacated Southeast 21<sup>st</sup> Court Right-of-Way, all now included in and forming a part of the City of Des Moines, Polk County, Iowa

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

Uses are to be limited to M-1 uses and dismantling of construction equipment for purpose of transport with no storage longer than six months.

Date December 17, 2012

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that upon due consideration of the facts, statements of interested persons and arguments of counsel, the objections to and the statements in support of the proposed rezoning of the Property from M-1 Light Industrial District to a limited M-2 Heavy Industrial District classification have been considered, the hearing is closed, and the proposed rezoning to the Limited M-2 District classification is hereby:

\_\_\_\_\_ APPROVED.

Moved by \_\_\_\_\_ to adopt and to approve the rezoning, subject to final passage of the rezoning ordinance.

\_\_\_\_\_ DENIED.

Moved by \_\_\_\_\_ to adopt and to deny the rezoning.

FORM APPROVED:

  
 Michael F. Kelley  
 Assistant City Attorney

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.

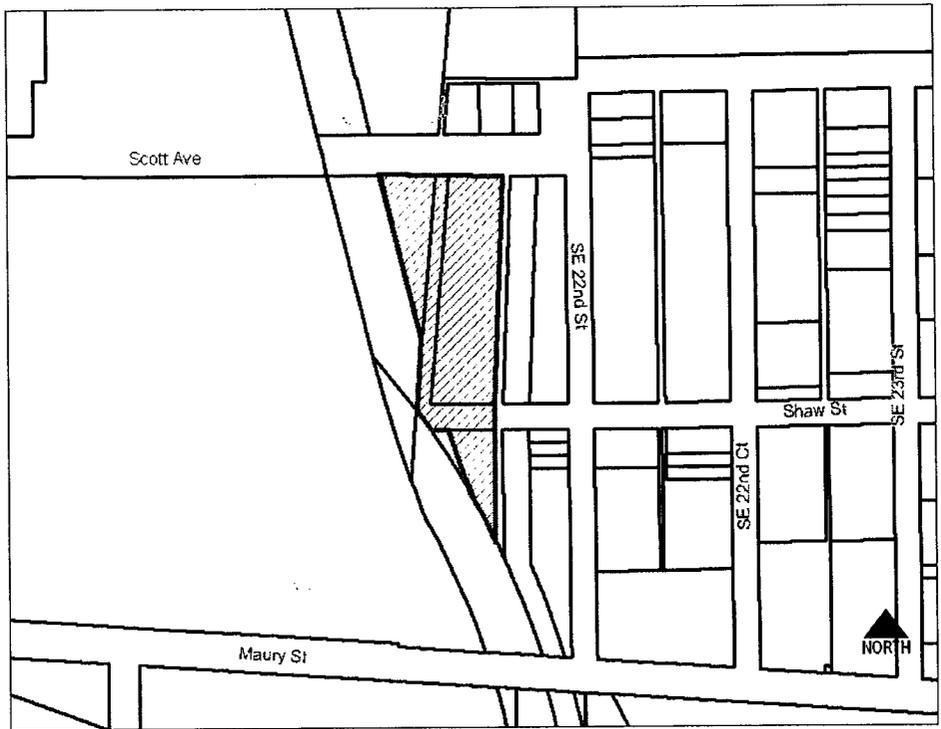
\_\_\_\_\_  
 Mayor

\_\_\_\_\_  
 City Clerk

Request from Available Materials Handling, LLC (owner) represented by Anthony Holt (officer) to rezone property located at 607 Southeast 21 <sup>st</sup> Street.				File #	
				ZON2012-00180	
<b>Description of Action</b>		Approval of the requested rezoning to a Limited "M-2" Heavy Industrial District with the following condition 1. Uses are to be limited to "M-1" uses and dismantling of construction equipment for purpose of transport with no storage longer than six months.			
<b>2020 Community Character Plan</b>		General Industrial			
<b>Horizon 2035 Transportation Plan</b>		No Planned Improvements			
<b>Current Zoning District</b>		"M-1" Light Industrial District			
<b>Proposed Zoning District</b>		Limited "M-2" Heavy Industrial District			
<b>Consent Card Responses</b>		In Favor	Not In Favor	Undetermined	% Opposition
Inside Area			1		
Outside Area					
<b>Plan and Zoning Commission Action</b>		Approval	8-3	<b>Required 6/7 Vote of the City Council</b>	
		Denial		Yes	X
				No	

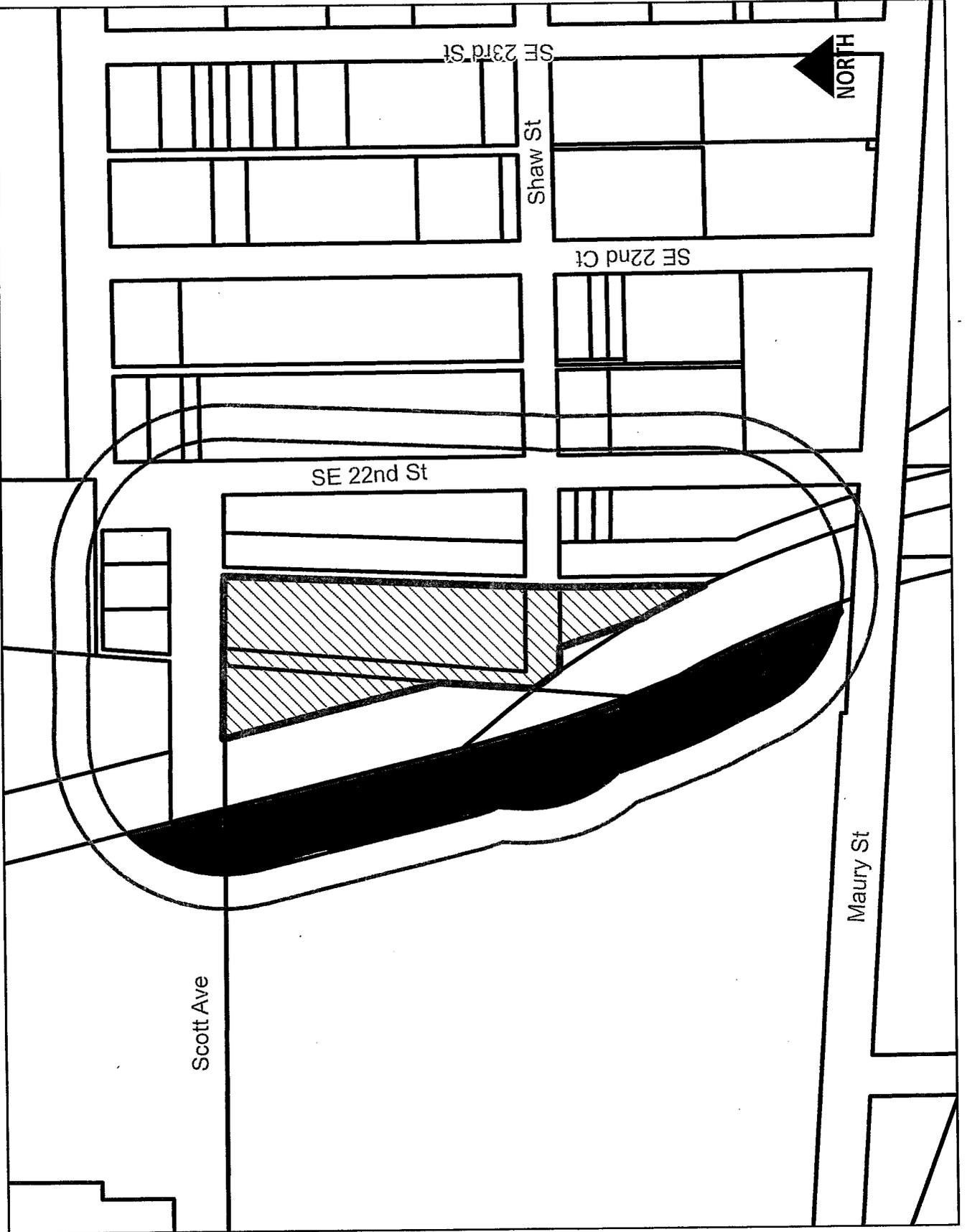
Available Material Handling LLC - 607 SE 21st Court

ZON2012-00180



ZON2012-00180  
200' BOUNDARY

Available Material Handling LLC - 607 SE 21st Court





# LILLIS O'MALLEY OLSON MANNING POSE & VAN DIKE LLP

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November 8, 2012

*Via Hand Delivery*



Daniel L. Flaherty, and  
Members of the Plan and Zoning Commission  
City of Des Moines  
602 Robert D. Ray Drive  
Des Moines, IA 50309

SUBJECT: Request from Available Materials Handling, LLC ("Owner") – 607 SE  
21<sup>st</sup> Street – Rezoning from "M-1" Light Industrial District to "M-2"  
Heavy Industrial District to allow Conditional Use Permit – Outdoor  
Storage of Junk and Salvage Equipment

Mr. Flaherty and Members of the Plan and Zoning Commission:

Our law firm represents Kemin Industries, Inc. ("Kemin") as it relates to Kemin's objection to the above-referenced matter.

On your meeting scheduled for Thursday, November 15, 2012 the Owner has requested a rezoning from the present M-1 Light Industrial District to M-2 Heavy Industrial District to allow a Conditional Use Permit for outdoor storage and junk and salvage equipment.

Kemin is a neighbor to the west of the subject property. Kemin is presently building a major new campus for its world headquarters on its property.

Kemin renews its objection to the Owner's rezoning request. Kemin acknowledges that Available Materials Handling, LLC and its officer, Anthony Holt, have made a substantial improvement to the subject property, but strongly objects to the request for "outdoor storage of junk and salvage equipment."

The undersigned and representatives of Kemin will be present at your meeting of Thursday, November 15, 2012 to reiterate its objection to the subject rezoning request.

**LILLIS O'MALLEY OLSON MANNING POSE & VAN DIKE LLP**

November 8, 2012  
Page Two

We would welcome any questions from you and/or the Owner regarding Kemin's objection prior to the hearing of Thursday, November 15<sup>th</sup>.

Please do not hesitate to contact the undersigned should you have any questions.

Very truly yours,

Handwritten signature of William J. Lillis in cursive, with the initials "WJL" and "(JMT)" written at the end.

William J. Lillis

Handwritten signature of Joel B. Templeman in cursive.

Joel B. Templeman  
For the Firm

WJL/sam

cc: Libby Nelson  
Erik Lundy

Date \_\_\_\_\_

Agenda Item 47

Roll Call # \_\_\_\_\_

November 21, 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 November 15, 2012, the following action was taken regarding a request from Available Materials Handling, LLC (owner) represented by Anthony Holt (officer) to rezone property located at 607 Southeast 21<sup>st</sup> Street.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 8-3 as follows:

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

**APPROVAL** of Part A) to find the request for rezoning in conformance with the Des Moines' 2020 Community Character Plan future land use designation, and Part B) to approve the requested rezoning to a Limited "M-2" Heavy Industrial District with the following condition: (ZON2012-00180)

1. Uses are to be limited to "M-1" uses and dismantling of construction equipment for purpose of transport with no storage longer than six months.

**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.



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

Part B) Staff recommends denial of the requested rezoning to "M-2" Heavy Industrial District.

Written Responses

0 In Favor

1 In Opposition

**STAFF REPORT**

**I. GENERAL INFORMATION**

1. **Purpose of Request:** The rezoning would allow use of the property for outside storage of inoperable motorized equipment. The Zoning Enforcement Officer has determined that this would constitute use of the property for a junk/salvage yard as defined by the Zoning Ordinance. Therefore, in order to proceed with the proposal, rezoning of the property to an "M-2" Heavy Industrial District followed by approval of a Conditional Use for a junk/salvage yard by the Zoning Board of Adjustment is required.
2. **Size of Site:** 2.2 acres.
3. **Existing Zoning (site):** "M-1" Light Industrial District.
4. **Existing Land Use (site):** The property is currently undeveloped. The applicant is currently in the process of developing the site in accordance with an approved Site Plan for use as a storage yard for empty waste transfer containers as permitted in the "M-1" District.
5. **Adjacent Land Use and Zoning:**
  - North* – "M-1", Uses is vacant land.
  - South* – "M-1 & M-2", Uses are Union Pacific Railroad, Norfolk Southern Railroad, Ash Grove Cement rail transfer site, and Wrench-N—Go auto salvage yard.
  - East* – "M-1", Uses are Norfolk Southern Railroad and vacant land.
  - West* – "M-1 & M-2", Uses are Union Pacific Railroad and Kemin Industries campus.
6. **General Neighborhood/Area Land Uses:** The subject property is located between Scott Avenue and Maury Street in an industrial area east of the Kemin Industries campus. The property is situated between two major railroad lines.
7. **Applicable Recognized Neighborhood(s):** The subject property is not within a recognized neighborhood area. Notifications of the hearing for this specific item were mailed on October 12, 2012 (20 days prior) and October 22, 2012 (10 days prior to the scheduled hearing) to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

The applicant is responsible for conducting a neighborhood meeting inviting surrounding property owners within 250 feet. The applicant will provide a summary of the meeting at the public hearing.

- 8. Relevant Zoning History:** On May 23, 2005 the subject property was zoned from “M-2” to “M-1” as part of a comprehensive down-zoning of undeveloped properties zoned “M-2” across the city.

The applicant has recently requested vacation and has been conveyed title to adjoining segments of Southeast 21<sup>st</sup> Court and Shaw Street by the City Council on April 9, 2012.

- 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:** There are timbered areas along the southern portion of the property. Should any further development propose to use that portion of the property, the developer will have to comply with tree preservation and mitigation requirements as required by the City Code.
- 2. Drainage/Grading:** Any future development of the subject property would be subject to stormwater management requirements as part of the Site Plan review process. The property recently had an approved Site Plan that is in compliance with these policies.
- 3. Traffic/Access:** The property has direct access from Scott Avenue (improved street) to the north via Southeast 22<sup>nd</sup> Street (unimproved street), which connects from Maury Street to the south. Initially in the location study for the Southeast Connector, Scott Avenue in this location was proposed to link to the northeast to the proposed Southeast Connector. However, that has been revised in favor of a connection made at grade at Southeast 25<sup>th</sup> Court south of Titan Tire.
- 4. Landscaping & Buffering:** The approved site development required landscaping in accordance with requirements applicable to “M” Industrial Districts. If the property is granted a Conditional Use Permit for a junk/salvage yard, additional screen fencing and plant material may be required by the Zoning Board of Adjustment and subject to a Site Plan amendment.
- 5. 2020 Community Character Plan:** The proposed rezoning to “M-2” Heavy Industrial District would be in conformance with the current General Industrial future land use designation in the Des Moines’ 2020 Community Character Plan.

**6. Staff Rationale:** Staff has concern with allowing junk/salvage yard in this particular location that is only separated by a railroad from the Kemin Industries campus which involves production of food grade and pharmaceutical ingredients. Staff realizes that the scope of the applicant's intent is narrowed to storage of inoperable equipment. However, over time any expansion of types of junk/salvage would present a negative impact to the existing Kemin Industries campus and other surrounding properties.

Under the existing "M-1" District zoning classification, the applicant could store the inoperable equipment within a completely enclosed building. This would require more expense to the applicant but can be accomplished without the requested rezoning.

## **SUMMARY OF DISCUSSION**

Erik Lundy presented the staff report and recommendation.

Mike Ludwig clarified that the conditions the applicant is offering would only allow the dismantling of equipment to fit on a trailer to be hauled to a different site. There is at least 20% opposition so a 6/7<sup>th</sup> vote of the City Council is necessary to approve the zoning.

Tony Holt 607 SE 21<sup>st</sup> Court stated this property had a history of nuisance for many years before they purchased it. He has asked for the rezoning so there would be no questions as to whether or not the equipment stored worked or not. Their company buy and sells machinery. For some of the machinery that they buy, it is uncertain whether or not it runs. They need a place to bring it to and see and if it does not run then we would dismantle it and move it to their other property. It is very difficult to dismantle big equipment in a building. It sometimes requires a lot of height. They called their neighbors and have had a couple of meetings with Kemin and realize there have been some concerns and believe that they can come to some reasonable consensus.

## **CHAIRPERSON OPENED THE PUBLIC HEARING**

*The following spoke in opposition of the applicant's request*

William Lillis 317 6<sup>th</sup> Avenue, Suite 300 stated that on behalf of Kemin Industry they salute Mr. Holt and what he has done to improve this property. They do not object to the roll-offs or the storage of roll-offs. They are concerned about the interpretation. They agree with staff recommendation that if this property was changed to a "M-2" the applicant would have to ask the Zoning Board of Adjustment for conditional use permit. Assuming a "M-2" zoning. The potential for salvage/junk scares them, because they have been there before. They investigated with the applicant as to whether they could do what he wants inside a building. An "M-1" zoning would suffice so he would not have to have a "M-2" type of classification. Kemin has environmental health requirements that would be in jeopardy if this rezoning is allowed.

Ted Irvine asked about the restrictions that Mr. Holt has suggested and is there any hope of consensus.

William Lillis stated that they believe that the zoning officer and staff have said that the minute any dismantling is started it immediately becomes a junk yard. If there is any way to define that in some other fashion such as text amendment specific to exactly what Mr. Holt does fine. But to take the present ordinance as it's drafted with the limitations he is not sure how it can be done. They want to be a good neighbor and stressed that Mr. Holt has been a wonderful neighbor.

Dann Flaherty asked is it the opposition's understanding that the applicant can already have the roll-offs under "M-1" zoning.

William Lillis stated that they do understand and have no objections to the roll-offs and the storage that includes. But the minute he begins to dismantle the applicant falls under the interpretation of a junk/salvage operation.

### Rebuttal

Tony Holt stated the zoning staff has done a tremendous job. This request is a fine line that nobody wants to cross because of the time it takes to straighten it up or deal with it and that is what's happening. He appeals to the Commission to make this work because there is a need for industries. He employs 27 people and if he chose to go out of business tomorrow, he would be okay but the 27 employees would not be.

CJ Stephens asked what type of contamination is being talked about.

Erik Lundy stated the biggest concern is that salvage material tends to harbor rodents, which in close proximity to a food based industry would be a problem.

JoAnne Corigliano moved staff recommendation but asked if the applicant could limit or avoid disassembling the equipment on this property.

Tony Holt stated that there is only a limited time it would ever be a necessity. If they brought in large equipment in order to haul them they would need to be disassembled.

JoAnne Corigliano withdrew her motion. Asked if it could be put into writing that the type of disassembly is very limited and not going to be a place where they are going to be extracting parts and pieces.

Dann Flaherty asked how long will the disassembled equipment stay on the lot.

Tony Holt stated up to six months for storage not for disassembling. When the truck comes in that is when the equipment is disassembled. This is not a junk parts operation.

Tim Fitzgerald asked would it be fair to say that the applicant is running a used equipment business.

Tony Holt stated yes, at the same time his business specializes in buying machinery and reconditioning it.

## **CHAIRPERSON CLOSED THE PUBLIC HEARING**

Mike Ludwig stated what the Commission is finding tonight the dilemma that staff was in. The zoning enforcement officer is the individual charged with determining the use and what zoning is required. Therefore, it is not within the Commission purview to be determining whether or not this use would comply with "M-1" or "M-2" zoning. Defining the limitation on the use is exactly the discussion staff has had with both the applicant and the adjoining property owner. Several years ago the City down zoned about sixty percent of the heavy industrial zoned ground in Des Moines from "M-2" to "M-1". All of those properties were down zoned without creating any non-conforming uses on property. Those properties were not used for any "M-2" use they were just sitting vacant or being used by a use that did not require "M-2" zoning. The idea was that consideration would be on a case by case basis to rezone property back to "M-2" zoning. There is additional "M-1" zoned ground elsewhere in the City that may be appropriate for this particular rezoning. The question is whether or not it's appropriate adjoining Kemin Industries with their concerns. Staff recommendation was not made lightly, they talked to both parties and it came down to the difficulty in writing regulations or limits on "M-2" zoning for that particular location given the unique adjoining interest and concerns about federal regulations on food production.

Dann Flaherty reminded the Commission that the zoning runs with the land. If the applicant were to leave, anybody else can use it.

JoAnne Corigliano asked the applicant if the use can be done on his other properties.

Tony Holt stated the Pleasantville property is zoned to allow a salvage license, but it is 30 miles away and he believes his employees are not going to want to move 30 miles. Also, he has a piece of property that is under lease that is zoned "M-2" that machines are stored at that has been condemned. The hearing for that case takes place in two weeks. They have machinery that has no place to go and that is why there is urgency to rezone this property.

Shirley Daniels stated this is a difficult and complex situation and the Commission has dealt with difficult and complex situation before. She believes that the applicant has done a tremendous amount of work and he is being commended for the effort that has been made so far. She believes to stay in business and provide the service for individuals that the applicant is going to be working with, the Commission needs to take a look at it and she will not vote to deny the applicant's request.

Vicki Stogdill asked is it possible to grant the "M-2" with conditions with restrictions on salvage and junk storage.

Dann Flaherty concern is if Kemin Industries is jeopardized if a salvage operation exists.

Mike Simonson asked if Kemin Industries is zoned "M-2".

Mike Ludwig confirmed Kemin Industries is zoned "M-2".

Ted Irvine stated the reason he is moving staff is the concern over business mix. Kemin Industries is already there and the applicant's proposal is not. The City has worked awfully hard to get the right kind of business mix and the right kind of places throughout the City. He knows that the City Economic Development Office was very much involved with the Kemin project for their expansion and very rightfully so. He believes that the applicant is obviously a good citizen and probably a good operator and he believes the applicant when he says he is going to do what he is going to do. He suggested that the applicant go to the City Economic Development Office and say he cannot be here where else can he be in the City because he will lose his employees if they cannot find him a spot.

William Lillis stated Kemin's real concern is FDA has unannounced inspections and they are fearful of rodent harborage and because they are a food processing facility they could be shut down.

Vicki Stogdill asked if a food processing facility attracts rodents.

William Lillis stated no they do not attract rodents.

Ted Irvine asked the applicant to please answer the question.

Tony Holt stated that before purchasing the property he did go to the City Economic Development and laid out his plan but he got no response. He believes that the railroad is probably more detrimental than this request. Rodents will not have water and they will not have food.

Mike Simonson stated that he is going to vote in opposition of the motion. Rats don't eat steel and cable. He understand the concern about zoning running with the land but there is "M-2" all around the City and if the Commission does not want "M-2" maybe all should be rezoned.

### **COMMISSION ACTION:**

Ted Irvine moved staff recommendation Part A) to find the request for rezoning in conformance with the Des Moines' 2020 Community Character Plan future land use designation, and Part B) to deny the requested rezoning to "M-2" Heavy Industrial District.

Motion failed 3-8 (Jacqueline Easley, Dann Flaherty, and Ted Irvine voted in favor, JoAnne Corigliano, Shirley Daniels, Tim Fitzgerald, Greg Jones, Christine Pardee, Mike Simonson, CJ Stephens and Vicki Stogdill voted in opposition)

Vicki Stogdill moved Part A) to find the request for rezoning in conformance with the Des Moines' 2020 Community Character Plan future land use designation, and Part B) to approve the requested rezoning to "M-2" Heavy Industrial District with the following condition:

1. To allow dismantling of equipment and storage for up to six months.

Mike Simonson asked staff if they were comfortable with this language.

Mike Ludwig stated that this language was proposed in meetings and was not acceptable to staff at the time.

Vicki Stogdill asked how can it be amended to be acceptable to staff.

Mike Ludwig stated that staff does not have the ability to monitor how long something has been stored on the property on a regular basis.

Vicki Stogdill asked if it could be worded such that equipments can only be dismantled immediately prior to transport.

Mike Ludwig stated that was not the intention of the applicant. The applicant is proposing to dismantle and store for a period of six months on the property.

JoAnne Corigliano asked if she was to understand that the applicant stated that he would dismantle when he is ready to send the parts out.

Mike Ludwig clarified that the applicant indicated that the equipment could be dismantled and parts can be stored for six months on the property before they are transported elsewhere.

Mike Simonson stated that he believes the Commission is trying to solve something that they cannot solve. The Commission needs staff and zoning enforcement. They cannot pass something that zoning enforcement is going to go out and say that you are in violation without knowing.

CJ Stephens asked if the applicant keeps inventory giving him an idea of how long a piece of equipment has been on the property.

Tony Holt stated yes he does keep inventory that is why he is seeking the rezoning.

Dann Flaherty asked if the Commission can forward this to City Council without recommendation.

Erik Lundy stated yes they can forward this to City Council without recommendation. He does not recommend it.

Mike Ludwig stated the motion to move staff failed 3-8. There could be a counter motion and see where that ends up.

Greg Jones stated that he believes that the Commission should vote on the motion and between now and when Council hears this item they can take a look at it and hopefully come up with something that works for the staff.

Mike Simonson asked for a friendly amendment to add the dismantling for the purpose of transport.

William Lillis asked about all the other uses that are in "M-2" which could constitute rodent harborage. This is a major concern.

Dann Flaherty clarified that the current motion will be strictly for the purposes that the Commission set forth. No other uses would be allowed.

Mike Ludwig restated the motion which is to approve the "M-2" zoning subject to "M-1" uses and dismantling of construction equipment for purpose of transport with no storage longer than six months.

Vicki Stogdill moved Part A) to find the request for rezoning in conformance with the Des Moines' 2020 Community Character Plan future land use designation, and Part B) to approve the Limited "M-2" zoning subject to "M-1" uses and dismantling of construction equipment for purpose of transport with no storage longer than six months.

Motion passed 8-3 (Jacqueline Easley, Dann Flaherty, and Ted Irvine voted in opposition)

Respectfully submitted,



Michael Ludwig, AICP  
Planning Administrator

MGL:clw

Attachment