

Date December 7, 2020

RESOLUTION HOLDING HEARING ON REQUEST FROM TIGER KNIGHT, LLC TO AMEND PLANDSM FUTURE LAND USE DESIGNATION AND TO REZONE PROPERTY LOCATED AT 1210 AND 1220 ARMY POST ROAD

WHEREAS, on November 23, 2020, by Roll Call No. 20-1866, the City Council received a communication from the City Plan and Zoning Commission advising that at a public hearing held on November 5, 2020, its members voted 14-0 in support of a motion to recommend **APPROVAL** of a request from Tiger Knight, LLC (owner), represented by Barry Nelson (officer), to amend the PlanDSM: Creating Our Tomorrow future land use designation for the southern portion of real property locally known as 1210 and 1220 Army Post Road (collectively “Property”) from Low Density Residential within a Community Node to Community Mixed Use within a Community Node, to allow rezoning to Limited MX3 Mixed Use District and use of the existing commercial building for a greater variety of permitted mixed uses such as retention of a lawncare business in operation on the Property; and

WHEREAS, on November 23, 2020, by Roll Call No. 20-1866, the City Council further received the City Plan and Zoning Commission’s recommendation that at a public hearing held on November 5, 2020, its members voted 14-0 in support of a motion to recommend **APPROVAL** of a request from Tiger Knight, LLC to rezone the entirety of the Property from RX1 Neighborhood Mix District to Limited MX3 Mixed Use District for the above-stated purpose, subject to the following conditions:

1. The following uses shall be prohibited on the Property:
 - a. Animal Boarding.
 - b. Bar.
 - c. Bail Bonds.
 - d. Delayed Deposit Service.
 - e. Pawnbroker.
 - f. Sign, General Advertising (billboard).
 - g. Vehicle Sales & Service Category, including Fuel Station, Vehicle Sales, Vehicle Rental, and Vehicle Maintenance/Repair, Minor.
 - h. Any use that that involves the sale or service of alcoholic liquor, wine, and/or beer.
2. Any commercial use on the Property shall be in accordance with all Site Plan and Building Code requirements, including issuance of all necessary permits by the City’s Permit & Development Center.
3. No commercial use of the Property shall commence until a Certificate of Occupancy for such use has been issued by the City’s Permit & Development Center; and

WHEREAS, on November 23, 2020, by Roll Call No. 20-1866, it was duly resolved by the City Council that the request to amend the land use designation and to rezone the Property be set down for hearing on December 7, 2020 at 5:00 P.M., by electronic means in accordance with the Governor’s and Mayor’s Proclamations and to encourage and maintain social distancing to curb the spread of COVID19 in the community, without public access to the meeting location; 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 land use amendment and rezoning; and

Date December 7, 2020

WHEREAS, in accordance with said notice, those interested in said proposed land use amendment and 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 1210 and 1220 Army Post Road, legally described as:

LOTS 1, 2, 3, AND 392, DAVID MCKEE PLACE, AN OFFICIAL PLAT RECORDED IN BOOK "H" PAGE 16 AT THE POLK COUNTY RECORDER'S OFFICE, EXCEPTING THEREFROM THE NORTH 10 FEET FROM SAID LOTS 1, 2, 3 AND 392 AND FURTHER EXCEPTING THE SOUTH 109 FEET OF SAID LOT 392, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA

from RX1 Neighborhood Mix District to Limited MX3 Mixed Use District to allow use of the existing commercial building for a greater variety of permitted mixed uses such as retention of a lawncare business in operation on the Property.

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 amendment to the PlanDSM future land use designation or rezoning of the Property to Limited MX3 Mixed Use District are hereby overruled, and the hearing is closed.
2. The proposed amendment to the PlanDSM: Creating Our Tomorrow Plan for the Property locally known as 1210 and 1220 Army Post Road to Community Mixed Use within a Community Node is hereby approved.
3. The proposed rezoning of the Property, as legally described above, to Limited MX3 Mixed Use District, 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:

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

(21-2020-4.24)
(ZON2020-00120)

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

MOTION CARRIED

APPROVED

CERTIFICATE

I, P. KAY CMELIK, 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 December 7, 2020
Agenda Item 39
Roll Call # _____

November 17, 2020

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their November 5, 2020 meeting, the following action was taken regarding a request from Tiger Knight, LLC (owner) represented by Barry Nelson (officer) to rezone property located at 1210 and 1220 Army Post Road from "RX1" Neighborhood Mix District to "MX3" Mixed Use District to allow the existing commercial building to be used for a greater variety of permitted mixed uses.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 14-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus	X			
Dory Briles	X			
Abby Chungath	X			
Kayla Berkson	X			
Jann Freed	X			
Johnny Alcivar	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 the requested rezoning is not in conformance with PlanDSM; Creating Our Tomorrow Plan, which designates the southern portion of the subject property as "Low Density Residential" within a Community Node, Part B)

APPROVAL of an amendment to the PlanDSM Creating Our Tomorrow Plan to revise the future land use classification for the southern portion of the subject property from "Low

Density Residential” within a Community Node to “Community Mixed Use” within a Community Node, Part C) **APPROVAL** of the requested rezoning of the property from “RX1” Mixed Use District to “MX3” Mixed Use District, subject to the following conditions:

1. The following uses shall be prohibited:
 - a. Animal Boarding.
 - b. Bar.
 - c. Bail Bonds.
 - d. Delayed Deposit Service.
 - e. Pawnbroker.
 - f. Sign, General Advertising (billboard).
 - g. Vehicle Sales & Service Category, including Fuel Station, Vehicle Sales, Vehicle Rental, and Vehicle Maintenance/Repair, Minor.
 - h. Any use that that involves the sale or service of alcoholic liquor, wine, and/or beer.
2. Any commercial use on the property shall be in accordance with all Site Plan and Building Code requirements, which issuance of all necessary permits by the City’s Permit & Development Center.
3. No commercial use of the property shall commence until a Certificate of Occupancy for such use has been issued by the City’s Permit & Development Center.

(21-2020-4.24 & ZON2020-00120)

Written Responses

0 in Favor

3 in opposition

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the Commission find the requested rezoning is not in conformance with PlanDSM; Creating Our Tomorrow Plan, which designates the southern portion of the subject property as “Low Density Residential” within a Community Node.

Part B) Staff recommends approval of an amendment to the PlanDSM Creating Our Tomorrow Plan to revise the future land use classification for the southern portion of the subject property from “Low Density Residential” within a Community Node to “Community Mixed Use” within a Community Node.

Part C) Staff recommends approval of the requested rezoning of the property from “RX1” Mixed Use District to “MX3” Mixed Use District, subject to the following conditions:

1. The following uses shall be prohibited:
 - a. Animal Boarding.
 - b. Bar.
 - c. Bail Bonds.
 - d. Delayed Deposit Service.
 - e. Pawnbroker.
 - f. Sign, General Advertising (billboard).
 - g. Vehicle Sales & Service Category, including Fuel Station, Vehicle Sales, Vehicle Rental, and Vehicle Maintenance/Repair, Minor.

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2. Any commercial use on the property shall be in accordance with all Site Plan and Building Code requirements, which issuance of all necessary permits by the City's Permit & Development Center.
3. No commercial use of the property shall commence until a Certificate of Occupancy for such use has been issued by the City's Permit & Development Center.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicant is seeking to rezone the property to allow the existing commercial building to be used for a greater variety of permitted uses than allowed in the "RX1" District. The applicant indicates that they intend to divide the 13,475-square foot commercial building in to multiple tenant bays that could be leased for multiple uses. While retail and office uses would be allowed in "RX1" District, the requested "MX3" District is needed to allow retention of a lawncare business that has been operating on the site. This lawncare business is an "Industrial Service, Light" use, which would be allowed in the "MX3" District so long as there is no outdoor storage of materials or equipment. The applicant has also indicated that they would like the ability to sell vehicles from the property, which would also require the "MX3" District.
2. **Size of Site:** 1.25 acres.
3. **Existing Zoning (site):** "RX1" Mixed-Use District.
4. **Existing Land Use (site):** The site contains a 13,475-square foot commercial building and surface parking lot.
5. **Adjacent Land Use and Zoning:**

North – "RX1", Uses are Army Post Road, office, and auto repair.

South - "N3b", Uses are one-household residential lots.

East – "RX1", Use is retail (Betts Military Surplus).

West – "RX1", Use is a one-household residential dwelling.
6. **General Neighborhood/Area Land Uses:** The subject property is located along the Army Post Road commercial corridor. Low density residential neighborhood areas are generally to the north and south of the corridor.
7. **Applicable Recognized Neighborhood(s):** The subject property is within 250 feet of the Watrous South Neighborhood. All recognized neighborhoods were notified of the meeting by mailing of the Preliminary Agenda for the October 15, 2020 meeting on

September 25, 2020 and for the November 5, 2020 meeting on October 16, 2020. Additionally, separate notification of the hearing for this specific item was mailed on September 25, 2020 (20 days prior to the October 15, 2020 public hearing) and on October 5, 2020 (10 days prior to the October 15, 2020 public hearing), as well on October 15, 2020 (20 days prior to the November 5, 2020 public hearing) and on October 21, 2020 (10 days prior to the November 5, 2020 public hearing) to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the property. A final agenda was mailed on October 30, 2020.

All agendas are mailed to the primary contact person designated to the City of Des Moines Neighborhood Development Division by the recognized neighborhood association. The Watrous South Neighborhood mailings were sent to James Spiller, PO Box 35845, Des Moines, IA 50315.

During the Governor's emergency declaration due to the COVID-19 pandemic, the applicant is responsible for reaching out to the surrounding property owner within 250 feet through a written communication soliciting questions and input and providing responses. The applicant shall provide a report on the outcomes of this process prior to the Plan and Zoning Commission meeting, and provide a summary at the hearing.

- 8. Relevant Zoning History:** On April 3, 2017, the City Council denied a request to rezone the property to the "M-1" Light Industrial District to allow the appellant to use the building for warehouse, bowling pin refurbishing, and automobile painting. This denial of the rezoning allowed the appellant to request a Use Variance.

On May 24, 2017, the Zoning Board of Adjustment denied a request for a Use Variance to allow use of the existing building and proposed addition for an ice warehouse and distribution facility.

On June 27, 2018, the Zoning Board of Adjustment granted an Exception of 4 feet less than the minimum 20 feet of width required for a driveway for two-way circulation and an Exception of 14 parking spaces less than the minimum 76 off-street parking spaces required for 9,000 square feet of assembly use (1 space per 150 square feet) and for 5,051 square feet of retail space (1 space per 400 square feet for 4,000 square feet and 1 space per 200 square feet for the balance), to allow use of the existing building, as well as a proposed 18-foot by 32-foot (576 square feet) addition to the rear of the building, for a mix of uses, including 9,000 square feet of event center (assembly) use and 5,051 square feet of retail use. That approval was subject to the following conditions:

1. All driveways shall be paved to the satisfaction of the Planning Administrator.
2. The parking lot shall be expanded to provide at least 22 additional parking spaces in accordance with an approved Site Plan (minimum of 62 total parking spaces).
3. The entire site shall be brought into conformance with the City's Landscaping Standards.

4. All site improvements and landscaping identified on the approved Site Plan shall be installed prior to the issuance of a final Certificate of Occupancy (C.O.).

On December 16, 2019, the subject property was rezoned from “C-2” General Retail and Highway-Oriented Commercial District to “RX1” Mixed-Use District, as part of the Citywide rezoning established by Ordinance 15,818.

On May 20, 2020, a Plat of Survey (13-2020-1.48) was approved to create a 109-foot deep by 123-foot wide parcel with frontage along West Street immediately to the south of the subject property. There is currently a relocated manufactured home setting on the subject property, which is intended to be placed on this newly created lot.

9. **PlanDSM Future Land Use Plan Designation:** Most of the subject property is designed as “Community Mixed-Use” within a Community Node centered at the intersection of Army Post Road and Southwest 9th Street. However, the southern “leg” of the subject property, which measures 54.76 by 123.46 feet, is designated as Low-Density Residential.
10. **Applicable Regulations:** Taking into the consideration of 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:** The PlanDSM future land use map designates the Army Post Road commercial corridor as “Community Mixed Use”. The proposed “MX3” Mixed Use District is compatible with this designation. However, the southern portion of the subject property, which measures 54.76 by 123.46 feet, is designated as “Low-Density Residential”. Therefore, this area needs to be amended to “Community Mixed Use”.
2. **Staff Rationale:** The subject property was rezoned from “C-2” General Retail and Highway-Oriented Commercial District to “RX1” Mixed-Use District, on December 16, 2019, as part of the Citywide rezoning. The Army Post Road corridor to the west of Southwest 9th Street was designated as “RX1” District, which is the least intense commercial district, since the properties along this corridor are small and are generally near residential uses. However, the subject property (1.25 acres) is much larger than most properties in this area and, is large enough to provide the necessary buffering to accommodate some “MX3” District uses. However, staff does not believe that a vehicle sales or rental use is an appropriate use on this site.

Given the size of the property, and the existence of the large commercial structure, staff recommends that the rezoning to “MX3” District be subject to prohibition of the uses listed in Section III of this report.

SUMMARY OF DISCUSSION

Bert Drost presented the staff report and recommendation.

Barry Nelson 13947 Oak Brook Drive, Urbandale stated he would like to get back the C2 zoning due to the size of building and parking lot. He is currently trying to improve the property with an open site plan and 2 open building permits.

Rocky Sposato asked if he has tried to have conversation with the Neighborhood Association?

Barry Nelson stated he sent out a letter to everyone on the list provided by the City. He doesn't have a problem meeting with them if that's something they wish to do.

Greg Wattier asked what items within the staff recommendation concern him?

Barry Nelson stated the C2 zoning he previously had would have allowed for an auto dealership and vehicle repair. He has no plans for auto repair or dealership but does have a tenant that details cars and would like to sell a car every now and then. If the commission deems no vehicle sales or repairs, he would be willing to forgo that.

CHAIRPERSON OPENED THE PUBLIC HEARING

Mitch Harris 1508 McKinley Avenue stated he agrees with City Staff's recommendation including the prohibition on vehicle sales and services use category.

Barry Nelson stated he would like to know why Mr. Harris would like item G to remain in the recommendation.

Bert Drost stated the reason they left that condition in the recommendation is because of the amount of other vehicle display lots in the area. When you start to have a critical mass, it will affect the characteristics of the corridor.

Barry Nelson asked to hear the reason Mr. Harris was against it.

Bert Drost stated the applicant doesn't have the ability to cross-examine the witnesses in this case.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Johnny Alcivar stated they have enough Auto Sales and repair shops along the South side corridors and supports staff recommendation.

COMMISSION ACTION:

Johnny Alcivar made a motion for approval of Part A) the Commission find the requested rezoning is not in conformance with PlanDSM; Creating Our Tomorrow Plan, which designates the southern portion of the subject property as "Low Density Residential" within a Community Node, Part B) **APPROVAL** of an amendment to the PlanDSM Creating Our Tomorrow Plan to revise the future land use classification for the southern portion of the

subject property from “Low Density Residential” within a Community Node to “Community Mixed Use” within a Community Node, Part C) **APPROVAL** of the requested rezoning of the property from “RX1” Mixed Use District to “MX3” Mixed Use District, subject to the following conditions:

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 - a. Animal Boarding.
 - b. Bar.
 - c. Bail Bonds.
 - d. Delayed Deposit Service.
 - e. Pawnbroker.
 - f. Sign, General Advertising (billboard).
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3. No commercial use of the property shall commence until a Certificate of Occupancy for such use has been issued by the City’s Permit & Development Center.

Motion passed: 14-0

Respectfully submitted,



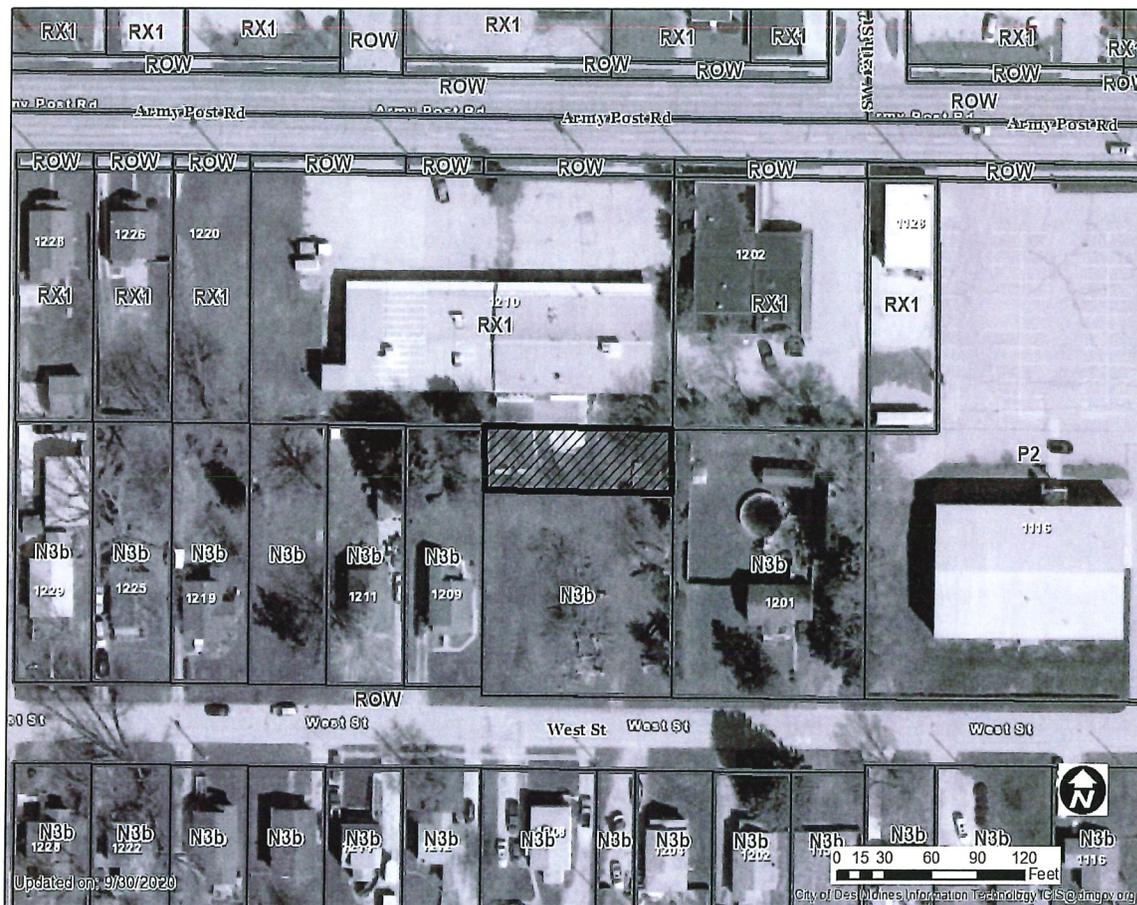
Michael Ludwig, AICP
Planning Administrator

MGL:tjh

Request from Tiger Knight, LLC (owner) represented by Barry Nelson (officer) for property at 1210 and 1220 Army Post Road.			File #	
			21-2020-4.24	
Description of Action	Amendment to the PlanDSM Creating Our Tomorrow Plan future land use classification from Low Density Residential within a Community Node to Community Commercial within a Community Node.			
PlanDSM Future Land Use	Current: Low Density Residential. Proposed: Community Mixed Use.			
Mobilizing Tomorrow Transportation Plan	No planned improvements.			
Current Zoning District	"RX1" Mixed Use District			
Proposed Zoning District	Limited "MX3" Mixed Use District			
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	X	Required 6/7 Vote of the City Council	Yes
	Denial			No

Tiger Knight, LLC, 1210 & 1220 Army Post Road

21-2020-4.24



1 inch = 73 feet

Request from Tiger Knight, LLC (owner) represented by Barry Nelson (officer) for property at 1210 and 1220 Army Post Road.				File # ZON2020-00120	
Description of Action	Rezone property from "RX1" Neighborhood Mix District to "MX1" Mixed Use District to allow the existing commercial building to be used for a greater variety of permitted mixed uses.				
PlanDSM Future Land Use	Current: Low Density Residential. Proposed: Community Mixed Use.				
Mobilizing Tomorrow Transportation Plan	No planned improvements.				
Current Zoning District	"RX1" Mixed Use District				
Proposed Zoning District	Limited "MX3" Mixed Use District				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Outside Area (200 feet)	0	3			
Within Subject Property					
Plan and Zoning Commission Action	Approval	X	Required 6/7 Vote of the City Council	Yes	
	Denial			No	X

Tiger Knight, LLC, 1210 and 1220 Army Post Road

ZON2020-00120



1 inch = 99 feet

Item: ZON2020-00120 Date: 10-25-2020

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

(Circle One)

Print Name: Bruce Barach ³⁹

RECEIVED
COMMUNITY DEVELOPMENT

Signature: Bruce Barach

NOV 04 2020

Address: 1209 West St.

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

Doesn't take care of property very well.
Overgrown trees and bushes need to be
cleaned up.

Item: ZON2020-000120 Date: 10/29/20

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

(Circle One)

Print Name: Bunker Family Ent

RECEIVED
COMMUNITY DEVELOPMENT

Signature: By: Nancy Bunker, Manager

NOV 04 2020

Address: 1911 J 69th St.
Windsor Heights, IA. 50324

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

Title holder of 1226 Army Post Rd. for many years.
Neighborhood is of reasonably-priced single-fam.
dwellings w/ many businesses. Prefer to keep the
neighborhood as residential as possible.

Item: ZON2020-00120 Date: _____

I (am) (am not) in favor of the request:
(Circle One)

Print Name: John Loose

RECEIVED
COMMUNITY DEVELOPMENT
NOV 12 2020

Signature: John Loose

Address: 1229 West St DSM Ia 50315

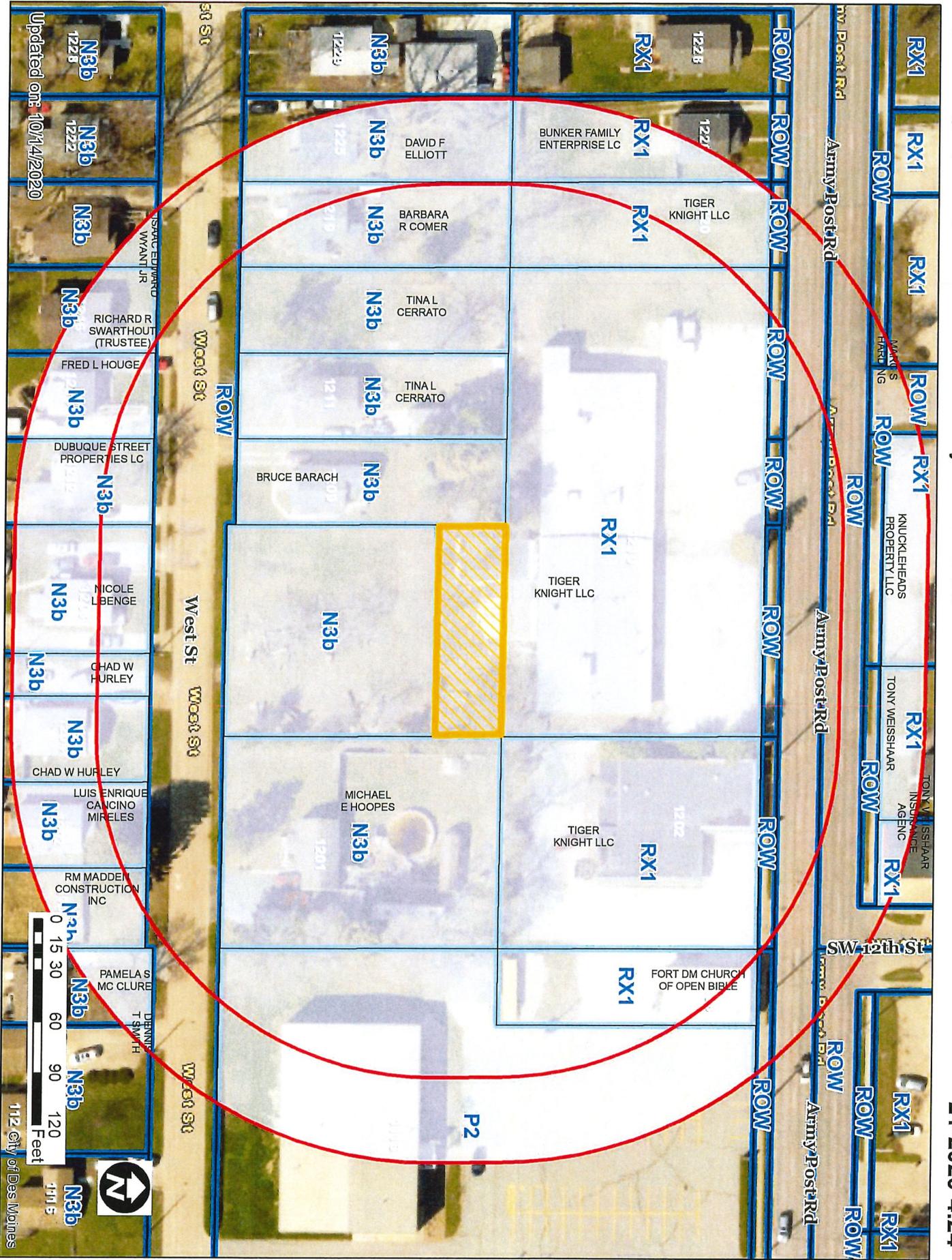
Reason for opposing or approving this request may be listed below:

THE PROPERTY IS IN POOR CONDITION
THERE IS A MODULAR HOME STORED ON THE
PROPERTY. WE WANT IT CLEANED UP
BEFORE ANY ZONING CHANGE IS CONSIDERED

Tiger Knight, LLC, 1210 & 1220 Army Post Road

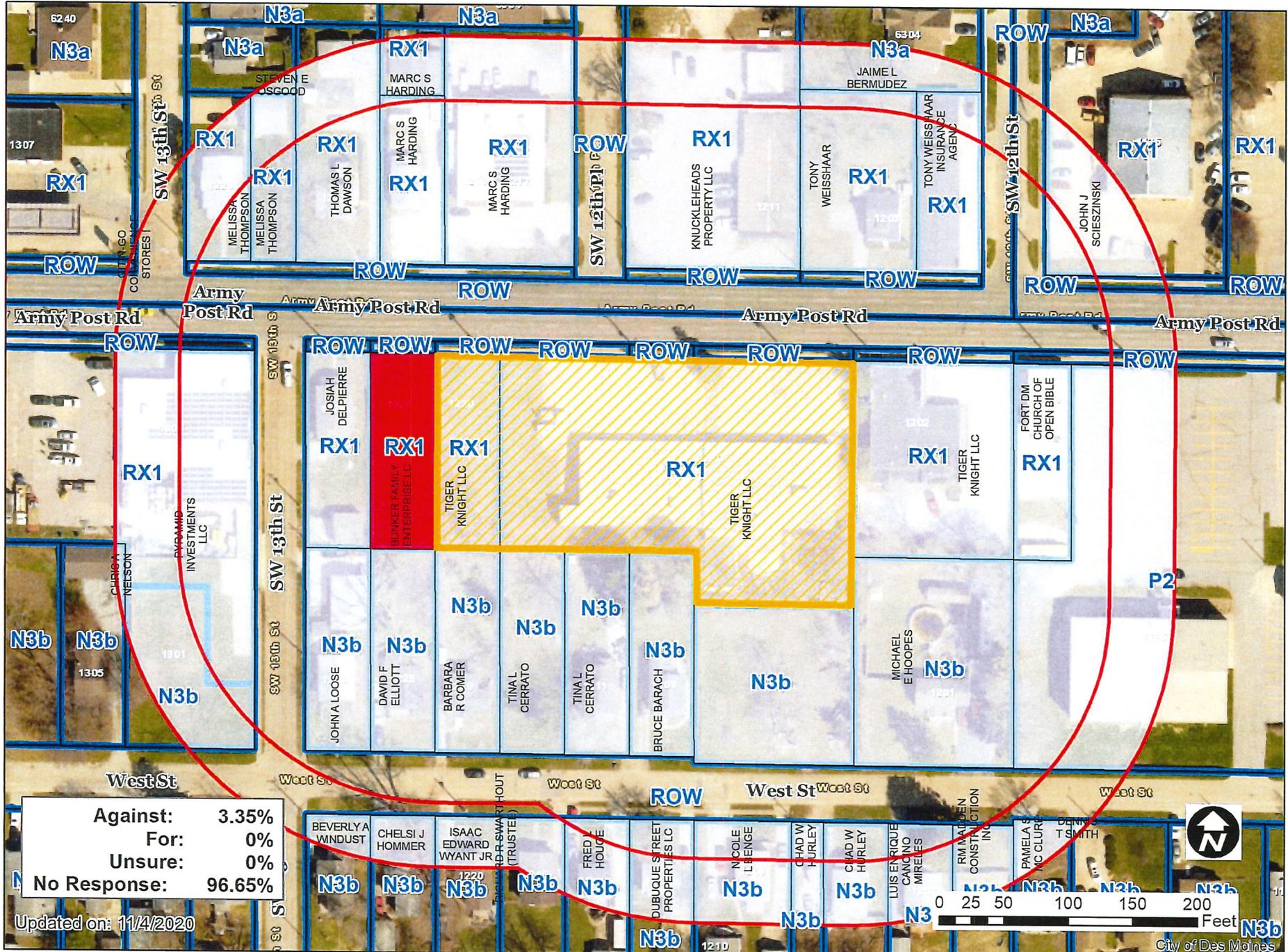
21-2020-4.24

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Tiger Knight, LLC, 1210 and 1220 Army Post Road

ZON2020-00120



1 inch = 99 feet