

Date November 5, 2018**RESOLUTION SETTING HEARING ON REQUEST FROM BOYER & BOYER, LLC TO
REZONE PROPERTY LOCATED AT 2900 EASTER LAKE DRIVE**

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on October 18, 2018, its members voted 8-0 in support of a motion to recommend **APPROVAL** of a request from Boyer & Boyer, LLC (purchaser), represented by Blake Boyer, to rezone property locally known as 2900 Easter Lake Drive ("Property") from "R1-90" Large-Lot One-Family Residential District to Limited "C-1" Neighborhood Retail Commercial District, to allow continuation of the existing daycare center on the Property, subject to the following rezoning conditions:

1. Permitted uses shall only include those as allowed in the "R1-90" District and a daycare center.
2. Any use of the Property for a daycare center shall comply with requirements for a change of occupancy under the applicable Building and Fire Codes and shall comply with an approved Site Plan, with permits issued by the Permit and Development Center; and

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

THE NORTH 380 FEET OF THE SOUTH 430 FEET OF THE EAST 340 FEET OF THE WEST 1000 FEET OF THE NORTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 25, TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE 5TH P.M. CONTAINING 2.966 ACRES, MORE OR LESS.

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 November 19, 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.

FORM APPROVED:

Glenna K. Frank, Assistant City Attorney

MOVED BY _____ TO ADOPT.

(ZON2018-00198)

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



October 31, 2018

Date November 5, 2018
Agenda Item 22
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 October 18, 2018 meeting, the following action was taken regarding a request from Boyer & Boyer, LLC (purchaser) represented by Blake Boyer to rezone property located at 2900 Easter Lake Drive from "R1-90" Large-Lot One-Family Residential District to "C-1" Neighborhood Retail Commercial District, to allow conversion of the existing church to a day care center.

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			

APPROVAL of of Part A) the rezoning to "C-1" District be found not in conformance with the existing PlanDSM future land use designation of Low Density Residential, **APPROVAL** of Part B) the requested amendment to PlanDSM future land use designation to Neighborhood Mixed Use and **APPROVAL** of Part C) the rezoning to a Limited "C-1" District subject to the following:

1. Permitted uses shall only include those as allowed in the "R1-90" District and a daycare center.
2. Any use of the property for a daycare center shall comply with requirements for a change of occupancy under the applicable Building and Fire Codes and shall comply with an approved Site Plan, with permits issued by the Permit and Development Center.

(21-2018-4.18) & (ZON2018-00198)

Written Responses

1 in Favor
2 in Opposition

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that rezoning to "C-1" District be found not in conformance with the existing PlanDSM future land use designation of Low Density Residential.

Part B) Staff recommends approval of the requested amendment to PlanDSM future land use designation to Neighborhood Mixed Use.

Part C) Staff recommends approval of a rezoning to a Limited "C-1" District subject to the following:

1. Permitted uses shall only include those as allowed in the "R1-90" District and a daycare center.
2. Any use of the property for a daycare center shall comply with requirements for a change of occupancy under the applicable Building and Fire Codes and shall comply with an approved Site Plan, with permits issued by the Permit and Development Center.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant proposes to purchase the existing church building and convert the occupancy to use as a daycare center. A portion of the church has been previously used for a daycare center.
2. **Size of Site:** 2.966 acres.
3. **Existing Zoning (site):** "R1-90" Large-Lot One-Family Residential District and "FSO" Free Standing Sign Overlay District.
4. **Existing Land Use (site):** Church and 24-foot by 24-foot residential-type detached garage.

5. Adjacent Land Use and Zoning:

North – “R1-90”; Use is Easter Lake County Park (Polk County Conservation).

South – “PUD” (Tobis Park Estates); Uses are single-family dwellings.

East – “R1-90”; Uses are large-lot single-family dwellings.

West – “R1-90”; Use is East Lake County Park (Pol County Conservation).

- 6. General Neighborhood/Area Land Uses:** The church building is located along Easter Lake Avenue, which serves as a collector within the primarily residential and agricultural neighborhood area along with serving access to the County park.

- 7. Applicable Recognized Neighborhood(s):** The subject property is located in the Easter Lake Area Neighborhood. The neighborhood was notified of the Commission meeting by mailing of the Preliminary Agenda on September 25, 2018. Additionally, separate notifications of the hearing were mailed on September 25, 2018 (20 days prior to the hearing) and on October 5, 2018 (13 days prior to the hearing because of the Columbus Day Postal Holiday) to the neighborhood association and to the primary titleholder on file with the Polk County Assessor for each condominium owner within the property and every owner of property or condominium within 250 feet of the subject property.

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. The Easter Lake Area Neighborhood Association notices were mailed to Jim Bollard, 4007 Southeast 26th Street, Des Moines, IA 50320.

The applicant conducted a neighborhood meeting with the surrounding property owners and neighborhood representatives on October 9, 2018 and will be available to provide a summary of the events at the public hearing.

- 8. Relevant Zoning History:** N/A.

- 9. PlanDSM Future Land Use Plan Designation:** Low Density Residential.

- 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. **Parking & Access:** There are two existing access drives from Easter Lake Drive. One of the accesses is a paved drive to the off-street parking lot. The other access drive is a gravel surfaced drive which existed prior to the church development. The approved Site Plan documents did not provide for connection of the gravel drive to the parking lot. The existing requirement for off-street parking spaces is based on a calculation of one space per 80 square feet of worship assembly (sanctuary) area. The daycare center would be required to provide one space per two employees plus three additional for pick-up and drop-off.
2. **Permit & Development Center Comments:** Any occupancy of the building to be converted to a daycare use must be reviewed under the applicable Building and Fire Codes, with issuance of permits for required modifications by the Permit and Development Center.

Any change in occupancy of the property requires the site to be brought into conformance with the existing Site Plan regulations. This would include meeting landscaping requirements which have come into effect since the previous Site Plan approval in 1998. It would also require that the gravel drive be paved or restored, since it has been expanded out of conformance with the paving requirements which were in effect at the time of that expansion. Any Site Plan would be reviewed and approved administratively by the Permit and Development Center.

3. **Des Moines' 2020 Community Character Plan:** The existing church building is currently within a Low Density Residential future land use designation. Because the proposed daycare center would become the predominant use of the property and it would not be accessory to the principal religious assembly use, the Zoning Enforcement Officer has determined that the proposed use would require a commercial zoning designation. Such a designation typically requires a future land use designation that is compatible with the proposed commercial zoning.

In this instance, the "C-1" District zoning is necessary to allow the independent daycare business. Staff believes that this zoning district would allow uses that would not be compatible with the nearby residential areas given the scale of the existing property and building. Therefore, staff recommends that the proposed rezoning be limited to allow uses as permitted in the "R1-90" District and the daycare center. Staff believes that the impacts of the proposed use would not change the pattern which existed with the previous church use, which was a permitted use in the residential zoning district. Staff further believes that by limiting the rezoning in that manner, the proposed amendment to the future land use designation would not be necessary to find the rezoning in conformance. This is based on the church remaining the primary use of the property.

SUMMARY OF DISCUSSION

Erik Lundy presented the staff report and recommendation.

David Courard-Hauri asked why the rezoning didn't go in front of the Zoning Board of Adjustment (ZBOA).

Erik Lundy stated that would be a remedy if the rezoning were denied by City Council. But, they would need to demonstrate to the ZBOA that the building has no other reasonable use, which could be concluded that another church could use the building.

Will Page asked about the difference between the land use and rezoning and how that would affect the supermajority vote of City Council.

Erik Lundy stated they are considered separately. For the land use amendment, if there isn't a 2/3rd vote from the Plan and Zoning Commission, that would trigger a 6/7 supermajority vote from City Council. The rezoning supermajority situation is tied to the State Code and is based on objection of owners of 20% of the land area or more within 200 feet around the subject property.

John "Jack Hilmes asked to see a land use map.

Erik Lundy stated everything around the subject property is designated, Low Density Residential with the Easter Lake County Park designated as Parks and Open Space.

CHAIRPERSON OPENED THE PUBLIC HEARING

Blake Boyer of Color my World stated that they have been located at 2900 Easter Lake Drive since 1998. They currently service 130 children. The staff includes a business operation manager, a director, an assistant director, 22 full-time teachers and 5 part-time staff. They have been rated one of the top 3 pre-schools in the Des Moines Metro for the past 3 years. When Presbyterian of Des Moines approached them about buying the property in 2017, they found out the property would need to be rezoned, which lead us to where we are today. They are also willing to remove the gravel driveway and turn it back into green space.

Greg Wattier asked how long they have been in this building?

Blake Boyer stated since 1998.

Greg Wattier asked if this has been a legal use?

Erik Lundy stated the building occupancy does allow for some ancillary daycare use operated by the church only. If they were running a full-time day commercial daycare they may have been in violation of the Zoning and Building Code occupancy provisions.

Greg Wattier asked if they were aware of any complaints the past 20 years?

Erik Lundy stated the City isn't aware of any.

Jacqueline Easley asked the applicant about a response card received from a neighboring property owner with concerns about the traffic to be generated, and also asked if they plan to increase their enrolment?

Blake Boyer stated no, they are comfortable with the number of children and staff they have.

Erik Lundy stated Traffic and Transportation requires applicants to file for a traffic analysis prior to the rezoning process. Based on that, the City Traffic and Transportation Engineering staff believes there is no need for further study and no traffic concern.

CHAIRPERSON CLOSED THE PUBLIC HEARING

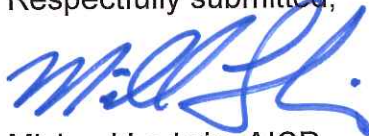
COMMISSION ACTION:

David Courard-Hauri made a motion for **APPROVAL** of Part A) the rezoning to "C-1" District be found not in conformance with the existing PlanDSM future land use designation of Low Density Residential, **APPROVAL** of Part B) the requested amendment to PlanDSM future land use designation to Neighborhood Mixed Use and **APPROVAL** of Part C) the rezoning to a Limited "C-1" District subject to the following:

1. Permitted uses shall only include those as allowed in the "R1-90" District and a daycare center.
2. Any use of the property for a daycare center shall comply with requirements for a change of occupancy under the applicable Building and Fire Codes and shall comply with an approved Site Plan, with permits issued by the Permit and Development Center.

Motion passed: 8-0

Respectfully submitted,



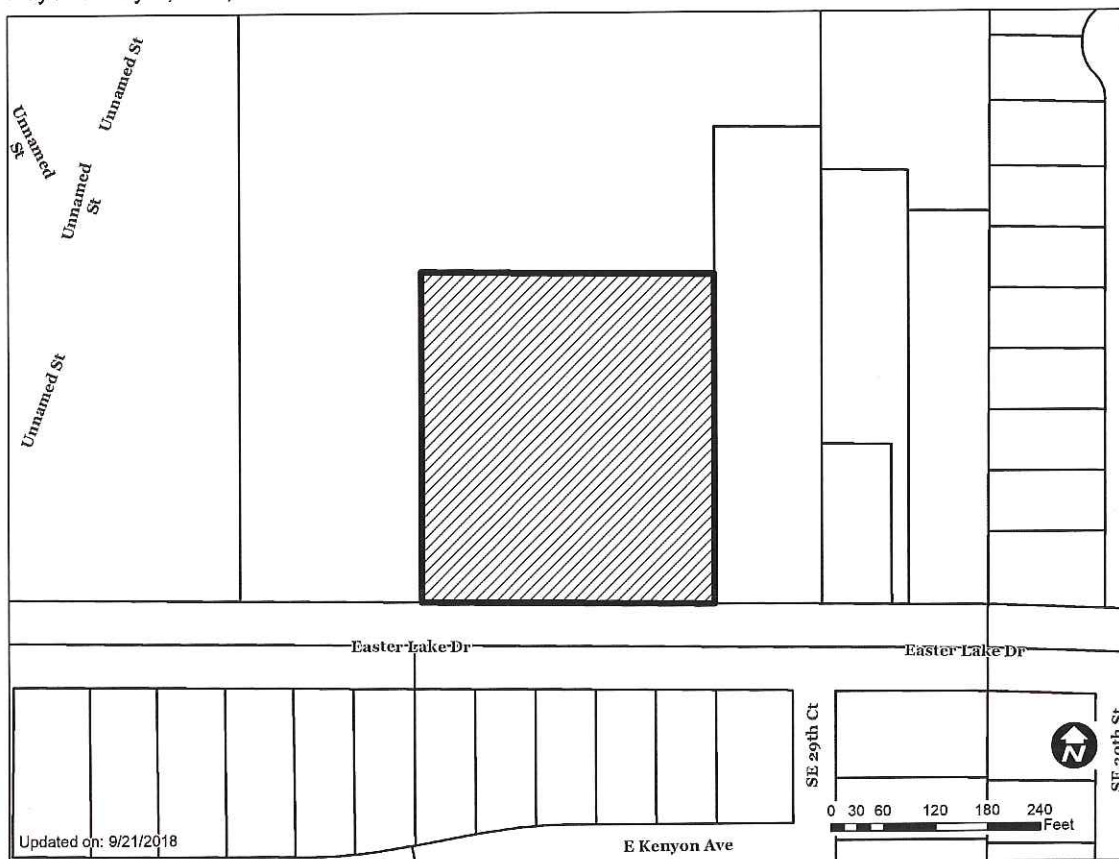
Michael Ludwig, AICP
Planning Administrator

MGL:tjh

Boyer & Boyer, LLC (purchaser) represented by Blake Boyer on property located at 2900 Easter Lake Drive. The subject property is owned by The Presbytery of Des Moines of the Presbyterian Church (U.S.A.)				File #	
				21-2018-4.18	
Description of Action		Amendment to the PlanDSM future land use classification from Low Density Residential to Neighborhood Mixed Use.			
PlanDSM Future Land Use		Current: Low Density Residential. Proposed: Neighborhood Mixed Use.			
Mobilizing Tomorrow Transportation Plan		Easter Lake Drive Widening Improvement to existing road (e.g. replacement, widening, improve alignment, conversion, etc.) from Indianola Ave to SE 36th St			
Current Zoning District		"R1-90" Large-Lot One-Family Residential District and "FSO" Freestanding Signs Overlay District.			
Proposed Zoning District		"C-1" Neighborhood Retail Commercial District and "FSO" Freestanding Signs Overlay District.			
Consent Card Responses		In Favor	Not In Favor	Undetermined	% Opposition
Subject Property		0	0		
Outside Area (200 feet)					
Plan and Zoning Commission Action		Approval	X	Required 6/7 Vote of the City Council	Yes
		Denial			No

Boyer & Boyer, LLC, 2900 Easter Lake Drive

21-2018-4.18

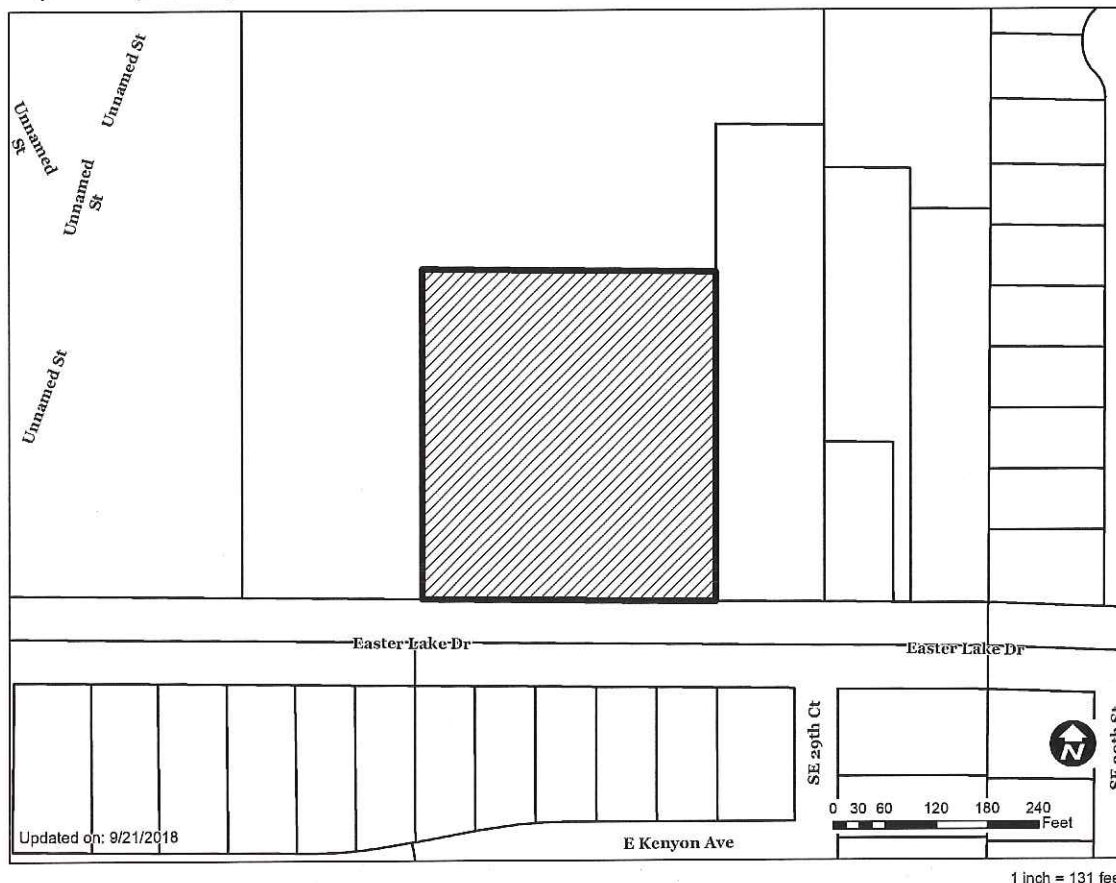


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Boyer & Boyer, LLC (purchaser) represented by Blake Boyer on property located at 2900 Easter Lake Drive. The subject property is owned by The Presbytery of Des Moines of the Presbyterian Church (U.S.A.)				File #		
				ZON2018-00198		
Description of Action	Rezone the property from "R1-90" Large-Lot One-Family Residential District to "C-1" Neighborhood Retail Commercial District, to allow conversion of the existing church to a day care center.					
PlanDSM Future Land Use	Current: Low Density Residential. Proposed: Neighborhood Mixed Use.					
Mobilizing Tomorrow Transportation Plan	Easter Lake Drive Widening Improvement to existing road (e.g. replacement, widening, improve alignment, conversion, etc.) from Indianola Ave to SE 36th St					
Current Zoning District	"R1-90" Large-Lot One-Family Residential District and "FSO" Freestanding Signs Overlay District.					
Proposed Zoning District	"C-1" Neighborhood Retail Commercial District and "FSO" Freestanding Signs Overlay District.					
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition		
Subject Property	1	2		25..81		
Outside Area (200 feet)						
Plan and Zoning Commission Action	Approval	X	Required 6/7 Vote of the City Council		Yes	X
	Denial				No	

Boyer & Boyer, LLC, 2900 Easter Lake Drive

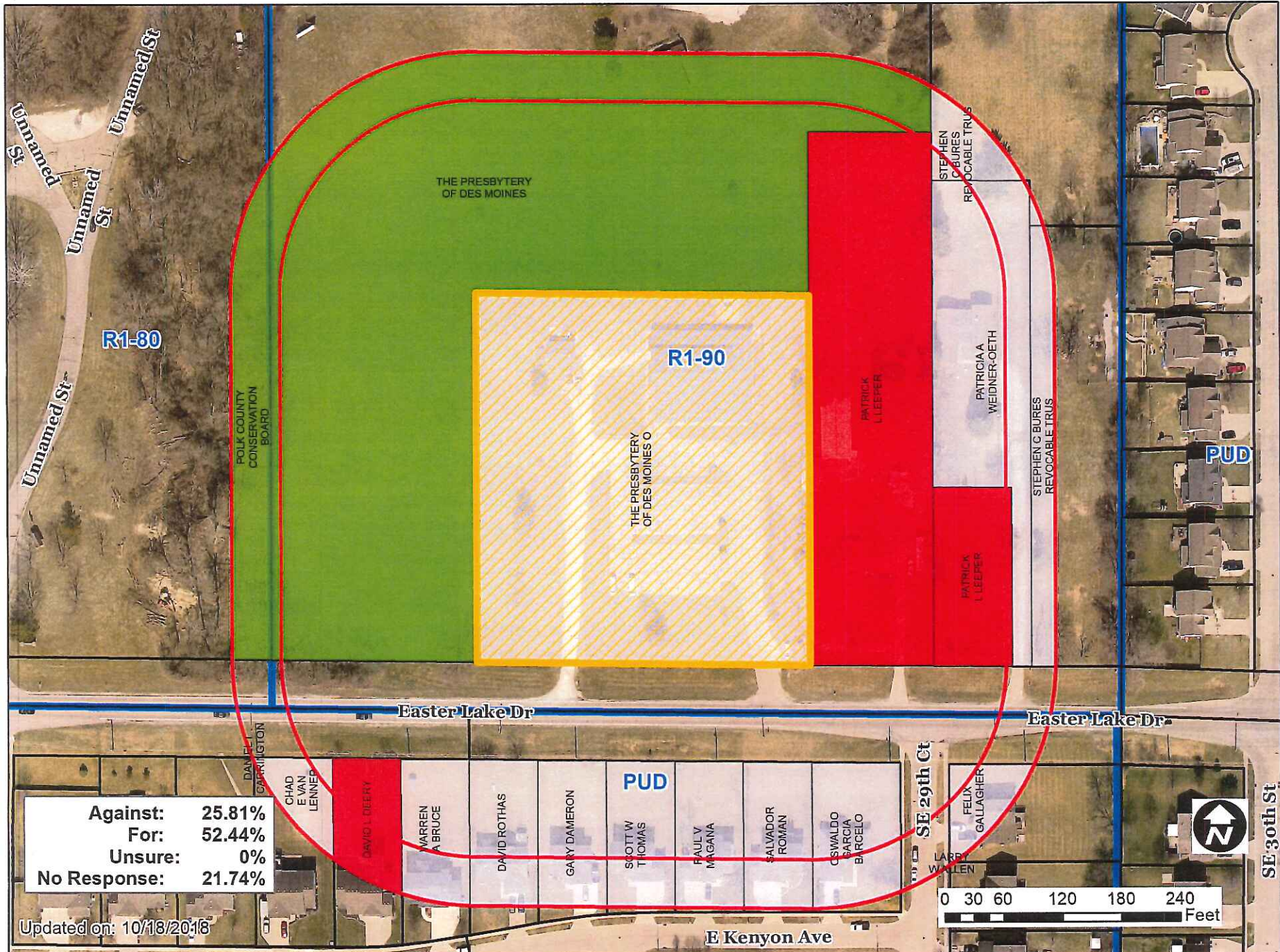
ZON2018-00198





1 inch = 131 feet

22



22

Item ZON2018-00198

Date 10/11/18

I (am) ☒ (am not) in favor of the request. w/ conditions.

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT

Print Name Adam Fendrick

Signature Adam Fendrick

Address 12130 NW 128th St. Granger IA

OCT 15 2018

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

Polk County Conservation supports this request only with the condition to allow a daycare to operate out of the building.

Item ZON2018-00198

Date 10/17/18

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

(Circle One)

RECEIVED
COMMUNITY DEVELOPMENT

Print Name Sandi + Dave Deery

Signature Sandi Deery

Address 2824 E Kenyon Ave

OCT 17 2018

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

We do not want more traffic on Easter Lake Drive. We already have enough gas stations and daycare close to Easter Lake Estates.

22

Item

ZON2018-00198

Date

10-11-18

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

RECEIVED

COMMUNITY DEVELOPMENT

Print Name LARRIE BEER

Signature

[Signature]

OCT 15 2018

Address 2980 EASTER LAKE DRIVE

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



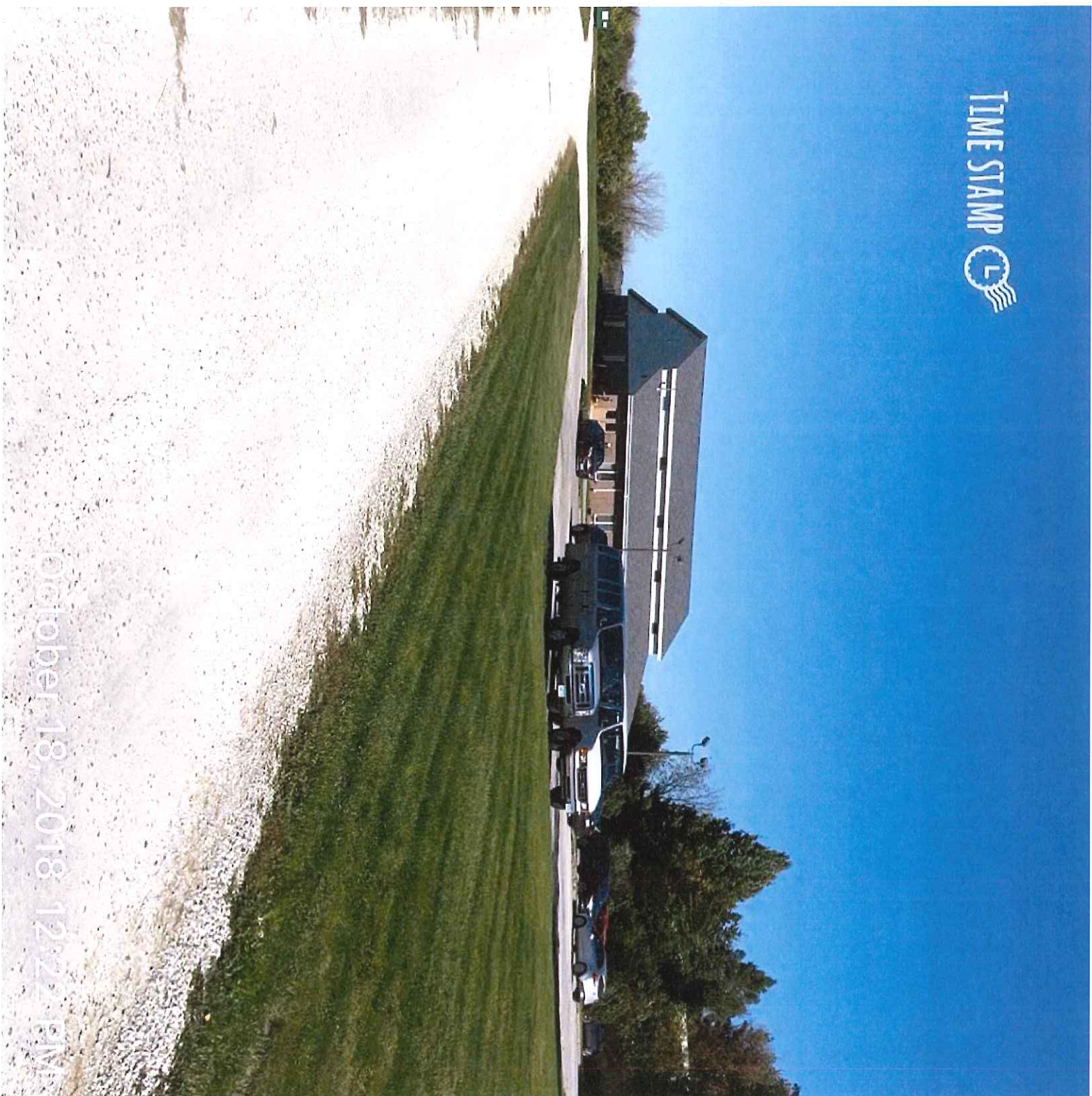
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TIME STAMP 



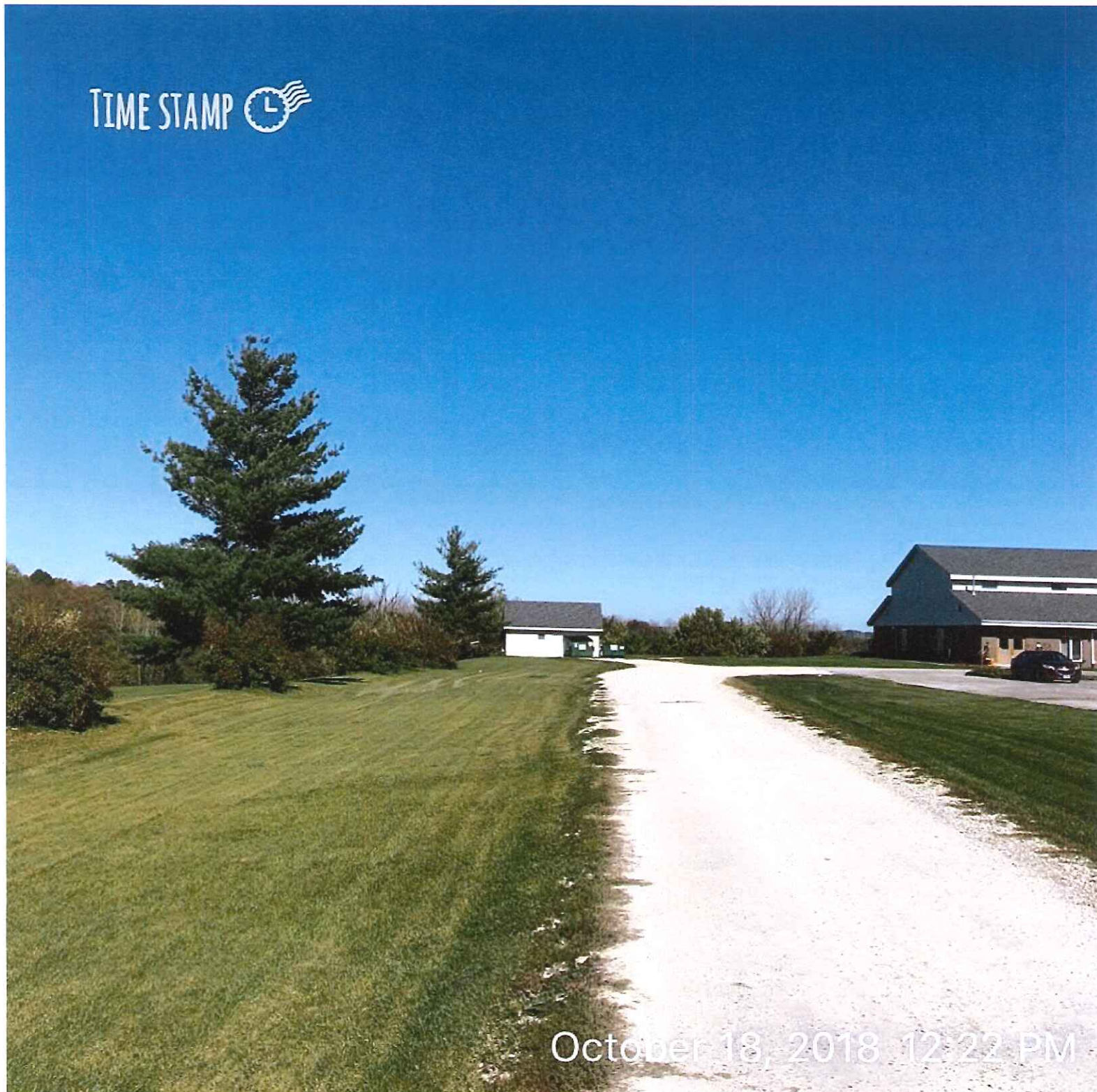
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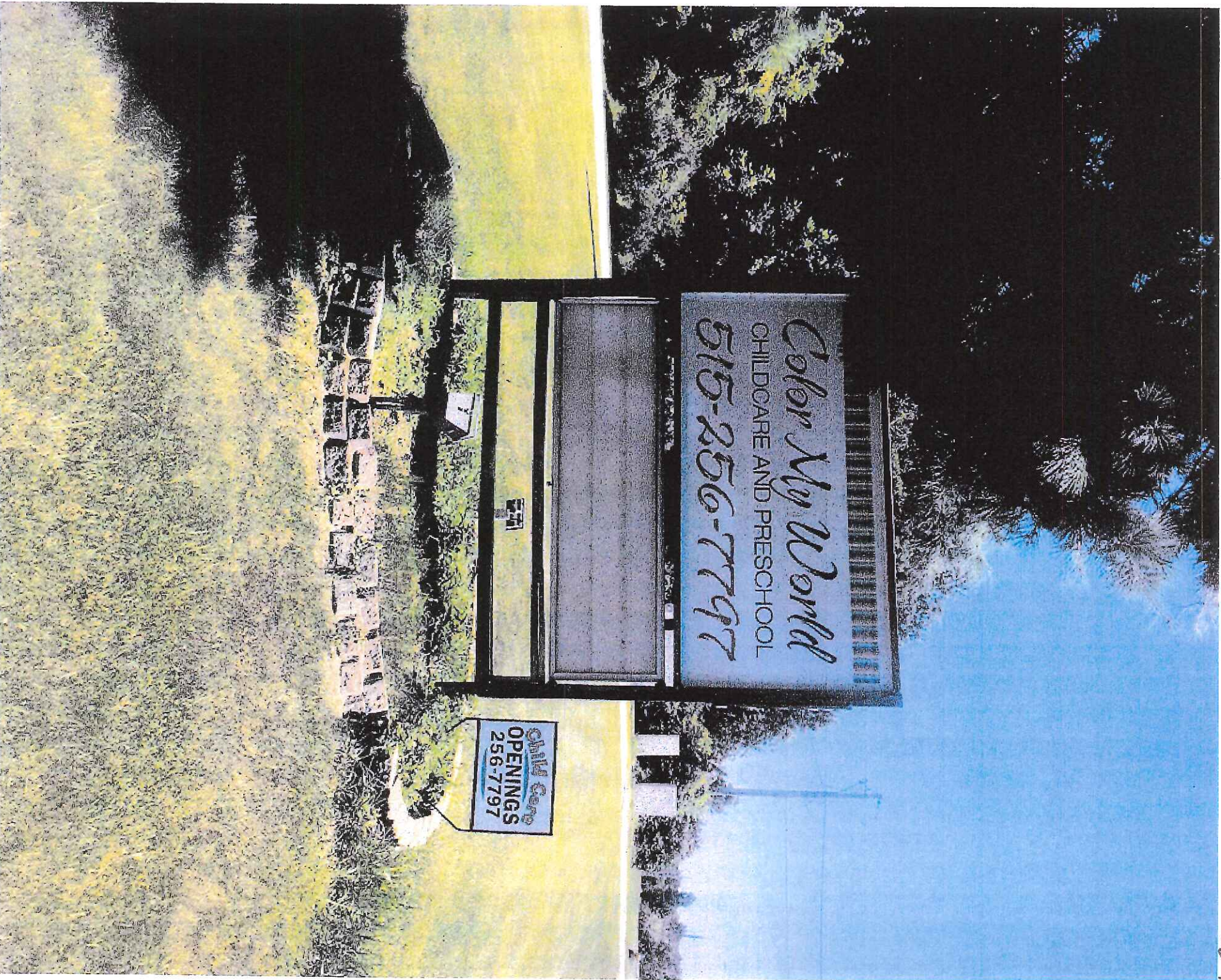
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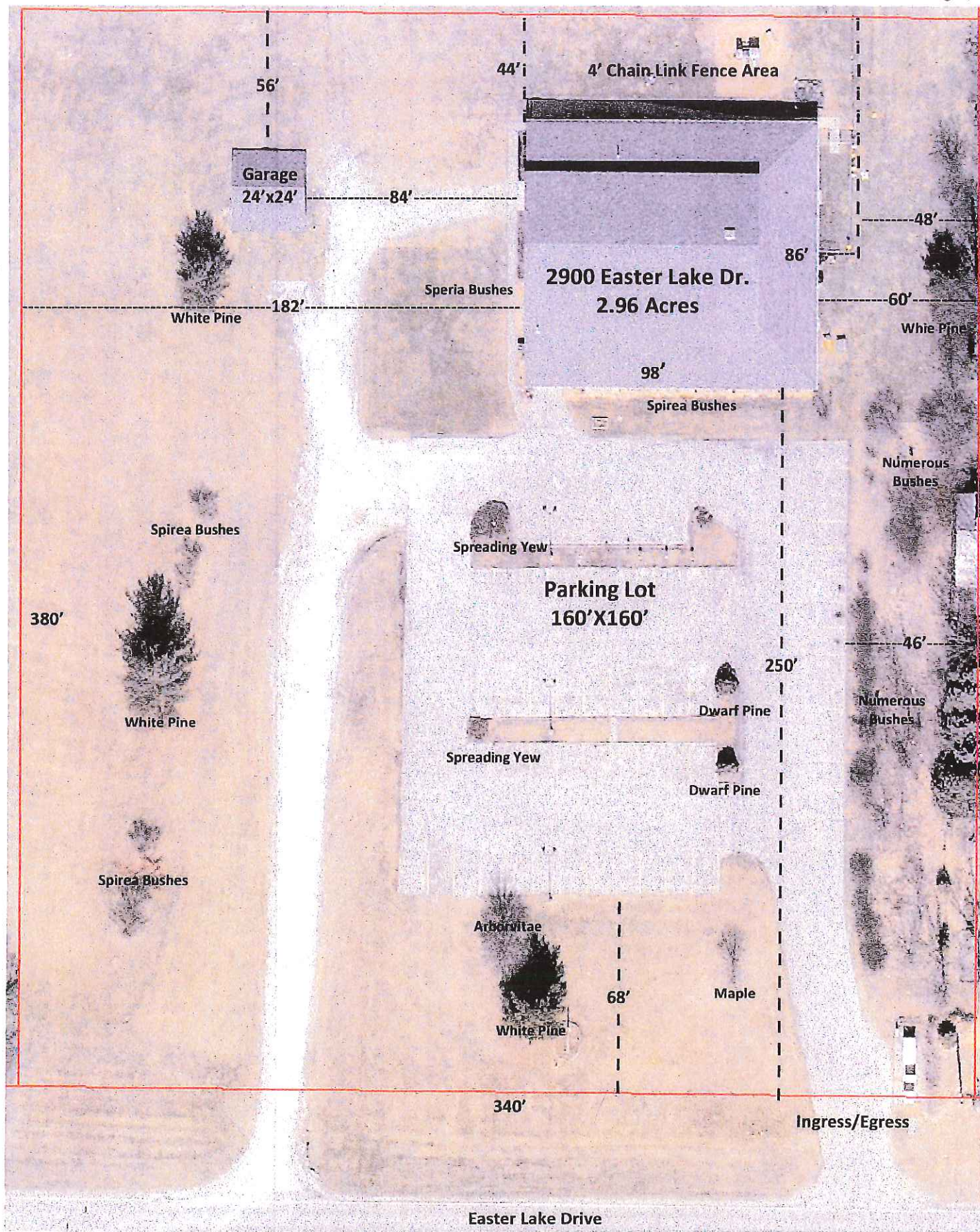
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**2900 Easter Lake Drive
Des Moines , Iowa 50320**

