



Date October 14, 2019

RESOLUTION HOLDING HEARING ON REQUEST FROM IOWA FIREWORKS COMPANY, LLC TO REZONE PROPERTY LOCATED AT 1820 EAST ARMY POST ROAD

WHEREAS, on September 23, 2019, by Roll Call No. 19-1490, the City Council received a communication from the City Plan and Zoning Commission advising that at a public hearing held on September 5, 2019, its members voted 10-1 in support of a motion to recommend DENIAL of a request from Iowa Fireworks Company, LLC (purchaser), represented by Jeremiah Terhark (officer), to rezone property located at 1820 East Army Post Road ("Property") and add zoning conditions permitting as principal uses the sale and warehousing of consumer fireworks in the existing Limited "M-1" Light Industrial District, to allow for the Property to be occupied by a business involving the sale and storage of fireworks; and

WHEREAS, on September 23, 2019, by Roll Call No. 19-1490, it was duly resolved by the City Council that the application of Iowa Fireworks Company, LLC to rezone the Property, legally described as follows, be set down for hearing on October 14, 2019 at 5:00 p.m. in the Council Chamber at the Council Chambers:

LOT 41 IN NEW HOPE, AN OFFICIAL PLAT, EXCEPT COMMENCING AT THE SOUTHWEST CORNER OF LOT 41 IN NEW HOPE; THENCE NORTH 33.3 FEET ALONG THE WEST LINE OF LOT 41; THENCE EASTERLY TO A POINT ON THE EAST LINE OF LOT 41; 30.8 FEET NORTH OF THE SOUTHEAST CORNER OF LOT 41; THENCE SOUTH 30.8 FEET ALONG THE EAST LINE OF LOT 41 TO THE SOUTHEASTERN CORNER OF LOT 41; THENCE WEST TO THE POINT OF BEGINNING, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA. SUBJECT TO ALL EASEMENTS, COVENANTS, AND RESTRICTIONS OF RECORD; 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 rezoning; 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.

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 statements of interested persons and arguments of counsel, any and all comments for and against the proposed rezoning of the Property to add zoning conditions permitting as principal uses the sale and warehousing of consumer fireworks in the existing Limited "M-1" Light Industrial District, to allow for the Property to be occupied by a business involving the sale and storage of fireworks, are hereby received and filed, and the hearing is closed.



**Roll Call Number**

**Agenda Item Number**

68B

Date October 14, 2019

**Alternative A**


MOVED by \_\_\_\_\_ to adopt and **DENY** the proposed rezoning, and to make the following findings of fact regarding the proposed rezoning:

- a. The City Plan and Zoning Commission voted 10-1 to recommend denial of the requested rezoning of the Property to add zoning conditions permitting as principal uses the sale and warehousing of consumer fireworks in the existing Limited "M-1" Light Industrial District, to allow for the Property to be occupied by a business involving the sale and storage of fireworks.
- b. The PlanDSM: Creating Our Tomorrow Plan future land use designation of the Property is Business Park, which is not in conformance with the proposed Industrial use of the Property as stated above.
- c. Industrial development such as that proposed by Iowa Fireworks Company, LLC should be focused in areas of the City that are already designated for such uses; the subject property is located along East Army Post Road in an area that contains primarily commercial and residential uses and development as a commercial corridor is more appropriate for the surrounding neighborhood.
- d. If the application of the existing zoning regulations has the effect of denying the owner all economic use of the Property, then the appropriate remedy is to seek relief from the Zoning Board of Adjustment.

**Alternative B**

MOVED by \_\_\_\_\_ to continue the public hearing until November 4, 2019, at 5:00 p.m. in the Council Chambers at City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa, and to direct the City Manager and Legal Department to prepare the necessary legislation to **APPROVE** the rezoning subject to conditions acceptable to the City and the owner(s).

FORM APPROVED:

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

(ZON2019-00151)

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





Date October 4, 2019  
 Agenda Item 68B  
 Roll Call # \_\_\_\_\_

September 17, 2019

Honorable Mayor and City Council  
 City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their September 5, 2019 meeting, the following action was taken regarding a request from Iowa Fireworks Company, LLC (purchaser) represented by Jeremiah Terhark (officer) to rezone the property located at 1820 East Army Post Road from Limited "M-1" Light Industrial District to Limited "M-1" Light Industrial District whereby retail sales of consumer fireworks and warehousing are added as permitted uses.. The subject property is owned by McFadden Holdings, LLC.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 11-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus				X
Dory Briles				X
Abby Chungath	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			
Rocky Sposato	X			
Steve Wallace	X			
Greg Wattier	X			
Emily Webb	X			

**APPROVAL** of Part A) the Commission find that the requested rezoning to "M-1" Light Industrial District is **not** in conformance with the PlanDSM: Creating Our Tomorrow land use plan, **APPROVAL** of Part B) to deny the request to amend PlanDSM Creating Our

Tomorrow to revise the Future Land Use designation from Business Park to Industrial and **APPROVAL** of Part C) to deny the requested rezoning. (ZON2019-00151)

Written Responses

0 in Favor

0 in Opposition

**STAFF RECOMMENDATION TO THE P&Z COMMISSION**

Part A) Staff recommends that the Commission find that the requested rezoning to "M-1" Light Industrial District is not in conformance with the PlanDSM: Creating Our Tomorrow land use plan.

Part B) Staff recommends denial of the request to amend PlanDSM Creating Our Tomorrow to revise the Future Land Use designation from Business Park to Industrial.

Part C) Staff recommends denial of the requested rezoning.

Should the rezoning be denied, the applicant would have up to one (1) year following that denial to seek a Use Variance from the Zoning Board of Adjustment to allow use of the property for a specific commercial use. Such a Use Variance would not require an amendment to the PlanDSM Creating Our Tomorrow future land use plan.

**STAFF REPORT TO THE PLANNING COMMISSION**

**I. GENERAL INFORMATION**

**1. Purpose of Request:** The rezoning would allow the property to be occupied by a business that involves the sale and storage of fireworks. The City's Zoning Ordinance only allows this type of business to be located within an "M" Industrial District. City Code Section 134-1281 further requires any sale and storage of fireworks to be the primary use of a property rather than an accessory use.

Should the rezoning be denied, the applicant would have up to one (1) year following that denial to seek a Use Variance from the Zoning Board of Adjustment to allow use of the property for a specific commercial use. Such a Use Variance would not require an amendment to the PlanDSM Creating Our Tomorrow future land use plan.

**2. Size of Site:** 46,173 square feet or 1.06 acres.

**3. Existing Zoning (site):** Limited "M-1" General Retail and Highway Oriented Commercial District and "FSO" Freestanding Signs Overlay District.

**4. Existing Land Use (site):** The site contains a vacant commercial structure previously occupied by tavern and restaurant uses, and a parking lot.

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



**North** – “C-2”, Use is an undeveloped parcel with frontage on Southeast 19<sup>th</sup> Street.

**South** - “M-1”, Use is an implement retail business with outdoor storage (Farm & City Supply).

**East** – “C-2”, Use is a vacant commercial structure most recently occupied as a bail bonds business.

**West** – “C-2”, Use is miniwarehouse (Budget Storage).

6. **General Neighborhood/Area Land Uses:** The subject property is located along the north side of the East Army Post Road highway commercial corridor east of the Southeast 14<sup>th</sup> Street intersection.
7. **Applicable Recognized Neighborhood(s):** The subject property is located within the Easter Lake Area Neighborhood. The neighborhood was notified of the meeting by mailing of the Preliminary Agenda to all recognized neighborhoods on August 16, 2019. Additionally, separate notifications of the hearing for this specific item were mailed on August 16, 2019 (20 days prior to the hearing) and August 26, 2019 (10 days prior to the hearing), to the neighborhood association and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site. A Final Agenda for the meeting was mailed to all the recognized neighborhood associations on August 26, 2016.

All agendas and applicable 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 mailings were sent to Jim Bollard, 4007 Southeast 26<sup>th</sup> Street, Des Moines, IA 50320.

The applicant is scheduled to conduct a neighborhood meeting on August 30, 2019 and will be available to provide a summary at the public hearing.

8. **Relevant Zoning History:** On September 26, 2016, the City Council adopted Ordinance 15,510 to rezone the property from “C-2” General Retail and Highway-Oriented Commercial District to “M-1” Light Industrial District. This rezoning did not necessitate an amendment to the PlanDSM future land use designation of Business Park since the ordinance imposes the following conditions.
- (1) Permitted uses on the Property shall be limited to the following:
    - a) Uses as permitted in the “C-2” District, excluding adult entertainment businesses, taverns or nightclubs, liquor stores, off-premises advertising signs, and financial service centers that provide check cashing and loans secured by postdated checks or payroll guarantee as their primary activity; and
    - b) Fencing contractor business with retail, office and outdoor storage components.
  - (2) Any outdoor storage on the Property shall comply with the following requirements:
    - a) Any outdoor storage shall be located to the north (rear) of the structure.



- b) Any outdoor storage shall be screened from view with fencing of a height and material acceptable to the Planning Administrator, and one (1) evergreen tree shall be provided every 10 lineal feet along the exterior of the fence.
  - c) No items within any outdoor storage area shall be stacked higher than the perimeter screening.
  - d) Any storage area and driveways shall be surfaced with an asphaltic or Portland cement binder pavement or such other surfaces as shall be approved by the City Engineer so as to provide a durable and dustless surface, and shall be so graded and drained as to dispose of all surface water accumulation within the area.
- (3) Prior to issuance of any Certificate of Occupancy for the Property, the Property shall be brought into conformance with a Site Plan as reviewed and approved by the City's Permit and Development Center.
  - (4) Any development of the Property shall comply with the City's Landscaping Standards as applicable in the "C-2" General Retail and Highway Oriented Commercial District.

**9. PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:** Business Park, described as, "Accommodates light industrial, office and employment uses along with limited complementary retail uses. Industrial uses in this category would produce little or no noise, odor, vibration, glare, or other objectionable influences and would have little or no adverse effect on surrounding properties."

**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 Plan Land Use Plan Designation:** The proposed rezoning would require the Future Land Use Map to be amended to the "Industrial" designation. Plan DSM describes this designation as follows:

*Accommodates industrial development and limited supporting commercial uses. Development in this classification could have large impact on adjoining properties and the environment which would need to be mitigated.*

Staff believes that industrial development should be focused in areas of the City that are already designated for those types of uses. The subject property is located along East Army Post Road in an area that contains primarily commercial and residential uses. Furthermore, the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designates this area for future business park development, which would be hindered by an industrial use.



Should the rezoning be denied, the applicant would have up to one (1) year following that denial to seek a Use Variance from the Zoning Board of Adjustment to allow use of the property for a specific commercial use. Such a Use Variance would not require an amendment to the PlanDSM Creating Our Tomorrow future land use plan.

2. **Fireworks Regulations:** In accordance with City Code Section 134-1281, retail sales of consumer fireworks are regulated as follows:
  - (a) Retail sales of Consumer Fireworks, as defined in chapter 46 of this code, shall be permitted only in those zoning districts where such sales are specifically classified as permitted uses by applicable district regulations.
  - (b) In each zoning district where retail sales of Consumer Fireworks, as defined in chapter 46 of this code, are classified as a permitted use, such sales shall be permitted only as a principal permitted use and not as an accessory use.
  - (c) In each zoning district where retail sales of Consumer Fireworks, as defined in chapter 46 of this code, are classified as a permitted use, such sales shall be undertaken in full compliance with chapter 46 of this code.
  
3. **Utilities:** There is an existing 16-inch water main in the East Army Post Road right-of-way. There are no public sanitary or storm sewers in the area to serve the property, as the nearest sewers are over ¼-mile to the west. The property is within a sewer connection fee area. As such, the property would be assessed a fee at any time in the future that there is a sewer available to the property and the property seeks to utilize it. The existing building has a private septic system.
  
4. **Site Plan Requirements:** Any construction or change of use on the site must be in compliance with the City's Site Plan regulations, including those regarding storm water management; off-street parking grading and soil erosion protection; tree removal and mitigation; landscaping and buffering, pavement design; and traffic and fire access. Any site plan must identify any lateral lines for any septic system that is on the property to ensure they are protected.
  
5. **Landscaping & Buffering:** Any development of the site would require landscaping in accordance with the City's Landscape Standards. These standards generally include open space, bufferyard, and parking lot plantings. Staff notes that any future Site Plan would be required to provide a 7-foot landscaped paving setback along the front property line.

Future development of the site would also be subject to the City's Tree Removal and Mitigation Ordinance (Section 42-550 of the City Code).
  
6. **Drainage/Grading:** Any additional development of the site must comply with the City's Stormwater Management requirements to the satisfaction of the City's Permit and Development Center. All grading is subject to an approved grading permit and soil erosion control plan.
  
7. **Access or Parking:** The site has an existing access drive to East Army Post Road, which should remain in its current location to align with the driveway across East Army Post Road to the south.



8. **Building and Fire Codes:** Any future renovation of the structure must be in accordance with all Building and Fire Codes, with issuance of all necessary permits from the City's Permit & Development Center. Since the existing structure has a minimal setback from the west property line, special fire-rated construction or a no-build easement on the adjoining parcel may be required.

## **SUMMARY OF DISCUSSION**

Erik Lundy presented staff report and recommendation.

Emily Webb asked how long the building has been vacant.

Erik Lundy stated approximately 5 years.

Jeremiah Terhark 4732 72<sup>nd</sup> Street, stated he conducted a neighborhood meeting on August 30<sup>th</sup> to receive community input. He does understand there has been a lot of false starts in this building and the front façade needs work. He understands that industrial use in this part of town is a concern and that's why he has proposed a limited usage specifically for fireworks. On approval of this limited use, they would work with City staff to bring this site up to compliance with City code and have engaged TDG architects to help them with that.

Greg Wattier asked if the company puts on fireworks shows.

Jeremiah Terhark stated they are a consumer retail fireworks business, they do not have a license to put on shows.

Greg Wattier asked if they sell year around?

Jeremiah Terhark stated they only sell from June 13<sup>th</sup> through July 8<sup>th</sup> as the State of Iowa allows.

## **CHAIRPERSON OPENED THE PUBLIC HEARING**

Nobody was present or requested to speak.

## **CHAIRPERSON CLOSED THE PUBLIC HEARING**

### **COMMISSION ACTION:**

Rocky Sposato made a motion for **APPROVAL** of Part A) the Commission find that the requested rezoning to "M-1" Light Industrial District is **not** in conformance with the PlanDSM: Creating Our Tomorrow land use plan, **APPROVAL** of Part B) to deny the request to amend PlanDSM Creating Our Tomorrow to revise the Future Land Use designation from Business Park to Industrial and **APPROVAL** of Part C) to deny the requested rezoning.

Erik Lundy noted that a 6/7<sup>th</sup> vote of the Council would be required to over-ride the P&Z recommendation. Should the rezoning be denied, the applicant would have up to one (1) year following that denial to seek a Use Variance from the Zoning Board of Adjustment to



allow use of the property for a specific commercial use. Such a Use Variance would not require an amendment to the PlanDSM Creating Our Tomorrow future land use plan.

Motion Carried: 11-0

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. Ludwig", is written over the typed name.

Michael Ludwig, AICP  
Planning Administrator

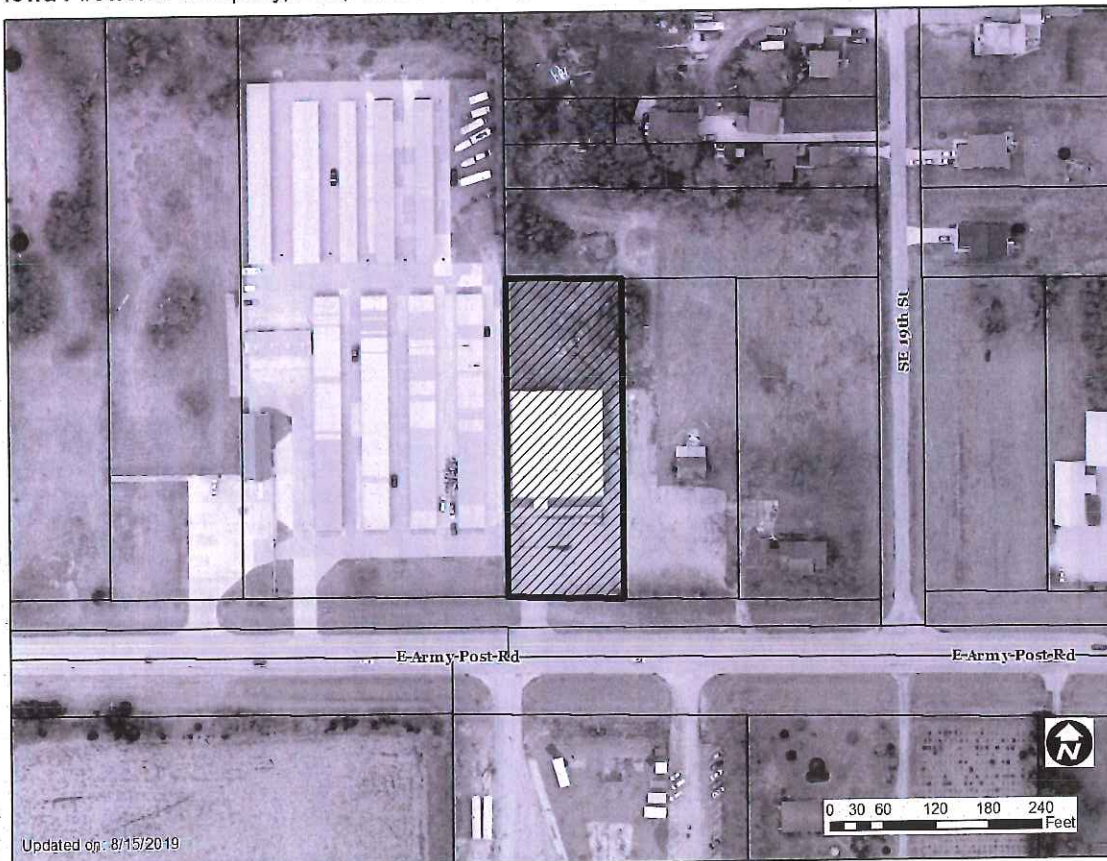
MGL:tjh

68B

Iowa Fireworks Company, LLC (purchaser) represented by Jeremiah Terhark (officer) for the property located at 1820 East Army Post Road. The subject property is owned by McFadden Holdings, LLC				File #	
				21-2019-4.14	
Description of Action	Amend the PlanDSM Creating Our Tomorrow to revise existing Future Land Use designation from Business Park to Industrial.				
PlanDSM Future Land Use	Current: Business Park. Proposed: Industrial.				
Mobilizing Tomorrow Transportation Plan	No planned improvements.				
Current Zoning District	Limited "M-1" Light Industrial District and "FSO" Freestanding Signs Overlay District.				
Proposed Zoning District	N/A.				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Outside Area (200 feet)	0	0			
Within Subject Property					
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes	X
	Denial	X		No	

Iowa Fireworks Company, LLC, 1820 East Army Post Road

21-2019-4.14



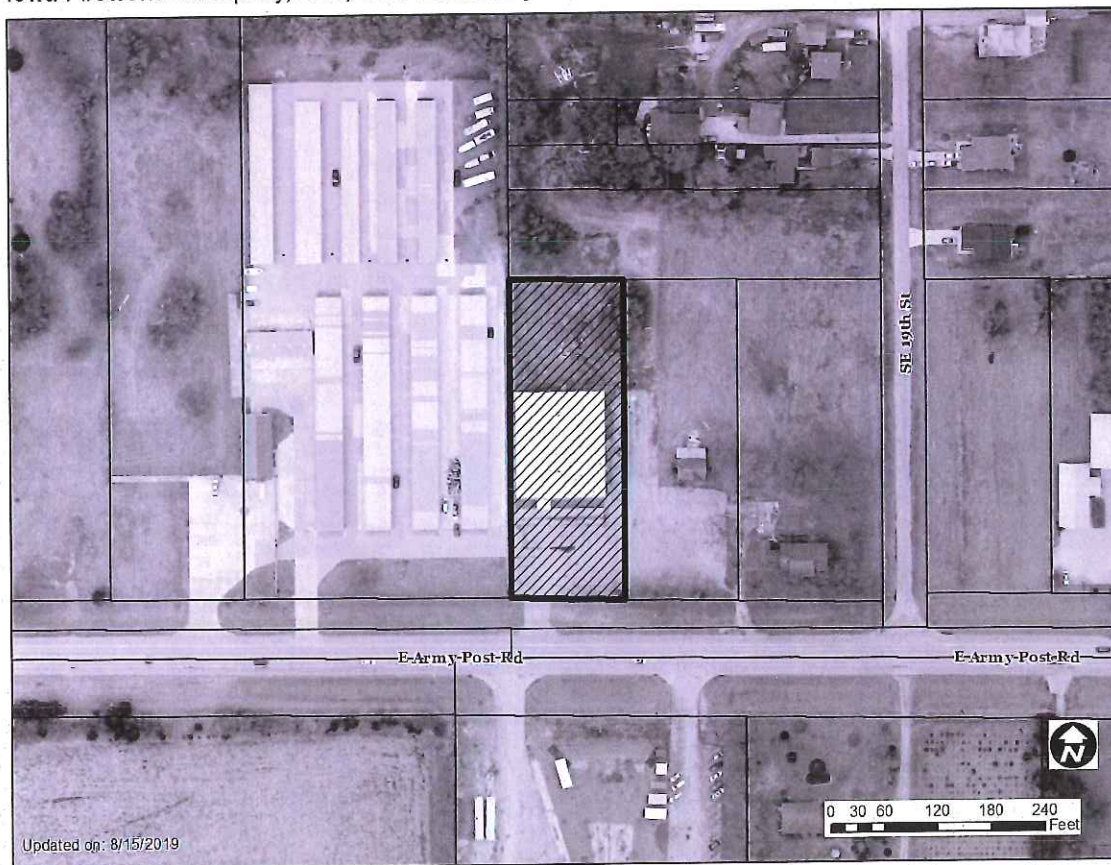


68B

Iowa Fireworks Company, LLC (purchaser) represented by Jeremiah Terhark (officer) for the property located at 1820 East Army Post Road. The subject property is owned by McFadden Holdings, LLC				File # ZON2019-00151	
Description of Action	Rezone property from Limited "M-1" Light Industrial District to Limited "M-1" Light Industrial District whereby retail sales of consumer fireworks and warehousing are added as permitted uses.				
Plan/DSM Future Land Use	Current: Business Park. Proposed: Industrial.				
Mobilizing Tomorrow Transportation Plan	No planned improvements.				
Current Zoning District	Limited "M-1" Light Industrial District and "FSO" Freestanding Signs Overlay District.				
Proposed Zoning District	N/A.				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Outside Area (200 feet)	0	0			
Within Subject Property					
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes	X
	Denial	X		No	

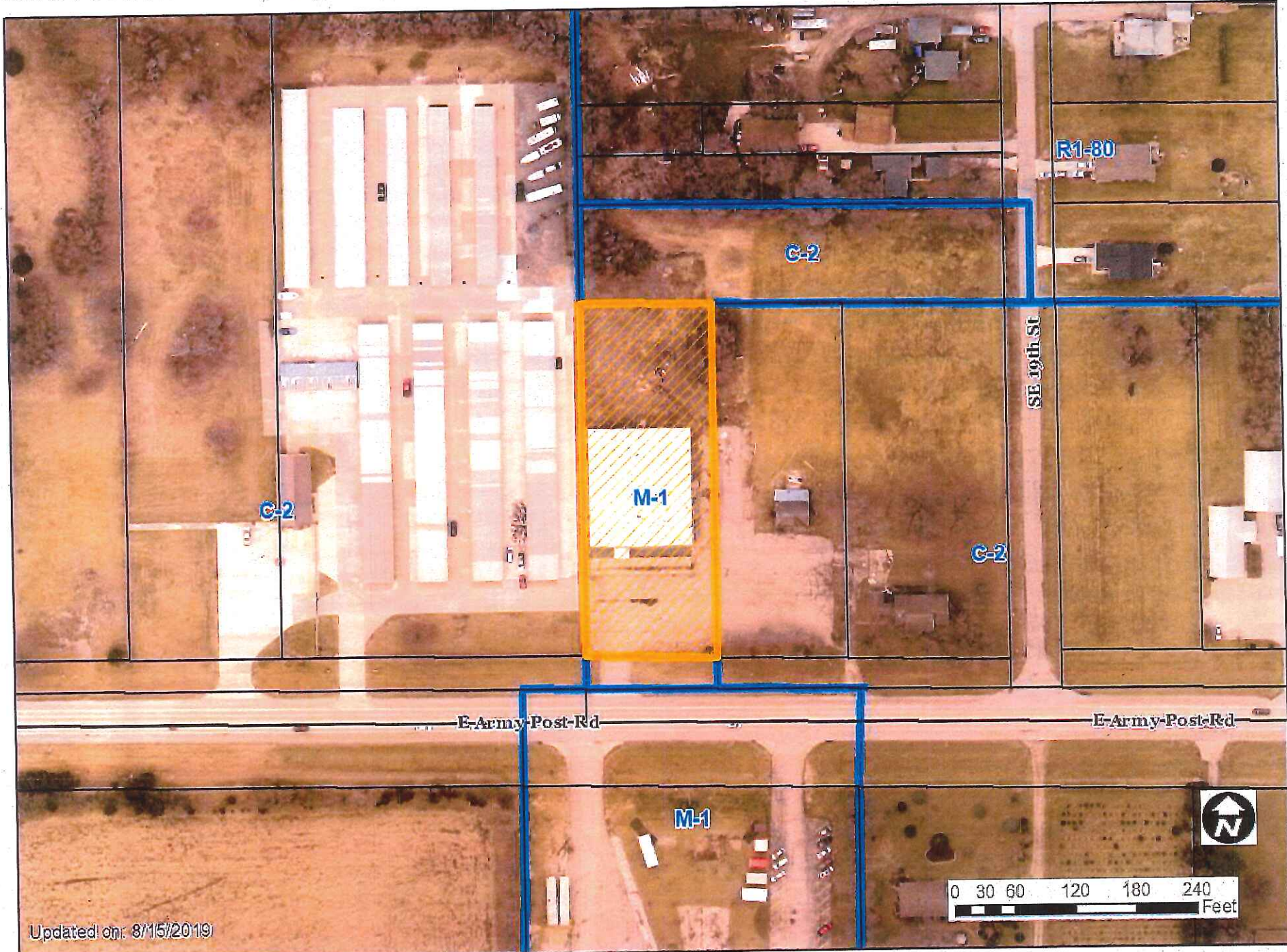
Iowa Fireworks Company, LLC, 1820 East Army Post Road

ZON2019-00151



1 inch = 127 feet



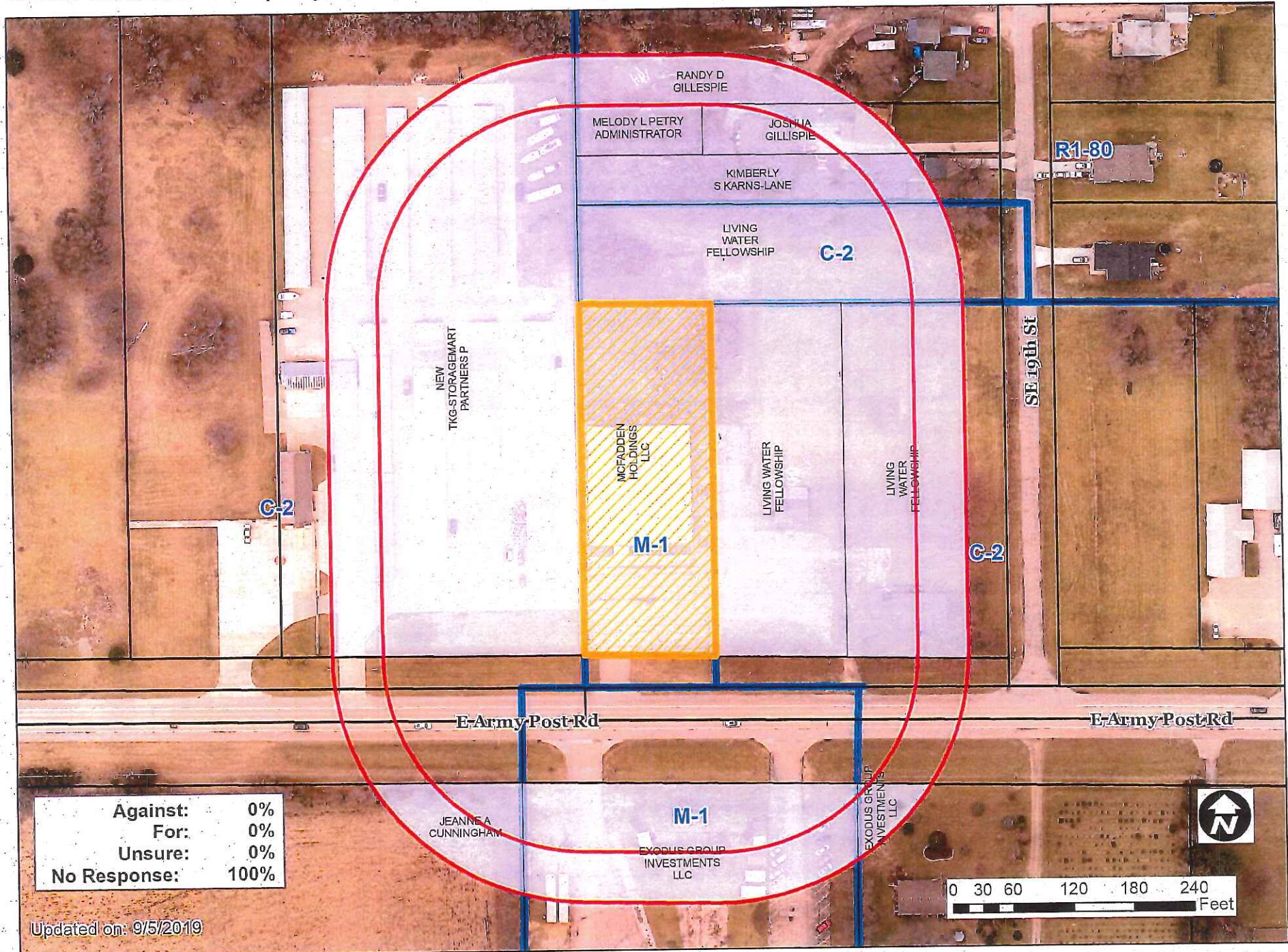


Updated on: 8/15/2019

1 inch = 127 feet

WBB





Against:	0%
For:	0%
Unsure:	0%
No Response:	100%

Updated on: 9/5/2019

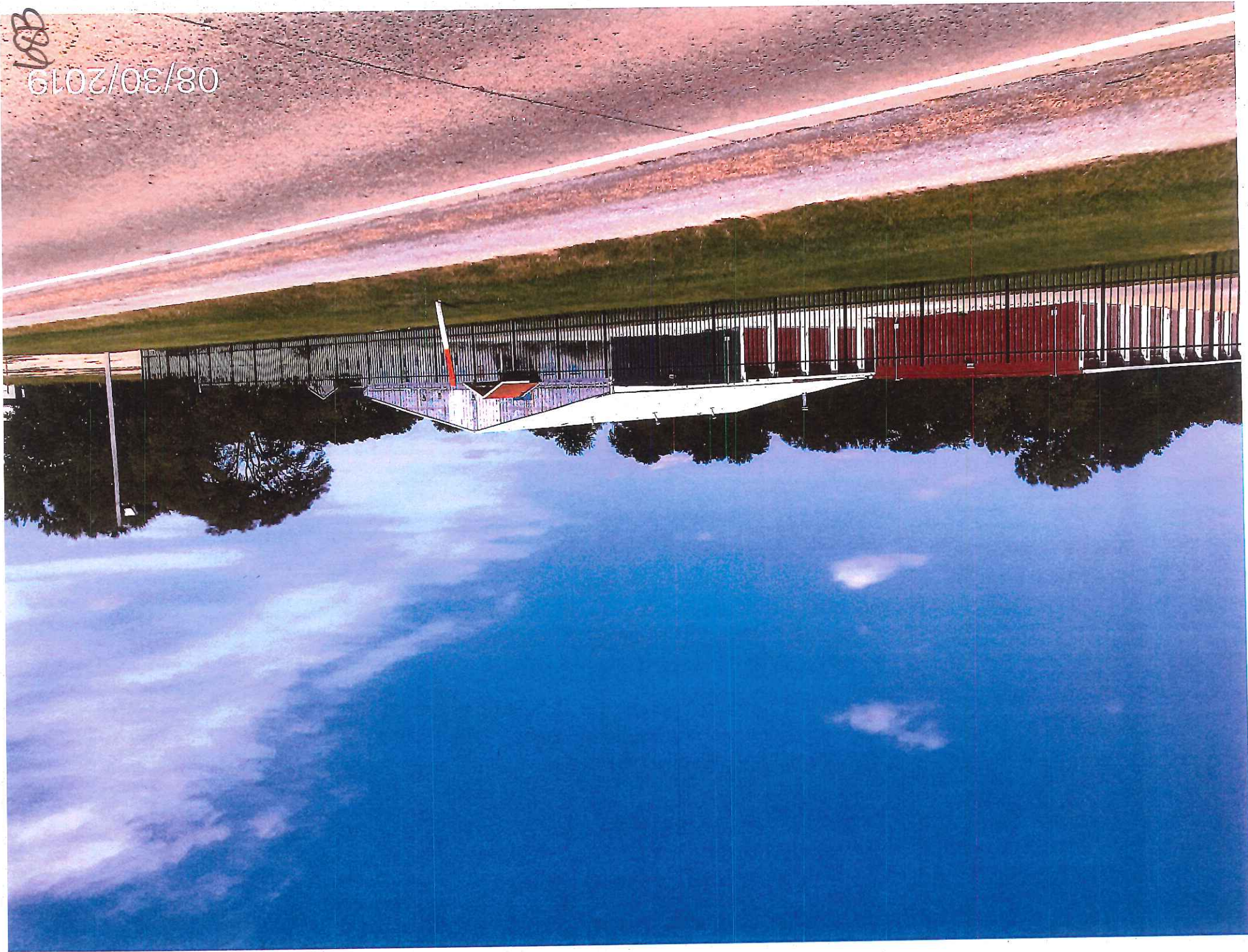
1 inch = 127 feet

USB



VBB

08/30/2019







08/30/2019

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