



Date July 9, 2018

**RESOLUTION SETTING HEARING ON REQUEST FROM KENNETH L. LAWLER TO
REZONE PROPERTY AT 4455 AND 4465 HUBBELL AVENUE**

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on June 21, 2018, its members voted 11-0 in support of a motion to recommend **APPROVAL** of a request from Kenneth L. Lawler d/b/a Great Plains Garden Center, Inc. (owner), to rezone property locally known as 4455 and 4465 Hubbell Avenue ("Property") from "A-1" Agricultural District to Limited "C-2" General Retail and Highway-Oriented Commercial District, to allow use of the Property for commercial daycare center and a residential dwelling, subject to the following rezoning conditions:

1. Sidewalks shall be constructed along the adjoining public street frontages as required and allowed by Traffic Engineering with any Site Plan development.
2. Vehicular driveway access for the property shall only be developed from East 44th Street.
3. Any change of use of the existing building shall require a review of a Site Plan and Commercial Building Plans with approval and issuance of all necessary permits by the City's Permit and Development Center.
4. The following uses of the property shall be prohibited:
 - a. Adult Entertainment Business,
 - b. Off-Premises Advertising Signs,
 - c. Vehicle Display Lots,
 - d. Businesses Selling Liquor,
 - e. Pawn Brokers,
 - f. Delayed Deposit Services; and
 - g. Taverns/Nightclubs; and

WHEREAS, the Property to be rezoned is legally described as follows:

LOT 7 AND THE WEST 60 FEET OF LOT 8 (EXCEPT THE WEST 2.0 FEET LYING ADJACENT TO AND PARALLEL TO THE SOUTH ROW LINE OF U.S. HIGHWAY 6) OF CAPITOL HEIGHTS, PLAT NO. 2, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

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

1. That the attached communication from the Plan and Zoning Commission is hereby received and filed.
2. That the meeting of the City Council at which the proposed rezoning is to be considered shall be held at the Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa, at 5:00 p.m. on July 23, 2018, at which time the City Council will hear both those who oppose and those who favor the proposal.
3. 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.



Roll Call Number

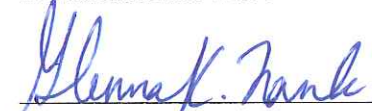
Agenda Item Number

17

Date July 9, 2018

MOVED BY _____ TO ADOPT.

FORM APPROVED:


Glenna K. Frank, Assistant City Attorney

(ZON2018-00088)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
COLEMAN				
GATTO				
GRAY				
MANDELBAUM				
WESTERGAARD				
TOTAL				

MOTION CARRIED

APPROVED

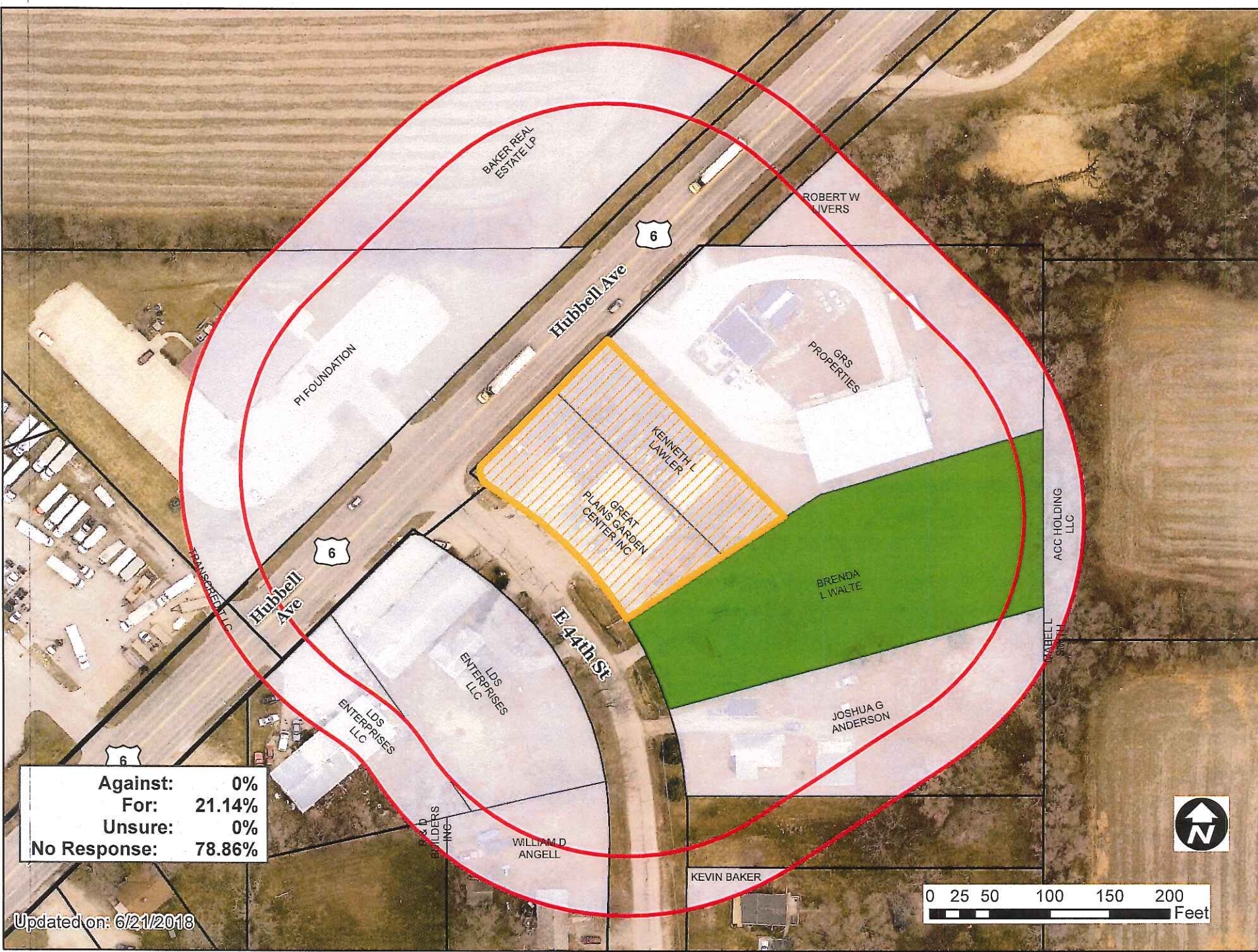
CERTIFICATE

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



Against:	0%
For:	21.14%
Unsure:	0%
No Response:	78.86%

Updated on: 6/21/2018

17



July 3, 2018

Date July 9, 2018

Agenda Item 17

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 June 21, 2018 meeting, the following action was taken regarding a request from the Kenneth L. Lawler dba Great Plains Garden Center, Inc. (owner) to rezone property located at 4455 and 4465 Hubbell Avenue. Additional subject property is owned by Kenneth and Angelia Lawler.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 11-0 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			

APPROVAL of rezoning to a Limited "C-2" District subject to owner agreeing to the following conditions:

1. Sidewalks shall be constructed along the adjoining public street frontages as required and allowed by Traffic Engineering with any Site Plan development.

2. Vehicular driveway access for the property shall only be developed from East 44th Street.
 3. Any change of use of the existing building shall require a review of a Site Plan and Commercial Building Plans with approval and issuance of all necessary permits by the City's Permit and Development Center.
 4. The following uses of the property shall be prohibited:
 - a. Adult Entertainment Business,
 - b. Off-Premises Advertising Signs,
 - c. Vehicle Display Lots,
 - d. Businesses Selling Liquor,
 - e. Pawn Brokers,
 - f. Delayed Deposit Services; and
 - g. Taverns/Nightclubs.
- (ZON2018-00088)

Written Responses

3 in Favor

0 in Opposition

STAFF RECOMMENDATION

Part A) Staff recommends that the Commission find the proposed rezoning in conformance with the Des Moines' PlanDSM: Creating Our Tomorrow Plan future land use designation of Community Mixed Use.

Part B) Staff recommends approval of rezoning to a Limited "C-2" District subject to owner agreeing to the following conditions:

1. Sidewalks shall be constructed along the adjoining public street frontages as required and allowed by Traffic Engineering with any Site Plan development.
2. Vehicular driveway access for the property shall only be developed from East 44th Street.
3. Any change of use of the existing building shall require a review of a Site Plan and Commercial Building Plans with approval and issuance of all necessary permits by the City's Permit and Development Center.
4. The following uses of the property shall be prohibited:
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 - c. Vehicle Display Lots,
 - d. Businesses Selling Liquor,
 - e. Pawn Brokers,
 - f. Delayed Deposit Services; and
 - g. Taverns/Nightclubs.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The proposed rezoning would allow for the applicant to lease or sell to a business that would propose a mixed-use building with a commercial daycare center and a residential unit.
2. **Size of Site:** 28,927 square feet (0.66 acres).
3. **Existing Zoning (site):** "A-1" Agricultural District.
4. **Existing Land Use (site):** There is existing retail use for a pawn broker in a portion of the existing 2,800-square foot building which was formerly used for a retail garden center.

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

North - "C-2", "PUD" & "A-1", Uses are single-family dwelling and auto repair shop.

South - "A-1"; Use is appliance store.

East - "A-1"; Use is a single-family dwelling.

West - "C-2" & "A-1"; Use is office building.

6. **General Neighborhood/Area Land Uses:** The subject property is located on the Hubbell Avenue/US Highway 6 mixed corridor.
7. **Applicable Recognized Neighborhood(s):** The subject property is not located within a recognized neighborhood. All neighborhood associations were notified of the public hearing by mailing of the Preliminary Agenda on June 1, 2018. Additionally, separate notifications of the hearing for this specific item were mailed on June 1, 2018 (20 days prior to the public hearing) and June 11, 2018 (10 days prior to the public hearing) to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site. All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division. A Final Agenda was mailed to recognized neighborhoods on June 15, 2018.

The applicant held their neighborhood meeting on June 9, 2018. The applicant will be available to provide a summary of the neighborhood meeting at the hearing

8. **Relevant Zoning History:** The property was annexed by the City Council on June 26, 2009 with the zoning designation of "A-1" Agricultural District.
9. **PlanDSM Land Use Plan Designation:** Community Mixed Use.
10. **Applicable Regulations:** Taking into consideration the criteria set forth in Chapter 18B of the Iowa Code, 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. 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 Plan:** The site is designated as Community Mixed Use. This designation is described as:

"Small- to medium-scale mixed use development, located on high capacity transit corridors or at the intersection of transportation corridors. Community mixed use areas include both a mix of medium density residential and a mix of retail and service establishments designed to attract customers from a large service area encompassing multiple neighborhoods and may include specialty retail that attracts regional customer."

The proposed "C-2" District would allow for the range of uses intended by this designation. Therefore, staff believes that the proposed rezoning should be found in conformance with PlanDSM future land use designation.

The property is adjacent to property designated for Low Density Residential. Therefore, staff believes that there are uses permitted in the "C-2" District regulations which should be prohibited in order to protect existing and future residential development. These prohibitions would include Adult Entertainment Business, Off-Premises Advertising Signs, Vehicle Display Lots, Businesses Selling Liquor, Pawn Brokers, Delayed Deposit Services and Taverns/Nightclubs.

- 2. Utilities:** Des Moines Water Works water main is located in East 44th Street to the south. The nearest access to public sanitary sewer is on Hubbell Avenue to the southwest over 300 feet from the existing building, which currently operates on a private septic disposal system. Public storm sewer is available on the opposite side of Hubbell Avenue.
- 3. Streets and Access:** A traffic study was not required by Traffic Engineering for the requested rezoning. Hubbell Avenue accommodates commercial traffic volumes and higher speed traffic. Therefore, Traffic Engineering Staff has recommended that vehicular access to the subject property should only be permitted from East 44th Street.

Additionally, based on the "complete streets" policy of the City, it is recommended that sidewalks be constructed on both public street frontages with development under any site plan. There are not public sidewalks on any immediately adjoining properties. However, there are existing segments of public sidewalk along Hubbell Avenue to the north and the south. The City is also incorporating them as part of widening projects on nearby sections of Hubbell Avenue beginning soon. It is the intent that public sidewalk would be constructed incrementally over time as required with development or with assessed projects resulting in continuous public sidewalks.

4. **Drainage/Grading:** Any change of use of the building, must comply with a Site Plan and issuance of all necessary permits by the City's Permit and Development Center. The Site Plan would review any modifications to site drainage.
5. **Landscaping/Open Space:** Any change of use will require a Site Plan with landscaping to bring the property into compliance with the Des Moines Landscape Standards. In this instance the requirements applicable to "C-2" Districts would be enforceable following the proposed rezoning.

SUMMARY OF DISCUSSION

Jason Van Essen noted that the applicant for Item #4 has agreed all the conditions recommended by staff.

Jacqueline Easley asked if anyone in the audience or on the Commission was opposed to Item 4 being moved to the consent agenda. No one expressed opposition.

John "Jack" Hilmes made a motion to move item #4 to the consent agenda. Motion carried 11-0.

COMMISSION ACTION:

John "Jack" Hilmes made a motion for approval of rezoning to a Limited "C-2" District subject to owner agreeing to the following conditions:

1. Sidewalks shall be constructed along the adjoining public street frontages as required and allowed by Traffic Engineering with any Site Plan development.
2. Vehicular driveway access for the property shall only be developed from East 44th Street.
3. Any change of use of the existing building shall require a review of a Site Plan and Commercial Building Plans with approval and issuance of all necessary permits by the City's Permit and Development Center.
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 - e. Pawn Brokers,
 - f. Delayed Deposit Services; and
 - g. Taverns/Nightclubs.

Motion Passed: 11-0-1

Respectfully submitted,

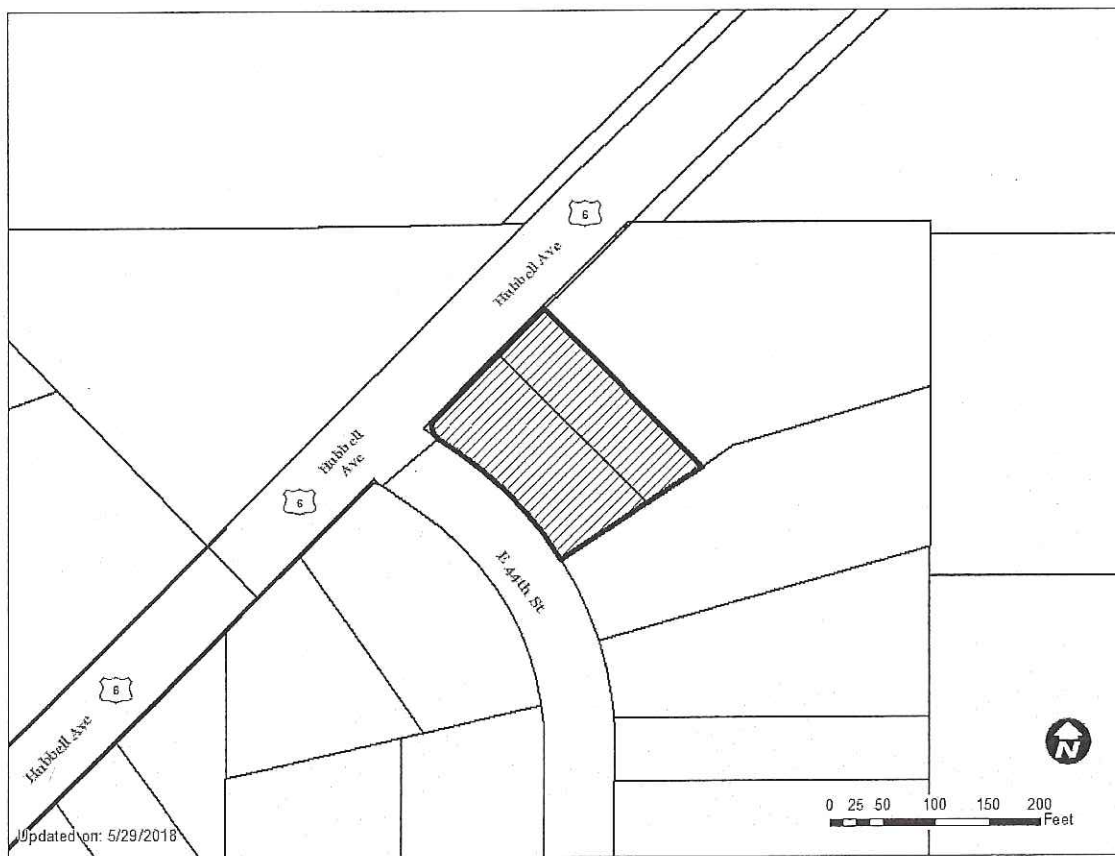
A handwritten signature in blue ink, appearing to read "Michael Ludwig".

Michael Ludwig, AICP
Planning Administrator

EML:tjh

Kenneth L. Lawler dba Great Plains Garden Center, Inc. (owner) for property located in the 4455 and 4465 Hubbell Avenue. Additional subject property is owned by Kenneth and Angelia Lawler.				File #	
				ZON2018-00088	
Description of Action	Rezoning from "A-1" Agricultural District to "C-2" General Retail and Highway-Oriented Commercial District, to allow use of the property for commercial daycare center and a residential dwelling.				
PlanDSM Future Land Use	Current: Community Mixed Use. Proposed: N/A.				
Mobilizing Tomorrow Transportation Plan	No planned improvements.				
Current Zoning District	"A-1" Agricultural District and "FSO" Freestanding Signs Overlay District.				
Proposed Zoning District	N/A.				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Subject Property	3	0			
Outside Area (200 feet)					
Plan and Zoning Commission Action	Approval	X	Required 6/7 Vote of the City Council	Yes	
	Denial			No	X

Kenneth L. Lawler dba Great Plains Garden Center, Inc., 4455 & 4465 Hubbell Avenue ZON2018-00088



Item ZON2018-00088 Date 6-16-18
☒ I (am) (am not) in favor of the request. SUBJECT PROPERTY OWNER / SELLER owner (Ken Hawley)
(Circle One)
RECEIVED Print Name Great Plains Garden Center
COMMUNITY DEVELOPMENT Signature Kenneth Hawley ~~owner~~ Great Plains Garden Center
JUN 18 2018 Address 43605 NE 44th St DM

Reason for opposing or approving this request may be listed below.

I am requesting + in favor of this - As I am retiring after 35 years in business I feel a daycare center would be a positive addition to the neighborhood + community in this area.
Thank you for your consideration

Item ZON2018-00088 Date 6-16-18
☒ I (am) (am not) in favor of the request. SUBJECT PROPERTY OWNER / SELLER
(Circle One)
RECEIVED Print Name Kenneth L Hawley
COMMUNITY DEVELOPMENT Signature Kenneth L Hawley
JUN 18 2018 Address 206 4th St SW Atlanta 30309
owner of property at 4455 + 4465 Rhode Ave, DM,
Reason for opposing or approving this request may be listed below.

I am in favor of this request - I feel a daycare center would be an asset to the neighborhood + would help serve the needs of the community - Thank you for your consideration

Item ZON2018-00088 Date 6/15/18
☒ I (am) (am not) in favor of the request.
(Circle One)
RECEIVED Print Name BRETTA/NAH/ARTE
COMMUNITY DEVELOPMENT Signature Brenda L. White
JUN 18 2018 Address 4295 E 44th St

Reason for opposing or approving this request may be listed below.