



Date August 20, 2018

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

WHEREAS, on July 9, 2018, by Roll Call No. 18-1153, the City Council received a communication from the City Plan and Zoning Commission advising 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, on July 9, 2018, by Roll Call No. 18-1153, it was duly resolved by the City Council that the application of Kenneth L. Lawler to rezone the Property, as legally described below, be set down for hearing on July 23, 2018 at 5:00 p.m. in the Council Chambers at City Hall; and

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

WHEREAS, on July 23, 2018, by Roll Call No. 18-1294, and on August 6, 2018, by Roll Call No. 18-1371, the City Council opened and continued the public hearing; and

WHEREAS, in accordance with said notice, those interested in said 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 Property locally known as 4455-4465 Hubbell Avenue, legally described as:

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



Date August 20, 2018

NO. 2, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA

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 conditions stated above as agreed to and accepted by execution of an Acceptance of Rezoning Ordinance in writing by the owner(s) of the Property, which is binding upon the owner(s) and their successors, heirs and assigns.

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, and any and all statements of interested persons and arguments of counsel, any objections to the proposed rezoning of the Property to Limited "C-2" General Retail and Highway-Oriented Commercial District with conditions as set forth above, are hereby overruled, and the hearing is closed.
2. The proposed rezoning of the Property to Limited "C-2" General Retail and Highway-Oriented Commercial District with conditions as set forth above, is hereby found to be in conformance with the PlanDSM: Creating Our Tomorrow Land Use Plan and is approved, subject to final passage of an ordinance rezoning the Property as set forth herein.

MOVED BY \_\_\_\_\_ TO ADOPT.

FORM APPROVED:

Glenna K. Frank, Assistant City Attorney

(ZON2018-00088)

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include 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

★ **Roll Call Number**

18-1371

✓ 49  
Agenda Item Number

52

Date August 6, 2018

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

**WHEREAS**, on July 9, 2018, by Roll Call No. 18-1153, the City Council received a communication from the City Plan and Zoning Commission advising 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 rezoning conditions stated in said communication and Roll Call; and

**WHEREAS**, on July 9, 2018, by Roll Call No. 18-1153, it was duly resolved by the City Council that the application of Kenneth L. Lawler to rezone the Property, as legally described below, be set down for hearing on July 23, 2018 at 5:00 p.m. in the Council Chambers at City Hall; and

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

**WHEREAS**, on July 23, 2018, by Roll Call No. 18-1294, the City Council opened and continued the public hearing at the request of the applicant; and

**WHEREAS**, the public hearing must be continued again to August 20, 2018 to allow for receipt of the Acceptance of Rezoning document.

**NOW THEREFORE, BE IT RESOLVED**, by the City Council of the City of Des Moines, Iowa, that the public hearing on the proposed rezoning of 4455 and 4465 Hubbell Avenue from "A-1" Agricultural District to Limited "C-2" General Retail and Highway-Oriented Commercial District is hereby opened and continued to the City Council meeting on August 20, 2018, at 5:00 p.m. in the Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa.

FORM APPROVED:

*Glenna K. Frank*  
Glenna K. Frank, Assistant City Attorney

MOVED BY *Westergaard* TO ADOPT.

(ZON2018-00088)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
COLEMAN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
WESTERGAARD	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

*T. M. Franklin*  
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.

*Diane Rauh*  
City Clerk



Date August 20, 2018  
 Agenda Item 49  
 Roll Call # \_\_\_\_\_

July 3, 2018

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 44<sup>th</sup> 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 44<sup>th</sup> 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.

## 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 44<sup>th</sup> 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 44<sup>th</sup> 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 44<sup>th</sup> 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.

Motion Passed: 11-0-1



Respectfully submitted,



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



1 inch = 106 feet

Item ZON2018-00088

Date 6-16-18

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

SUBJECT PROPERTY OWNER / SELLER

owner (Ken Hawler)

(Circle One) RECEIVED

Print Name Great Plains Garden Center

COMMUNITY DEVELOPMENT

Signature Kenneth Hawler <sup>owner</sup> ~~Great Plains Garden Center~~

JUN 18 2018

Address 4365 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 Hawler

COMMUNITY DEVELOPMENT

Signature Kenneth L Hawler

JUN 18 2018

Address 206 4th St SW Apt 2009

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*

49

Item ZON2018-00088

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

COMMUNITY DEVELOPMENT RECEIVED

Print Name

Signature

Address

JUN 18 2018

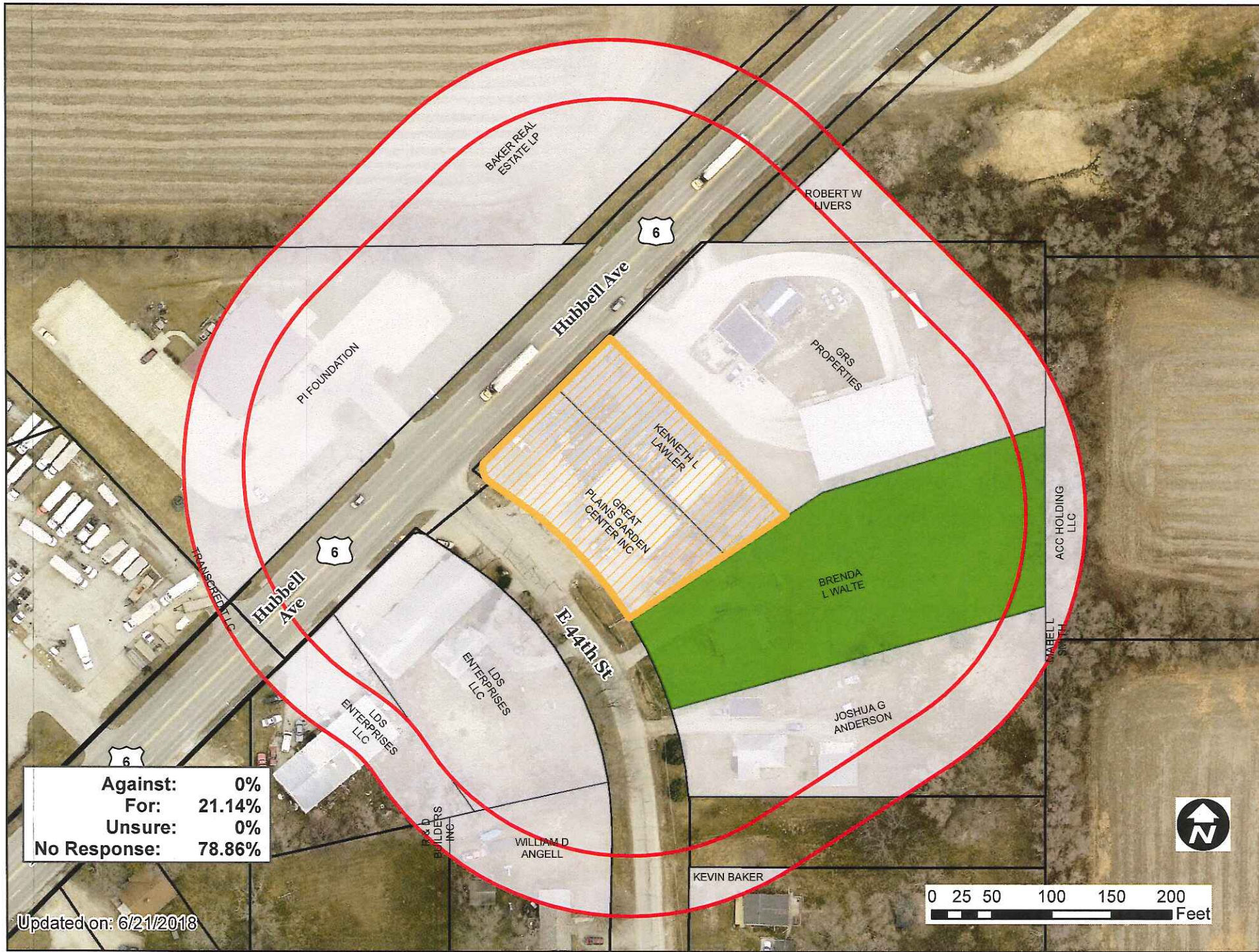
BREANNA L HARTZ  
Brandee Hawler  
4295 E 49th St

Date

6/15/18

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

Vertical lines for handwritten notes.



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



Updated on: 6/21/2018

147

ZON2018-00088

Date 6-16-18

Item

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

SUBJECT PROPERTY OWNER / SELLER

owner (Kenhawler)

(Circle One) RECEIVED

Print Name Great Plains Garden Center

COMMUNITY DEVELOPMENT

Signature ~~Ken Hawler~~ <sup>owner</sup> Great Plains Garden Center

JUN 18 2018

Address 4365 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

ZON2018-00088

Date 6-16-18

Item

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

SUBJECT PROPERTY OWNER / SELLER

(Circle One) RECEIVED

Print Name Kenneth L Hawler

COMMUNITY DEVELOPMENT

Signature Kenneth L Hawler

JUN 18 2018

Address 206 1st SW Atlanta 30309  
owner of property at 4465 + 4465 Northwest, 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

59 17

18-1371

ZON2018-00088

Date 6/15/18

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

COMMUNITY DEVELOPMENT RECEIVED

Print Name

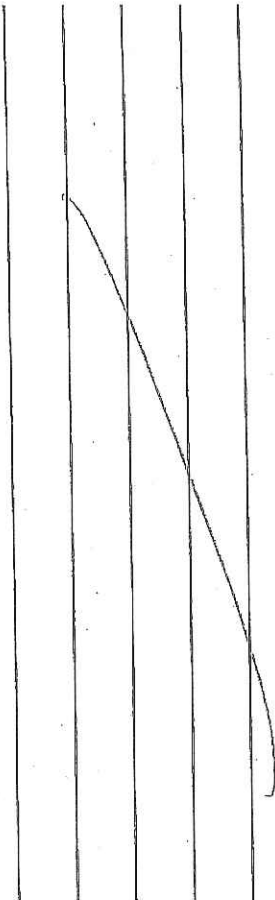
Signature

Address

BREND A HAWLER  
Brend A Hawler  
4295 E 44th St

JUN 18 2018

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



18-1371

52

★ Roll Call Number  
18-1294

Agenda Item Number  
55

Date July 23, 2018

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

**WHEREAS**, on July 9, 2018, by Roll Call No. 18-1153, the City Council received a communication from the City Plan and Zoning Commission advising 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 rezoning conditions stated in said communication and Roll Call; and

**WHEREAS**, on July 9, 2018, by Roll Call No. 18-1153, it was duly resolved by the City Council that the application of Kenneth L. Lawler to rezone the Property, as legally described below, be set down for hearing on July 23, 2018 at 5:00 p.m. in the Council Chambers at City Hall; and

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

**WHEREAS**, the applicant has requested that the public hearing be continued to August 6, 2018 in order to have additional time for correction and completion of the Acceptance of Rezoning document.

**NOW THEREFORE, BE IT RESOLVED**, by the City Council of the City of Des Moines, Iowa, that the public hearing on the proposed rezoning of 4455 and 4465 Hubbell Avenue from "A-1" Agricultural District to Limited "C-2" General Retail and Highway-Oriented Commercial District is hereby opened and continued to the City Council meeting on August 6, 2018, at 5:00 p.m. in the Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa.

MOVED BY Westergaard TO ADOPT.

FORM APPROVED:

Glenna K. Frank  
Glenna K. Frank, Assistant City Attorney

(ZON2018-00088)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
COLEMAN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
WESTERGAARD	✓			
TOTAL	7			

MOTION CARRIED APPROVED

T. M. Franklin 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.

Diane Rauh City Clerk

4955  
~~18-1294~~  
18-1371

**Rauh, Diane I.**

---

**From:** Frank, Glenna K.  
**Sent:** Tuesday, July 17, 2018 10:22 AM  
**To:** fran.stroud@yahoo.com; polkcountypawn@gmail.com  
**Cc:** Lampkin, Renae D.; Ludwig, Michael G.; Lundy, Erik M.; Rauh, Diane I.  
**Subject:** Rezoning of 4455-4465 Hubbell Ave - Continuance  
**Attachments:** 2nd Letter of Acceptance.pdf; Acceptance of Rezoning.pdf; Waiver Request Letter.docx

Hello all: Per phone conversation today with Mr. Lawler, the hearing on the rezoning of 4455 and 4465 Hubbell Avenue will be submitted for continuance to August 6, 2018 at 5 pm in the City Council Chambers. I have attached an updated letter and updated Acceptance of Rezoning indicating that Ms. Stroud is a tenant and potential purchaser of the property. The attached documents will also be sent by U.S. Mail. Please note the new deadlines for original signed and notarized documents to be returned to me at the address below.

Thank you,

Glenna K. Frank  
Assistant City Attorney  
400 Robert D. Ray Drive  
Des Moines, IA 50309  
P: (515) 283-4530  
F: (515) 237-1643  
[gkfrank@dmgov.org](mailto:gkfrank@dmgov.org)





Roll Call Number

18-1153

18-1371  
~~18-1294~~ 5549

Agenda Item Number

19

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 44<sup>th</sup> 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.



18-1371  
~~18-1294~~ 49

★ Roll Call Number  
18-1153

Agenda Item Number  
19

Date July 9, 2018

MOVED BY Gatto TO ADOPT.

FORM APPROVED:

Glenna K. Frank  
Glenna K. Frank, Assistant City Attorney

(ZON2018-00088)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
COLEMAN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
WESTERGAARD	✓			
TOTAL	7			

MOTION CARRIED APPROVED  
T. M. Franklin Cownie 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.

Diane Rauh City Clerk

18-1371

~~18-1294~~ 55  
49



DES MOINES, CITY OF  
400 ROBERT D RAY DR

DES MOINES IA 503091813

### AFFIDAVIT OF PUBLICATION

State of Wisconsin

County of Brown, ss.:

The undersigned, being first duly sworn on oath, states that The Des Moines Register and Tribune Company, a corporation duly organized and existing under the laws of the State of Iowa, with its principal place of business in Des Moines, Iowa, the publisher of

#### THE DES MOINES REGISTER

newspaper of general circulation printed and published in the City of Des Moines, Polk County, Iowa, and that an advertisement, a printed copy of which is attached as Exhibit "A" and made part of this affidavit, was printed and published in The Des Moines Register on the following dates:

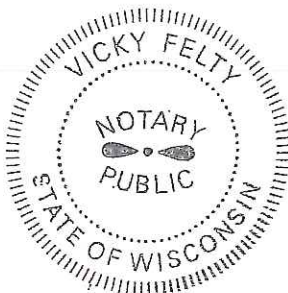
Ad No.	Start Date:	Run Dates:	Cost:
0003008596	7/12/18	07/12/18	\$35.01

Copy of Advertisement  
Exhibit "A"

Kevin Gans  
Staff member, Register Media

Subscribed and sworn to before me by said affiant this

12th day of July, 2018



Vicky Felty  
Notary Public

9-19-21  
Commission expires

PO10440; \$35.01

NOTICE OF HEARING ON  
REZONING

NOTICE IS HEREBY GIVEN that the City Council of the City of Des Moines, Iowa, has adopted a resolution concerning a request from Kenneth L. Lawler d/b/a Great Plains Garden Center, Inc. (owner) to rezone property located at 4455 and 4465 Hubbell Avenue, Des Moines, Iowa, legally described as follows: A-1's Agricultural District to Limited \*C-2's General District and Highway-Oriented Commercial District to allow use of the District for a commercial daycare center and a residential dwelling, subject to conditions as set forth in the resolution:  
LOT 7 AND THE WEST 60 FEET OF LOT 8 (EXCEPT THE WEST 20 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.

A map of the subject property is on file and available for public inspection in the office of the City Clerk.

NOTICE IS FURTHER GIVEN that the City Council will consider the proposed rezoning after a public hearing to be held at 5:00 p.m. in the Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa, on July 23, 2018. At the hearing, opportunity to be heard will be given to proponents and opponents of the proposed rezoning.

CITY OF DES MOINES, IOWA  
By: T. M. Franklin Cowme, Mayor  
ATTEST: Diane Kaub, City Clerk  
Published in the Des Moines Register on July 12, 2018.

~~18-1294~~ 49  
~~18-1371~~

P01D440; #35.D1