



Roll Call Number

Agenda Item Number

64A

Date March 19, 2018

RESOLUTION ON REQUEST FROM CREIGHTON PENNEY D/B/A MID IOWA TOWING TO AMEND THE EXISTING PLANDSM: CREATING OUR TOMORROW PLAN FUTURE LAND USE DESIGNATION (PORTION OF 109 EAST 28TH STREET)

WHEREAS, on April 25, 2016, by Roll Call No. 16-0717, the City Council adopted the PlanDSM: Creating Our Tomorrow Plan; and

WHEREAS, at a public hearing held on February 15, 2018, the City Plan and Zoning Commission voted 8-0 in support of a motion to recommend DENIAL of a request by Creighton Penney d/b/a Mid Iowa Towing (owner), to amend the existing PlanDSM: Creating Our Tomorrow Plan future land use designation for real property locally known as 109 East 28th Street, from Low Density Residential to Industrial, to allow for rezoning to "M-2" Heavy Industrial District and use for outdoor storage of inoperable vehicles as part of a towing contractor business; and

WHEREAS, following said hearing, the applicant has amended its request for amendment to the comprehensive plan to include only that portion of the property known as Polk County Assessor District/Parcel No. 050/02139-001-002.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, that the proposed amendment to the PlanDSM: Creating Our Tomorrow Plan, as described above for Polk County Assessor District/Parcel No. 050/02139-001-002, is hereby approved / denied.

MOVED by _____ to adopt and APPROVE / DENY the proposed amendment.

FORM APPROVED:

Glenna K. Frank, Assistant City Attorney

(21-2018-4.01)

NOTE: Six affirmative votes are required to approve the proposed amendment due to the Plan and Zoning Commission's recommendation for denial. Des Moines City Code §82-78.

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, COLEMAN, GATTO, GRAY, MANDELBAUM, WESTERGAARD, and TOTAL.

MOTION CARRIED APPROVED

Mayor

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.

City Clerk



February 26, 2018

Date March 19, 2018
 Agenda Item 64B
 Roll Call # _____

Honorable Mayor and City Council
 City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their February 15, 2018 meeting, the following action was taken regarding a request Creighton Penney (owner), dba Mid Iowa Towing, to rezone property located at 109 East 28th Street. Additional subject property is owned by Armstrong Rubber Company.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 8-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus				X
Dory Briles	X			
Chris Cutler				X
David Courard-Hauri	X			
Jacqueline Easley				X
Jann Freed				X
John "Jack" Hilmes	X			
Lisa Howard	X			
Carolyn Jenison	X			
Greg Jones	X			
William Page	X			
Mike Simonson				X
Rocky Sposato				X
Steve Wallace				X
Greg Wattier	X			

Part A) the proposed rezoning is not in conformance with the existing PlanDSM Creating Our Tomorrow future land use designation, **DENIAL** of Part B) amending PlanDSM Creating Our Tomorrow future land use designation from Low Density Residential to Industrial and denial of Part C) rezoning from "M-1" Light Industrial District to "M-2" Heavy

Industrial District, to allow the property to be use for outdoor storage of inoperable vehicles as part of a towing contractor business.

(21-2018-4.01&ZON2018-00008)

Written Responses

1 in Favor

1 in Opposition

STAFF RECOMMENDATION

Based on the advice of City Legal, if the applicant has not demonstrated that they own the entire subject property or demonstrated the consent of the intervening property owner prior to the hearing, Staff recommends that the Commission continue the item indefinitely until this has been provided.

If the applicant has demonstrated that they own the entire subject property or demonstrated the consent of the intervening property owner prior to the hearing, Staff recommends the following:

Part A) Staff recommends that the Commission find the requested rezoning not in conformance with PlanDSM.

Part B & C) Staff recommends denial of the requested amendment to the PlanDSM Future Land Use Map, and denial of the requested rezoning to the "M-2" Heavy Industrial District.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. Purpose of Request: The applicant is seeking to continue operation of the property as a towing yard business with an existing 6,480-square foot shop building, whereby vehicles, both operable and inoperable, are towed to the site for temporary storage. Any storage of inoperable vehicles outside is defined by the Zoning Ordinance as a junk or salvage. This property has been in violation of the City's zoning and site plan regulations since it was converted from an excavating business to the towing yard circa 2007. To allow this use of the property, the site must be rezoned to "M-2" Heavy Industrial District zoning and the Zoning Board of Adjustment must grant a Conditional Use Permit for a junk or salvage yard. If the property is denied rezoning by the City Council, the applicant may seek a Use Variance from the Zoning Board of Adjustment to continue the use.

The applicant has indicated that the business is currently under contract with the Iowa Highway Patrol for vehicle impounds. The applicant has further indicated that they have operated a towing business on the site since 2007. The previous use of the property was for an excavation business

The subject property is comprised of three tax parcels. According to the Polk County Assessor, two of these parcels are owned by the applicant and the intervening parcel (a former rail spur) is owned by Armstrong Rubber Company. The applicant is working to clarify the ownership of the third parcel. The City Legal Department has indicated that

the Commission should not proceed to consider the rezoning of this parcel until the applicant either demonstrates ownership of the intervening property or provides consent of the rezoning from the current owner. By not rezoning this parcel, the site use and development become very challenging.

2. **Size of Site:** 37,141 square feet or 0.853 acres.
3. **Existing Zoning (site):** "M-1" Light Industrial District and "FSO" Freestanding Sign Overlay District.
4. **Existing Land Use (site):** Auto repair shop and outdoor storage of operable and inoperable vehicles.
5. **Adjacent Land Use and Zoning:**
 - East** - "R1-60"; Use is single-family dwellings.
 - West** - "M-1"; Use is the Des Moines Fire Department's administration, maintenance, and training facility.
 - North** - "R1-60"; Uses are single-family dwellings.
 - South** - "M-1"; Use is Union Pacific Railroad railyard.
6. **General Neighborhood/Area Land Uses:** The subject property is located within a transition area between a low density residential neighborhood to the north and east, an industrial area to the west, and a major railroad corridor to the south.
7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Fairground Neighborhood. All neighborhood associations were notified of the meeting by mailing of the Preliminary Agenda on January 26, 2018. Additionally, separate notifications of the hearing for this specific item were mailed on January 26, 2018 (20 days prior to the hearing) (A corrected 20-day notice was sent on January 31, 2018) and February 5, 2018 (10 days prior to the hearing) to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the requested rezoning and to the neighborhood contract. A Final Agenda for the meetings were mailed to all the recognized neighborhood associations on February 9, 2018. The Fairground Neighborhood mailings were sent to Sharon Cooper, 2838 Logan Avenue, Des Moines, IA 50317.

The applicant is required to hold a neighborhood meeting prior to the public hearing. They have indicated that a neighborhood meeting was held on January 16, 2018.
8. **Relevant Zoning History:** None.
9. **PlanDSM Land Use Plan Designation:** The proposed rezoning area is designated as "Low Density Residential" on the Future Land Use Map.
10. **Applicable Regulations:** The Commission reviews all proposals to amend zoning boundaries or regulations 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, and taking into consideration the criteria set forth in Chapter 18B of the Iowa Code. The Commission may make recommendations to the City Council on conditions to be made in addition to the existing regulations so long as the subject property owner agrees to them in writing. The recommendation of the Commission will be forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

- 1. PlanDSM Creating Our Tomorrow:** The proposed rezoning is not in conformance with the Future Land Use Map designation of "Low Density Residential". Even though the property is currently zoned of "M-1" Light Industrial District, the Future Land Use Map must be amended to the "Industrial" designation to find the proposed rezoning to a more intensive "M-2" Heavy Industrial District in conformance with PlanDSM.

The Plan describes the "Low Density Residential" category as areas developed with primarily single-family and two-family residential units, with up to 6 dwelling units per net acre.

The Plan describes the "Industrial" category as accommodating industrial development and limited supporting commercial uses. Development in the classification could have a large impact on adjoining properties and the environment which would need to be mitigated.

- 2. Site Plan Requirements:** When the property was converted from the legal non-conforming excavating contractor business to the junk and salvage yard use circa 2007, it should have conformed to all Zoning and Site Plan requirements at that time. If the applicant gets necessary zoning approval either through rezoning by the City Council or relief of the Zoning Board Adjustment, the resulting change of use would require review and approval of a Site Plan to demonstrate that the site would be brought into conformance with current Zoning and Site Plan requirements. This would include, but is not limited to, stormwater management, pavement, parking and landscaping. The current site is used with an unpaved surface, and does not conform to required setbacks or landscaping.
- 3. Traffic Analysis:** The anticipated trip generation by the proposed project is below the threshold for requiring a traffic study. Primary access to the site is currently from East 28th Street. During construction of utilities in Dean Avenue to the north, that access was not available after business hours causing the applicant to access from East 28th Court to the east, which is a primarily residential street. This led to neighbor complaints, which resulted in a zoning violation issued to the property for an illegal use.
- 4. Staff Rationale:** Staff believes that amending the PlanDSM and rezoning the property to a more intensive industrial would not safeguard the adjoining residential neighborhood area. Long-term allowance for heavy industrial use in this location would have a large impact on adjoining residential properties that could not be adequately mitigated.

SUMMARY OF DISCUSSION

Erik Lundy presented the staff report and recommendation. As there is an issue with this submittal due to land ownership, Erik Lundy asked for additional guidance from legal Glenna Franks.

Glenna Franks stated that typically before an application is received, there must be proof of ownership by all parties. In this case, the ownership was not cleared prior to accepting the application and it is recommended to be cleared before review.

CHAIRPERSON OPENED THE PUBLIC HEARING

Daniel Manning, Jr., Lillis O'Malley Law Firm ,317 6th Avenue, representing Creighton Penney (owner), dba Mid Iowa Towing, stated that he is in agreement with Glenna Franks. They are working with Pirelli, formerly Armstrong Rubber Company, to either deed the small strip of land through this parcel or at least get a sign off from them. They are also recommending a denial and they will further take it to City Council.

Jill Pearson, 117 E. 28th Street, came to speak in support of this business. She stated that she lives three homes down from this area and contends this is a dead-end street and no one drives down in this area. They do not see this as a salvage area and rarely see cars parked on the exterior of building. Home owners on the E. 28th Court also like them as neighbors and everyone in this area keeps an eye on each other's properties. They do not perceive this as a salvage yard.

CHAIRPERSON CLOSED THE PUBLIC HEARING

COMMISSION ACTION:

David Courard-Hauri moved staff recommendation for **denial**.

Motion Passed: 8-0

Respectfully submitted,



Erik Lundy, AICP
Senior City Planner

EML:tjh