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Date March 7, 2022

#### RESOLUTION SETTING HEARING ON A REQUEST FROM MARK LILE AND KAREN LILE TO AMEND THE PLANDSM FUTURE LAND USE DESIGNATION AND TO REZONE PROPERTY LOCATED AT 1100 ARMY POST ROAD

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on February 17, 2022, its members voted 12-0 in support of a motion to recommend **DENIAL** of a request from Mark Lile and Karen Lile (Owners) to amend the PlanDSM: Creating Our Tomorrow future land use designation for real property located at 1100 Army Post Road ("Property") from Community Mixed Use to Industrial to allow rezoning to '11' Industrial District to allow use of the property for outdoor storage; and

**WHEREAS**, the City Plan and Zoning Commission has advised that at a public hearing held on February 17, 2022, its members voted 12-0 in support of a motion to recommend **DENIAL** of a request to rezone Property located 1100 Army Post Road from 'RX1' Mixed Use District to 'I1' Industrial; and

WHEREAS, the Property is legally described as follows:

THE EAST 50 FEET OF THE NORTH 164 FEET (EXCEPT THE NORTH 10 FEET THEREOF) OF LOT 13 IN BLOCK 1 IN RODGERS PLACE, AN OFFICIAL PLAT, 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 land use plan amendment and rezoning is to be considered, and at which time the City Council will hear both those who oppose and those who favor the proposal, shall be held at 5:00 p.m. on March 21, 2022, at the Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa.
- 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.



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Date March 7, 2022

Agenda Item Number 3

MOVED BY \_\_\_\_\_\_ TO ADOPT- SECONDED BY \_\_\_\_\_\_.

APPROVED AS TO FORM:

Judy Klanlu - Kruse

Judy K. Parks-Kruse Assistant City Attorney

(ZONG-2022-000004) (ZONG-2022-000001)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT	CERTIFICATE
COWNIE					
BOESEN					I, P. Kay Cmelik, City Clerk of said City hereby certify that at a meeting of the City Council of said
GATTO					City of Des Moines, held on the above date, among
SHEUMAKER					other proceedings the above was adopted.
MANDELBAUM					IN MUTHERS MULTEREOF I have become on my
VOSS					IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first
WESTERGAARD					above written.
TOTAL					
MOTION CARRIED			AP	PROVED	
				Mayor	City Clerk



February 22, 2022

Communication from the City Plan and Zoning Commission advising that at their February 17, 2022 meeting, the following action was taken regarding a request from Mark Lile & Karen Lile (owners) to rezone property located at 1100 Army Post Road from "RX1" Mixed Use District to "I1" Industrial District, to allow use of the property for outdoor storage.

#### **COMMISSION RECOMMENDATION:**

After public hearing, the members voted 12-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus	Х			
Leah Rudolphi	Х			
Dory Briles	Х			
Abby Chungath	Х			
Kayla Berkson	Х			
Chris Draper	Х			
Jann Freed	Х			
Todd Garner				Х
Johnny Alcivar				Х
Lisa Howard	Х			
Carolyn Jenison	Х			
William Page	Х			
Andrew Lorentzen	Х			
Greg Wattier				Х
Emily Webb	Х			

**APPROVAL** of Part A) The requested rezoning be found **not** in conformance with the existing PlanDSM future land use designation of Community Mixed Use.

Part B) **Denial** of the requested amendment to the PlanDSM Creating Our Tomorrow Plan to revise the future land use classification from Community Mixed Use to Industrial, since the Industrial designation should be focused in areas of the City that are already designated for those types of uses and not within areas that comprise primarily small-scale commercial and residential uses. Part C) **Denial** of the requested rezoning from "RX1" Mixed Use District to "I1" Industrial District, since the "I1" District is not in conformance with the existing PlanDSM Future land use designation of Community Mixed Use. (ZONG-2022-000001)

	Written Responses
and the second second	1 in Favor and
	0 in opposition

## STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the requested rezoning be found not in conformance with the existing PlanDSM future land use designation of Community Mixed Use.

Part B) Staff recommends denial of the requested amendment to the PlanDSM Creating Our Tomorrow Plan to revise the future land use classification from Community Mixed Use to Industrial, since the Industrial designation should be focused in areas of the City that are already designated for those types of uses and not within areas that comprise primarily small-scale commercial and residential uses.

Part C) Staff recommends denial of the requested rezoning from "RX1" Mixed Use District to "I1" Industrial District, since the "I1" District is not in conformance with the existing PlanDSM Future land use designation of Community Mixed Use.

#### STAFF REPORT TO THE PLANNING COMMISSION

#### I. GENERAL INFORMATION

- 1. Purpose of Request: The rezoning is being requested to allow outdoor storage of equipment and trailers within the property. The City's Zoning Ordinance only allows outdoor storage to be located within an "I1" Industrial District or "I2" Industrial District.
- 2. Size of Site: 50 feet by 154 feet (7,700 square feet).
- 3. Existing Zoning (site): "RX1" Mixed-Use District.
- 4. Existing Land Use (site): The subject property contains two garages and a continuous paved driveway fronting Southwest 11<sup>th</sup> Street. There is no access to the property from Army Post Road. The area to the south of the garages is fenced off and currently used for outdoor storage.

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

North – "RX1"; Use is a strip commercial center, with retail, restaurant, and bar uses. South – "N3b"; Uses are single-household residential. East – "RX1"; Use is a repair and maintenance shop.

West – "RX1"; Use is an office use.

- 6. General Neighborhood/Area Land Uses: The subject property is located on the southwest corner of Army Post Road and Southwest 11<sup>th</sup> Street. The uses immediately adjacent to the Army Post Road corridor are generally commercial in nature with one-household residential uses to the south.
- 7. Applicable Recognized Neighborhood(s): The subject property is located within 250 feet of the Watrous South Neighborhood Association. All neighborhoods were notified of the public hearing by mailing of the Preliminary Agenda on January 28, 2022. Additionally, separate notifications of the hearing for this specific item were mailed on January 28, 2022 (20 days prior to the hearing) and February 7, 2022 (10 days prior to the hearing) to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site. Additionally, a Final Agenda for the hearing will be mailed to all recognized neighborhoods on February 11, 2022.

All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Services Department The Watrous South Neighborhood Association mailings were sent to James Spiller, PO Box 35845, Des Moines, IA 50315.

The applicant will provide a summary of the neighborhood meeting at the public hearing.

- 8. Relevant Zoning History: On November 10, 2021, the applicant was sent a Notice of Violation, which states the following: *Upon inspection there was found to be inoperable, unsafe, and/or unlicensed vehicle(s), vehicular component parts, and/or miscellaneous junk and debris stored outside.* The applicant subsequently applied for a rezoning in order to mitigate the violation.
- **9. PlanDSM: Creating Our Tomorrow Plan 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**

 PlanDSM Creating Our Tomorrow: The subject property is designated as "Community Mixed Use" on the Future Land Use Map and also located within a "Community Node" centered at the intersection of Army Post Road and Southwest 9<sup>th</sup> Street. PlanDSM describes these designations as follows:

#### COMMUNITY MIXED USE

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 customers.

#### COMMUNITY NODE

Mid-sized centers providing a range of daily needs and specialized services within a larger neighborhood context. Consist of a mix of housing, retail and offices serving a larger population and geographical area than a neighborhood node. May include a shopping district including a grocery and drug store. Residential development including medium and high densities may occur.

The proposed "I1" District zoning requires the "Industrial" designation on the Future Land Use Map in order to find the proposed rezoning in conformance with PlanDSM and will require the Future Land Use Map to be amended to the "Industrial" designation which is currently designated as Community Mixed Use.

Industrial is described as follows:

#### **INDUSTRIAL**

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

The Zoning Ordinance states that "I1" Industrial District is intended for general industrial uses, warehousing, and transportation terminals." Building types allowed in this district include the Storefront, Commercial Cottage, General Building, Workshop/Warehouse, Civic Building and Principal-Use Parking Structure.

The applicant has proposed the "I1" Industrial District in order to continue to do outdoor storage of small business equipment at the site, which are activities that are defined under the Zoning Ordinance as Equipment & Material Storage, Outdoor use.

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 Army Post Road in an area that is primarily small scale commercial and retail uses that back up to residential uses. Accommodating industrial uses could have a large impact on adjoining properties and the environment. Furthermore, the property is surrounded to the immediate south and to the north of Army Post Road by predominantly Low Density Residential on the Future Land Use Map, thereby not being compatible to the character and industrial uses in the area.

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. Planning and Design Ordinance: Any development must comply with all applicable site plan and design regulations of the Planning and Design Ordinance. Should the rezoning be approved, the applicant would be required to prepare a Site Plan and

building elevations for any proposed additions or modifications for review before the property can be occupied by the proposed use.

**3. Grading & Storm Water Management:** Any grading is subject to an approved grading permit and soil erosion control plan, as well as a Stormwater Pollution Protection Plan (SWPPP) approved by the Iowa DNR. Tree removal and mitigation calculations must be submitted with any site plan in accordance with Section 42-550 of the Municipal Code.

#### SUMMARY OF DISCUSSION

Srevoshi Chakraborty presented the staff report and recommendation.

<u>Chris Draper</u> asked if the property is rezoned to industrial, would inoperable cars and parts be allowed to be stored onsite.

<u>Sreyoshi Chakraborty</u> stated outdoor storage is only allowed in 11 or 12 industrial districts so the owner could legally have outdoor storage.

Chris Draper asked if the inoperability is out the window at the point its zoned industrial.

<u>Jason Van Essen</u> stated there is a fine line between a junkyard and outdoor storage. What was stated in the staff report was quoted from a section of city code that is used in the neighborhood enforcement division.

Abby Chungath asked if there are specification around fence types for outdoor storage.

<u>Jason Van Essen</u> stated there are outdoor storage performance measures. If this was approved, the applicant would need to provide a site plan and bring the site into conformance.

Abby Chungath stated in regard to the material of the fence, could it be chain link.

Jason Van Essen stated it would need to be a solid material to buffer from the residential use.

Abby Chungath asked if that would still apply if the applicant sought a use variance.

Jason Van Essen stated conditions of a use variance could be negotiated.

Andrew Lorentzen asked in relation to this property, where is the nearest I1 zoning.

Jason Van Essen stated it would be a long ways away.

Emily Webb asked if the applicant could have outdoor storage if he was to seek a use variance.

<u>Sreyoshi Chakraborty</u> stated if the Zoning Board of Adjustment was to grant the use variance, yes.

<u>Jason Van Essen</u> stated the applicant would need to demonstrate financial hardship to be allowed a use variance.

<u>Mark Lile</u>, 1100 Army Post Road stated he has owned the property for 5 years and wouldn't be building or changing anything from what he is currently doing. The neighbors he was able to speak with have no problem with the outdoor storage as everything is in good working condition, no junk has or will be stored.

Chris Draper asked how he arrived at making a request for rezoning.

<u>Mark Lile</u> stated he received notice of violation from the city for outside storage and signage issues.

Chris Draper asked if he was advised to seek a rezoning rather than a use variance.

Jason Van Essen stated you cannot seek a use variance until denied a rezoning.

Will Page asked for staff to explain the use variance.

Jason Van Essen stated the applicant doesn't have legal nonconforming rights or grandfathering rights for outdoor storage. A violation was issued from the neighborhood enforcement division and this rezoning process is an option to rectify the violation. City Council would ultimately decide to rezone the property with a recommendation from the Plan and Zoning Commission. Zoning runs with the land so if he were to sale the property, that next owner would acquire the same zoning designation.

Mark Lile stated he was told zoning conditions could be recommended.

<u>Jason Van Essen</u> stated the Plan and Zoning Commission has the ability to recommend zoning conditions that the owner and ultimately the City Council would need to agree with. The other option would be a use variance, which would allow you relief from the current zoning, without completely rezoning the property. A use variance can have a lot of limitations, such as a particular use or timeframe.

<u>Judy Parks-Kruse</u> stated a use variance is almost never allowed due to the stipulations set by state and city code. The Zoning Board of Adjustment must find that a piece of land could not be used for anything else. This is why applicants need to be denied rezoning before seeking a use variance.

<u>Emily Webb</u> asked if this rezoning was approved, the applicant would need to replace the existing fence.

<u>Jason Van Essen</u> stated the next step would be submitting a site plan that would bring the site into conformance with the new use.

#### **CHAIRPERSON OPENED THE PUBLIC HEARING**

<u>Carol Maher</u>, 701 Polk Blvd stated within Chapter 135 it states the fence would need to be screened, have a 25-foot setback from the street, 10-foot setback from all lot lines and has to be paved.

<u>Mark Lile</u> stated he is aware of the struggles he will have to bring the site into compliance if approved the rezoning tonight.

#### CHAIRPERSON CLOSED THE PUBLIC HEARING

<u>Chris Draper</u> stated he would like to approve staff recommendation as it would open up negotiations for a use variance that would provide meaningful operation to continue rather than changing this small piece of property to an industrial use.

#### **COMMISSION ACTION:**

Chris Draper made a motion for:

Part A) The requested rezoning be found not in conformance with the existing PlanDSM future land use designation of Community Mixed Use.

Part B) Denial of the requested amendment to the PlanDSM Creating Our Tomorrow Plan to revise the future land use classification from Community Mixed Use to Industrial, since the Industrial designation should be focused in areas of the City that are already designated for those types of uses and not within areas that comprise primarily small-scale commercial and residential uses.

Part C) Denial of the requested rezoning from "RX1" Mixed Use District to "I1" Industrial District, since the "I1" District is not in conformance with the existing PlanDSM Future land use designation of Community Mixed Use.

Motion passed: 12-0

Respectfully submitted,

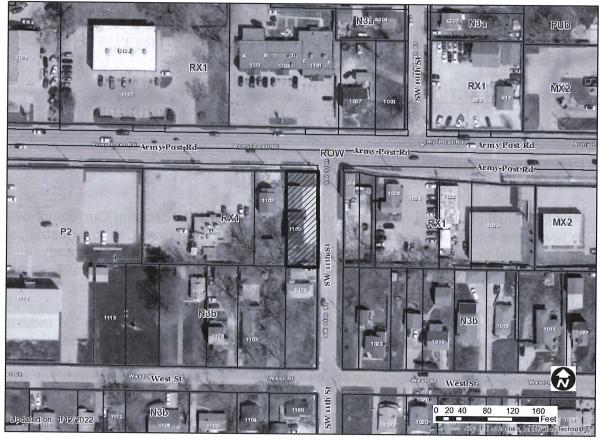
Jula Com

Jason Van Essen, AICP Planning & Urban Design Administrator

JMV:tjh

Mark & Karen Lile, 1100 Army Post Road

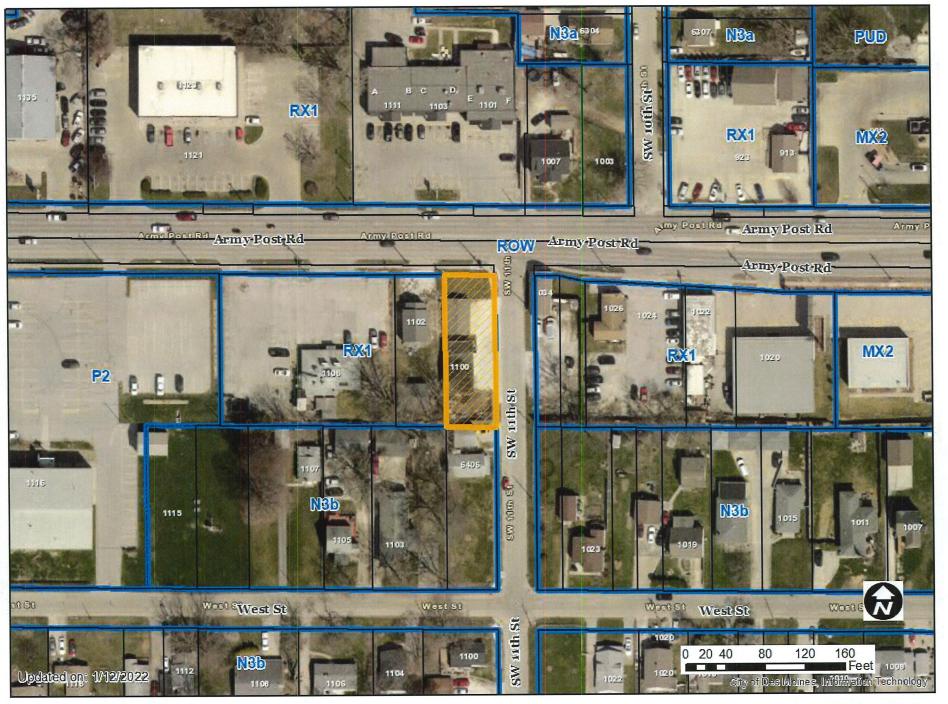
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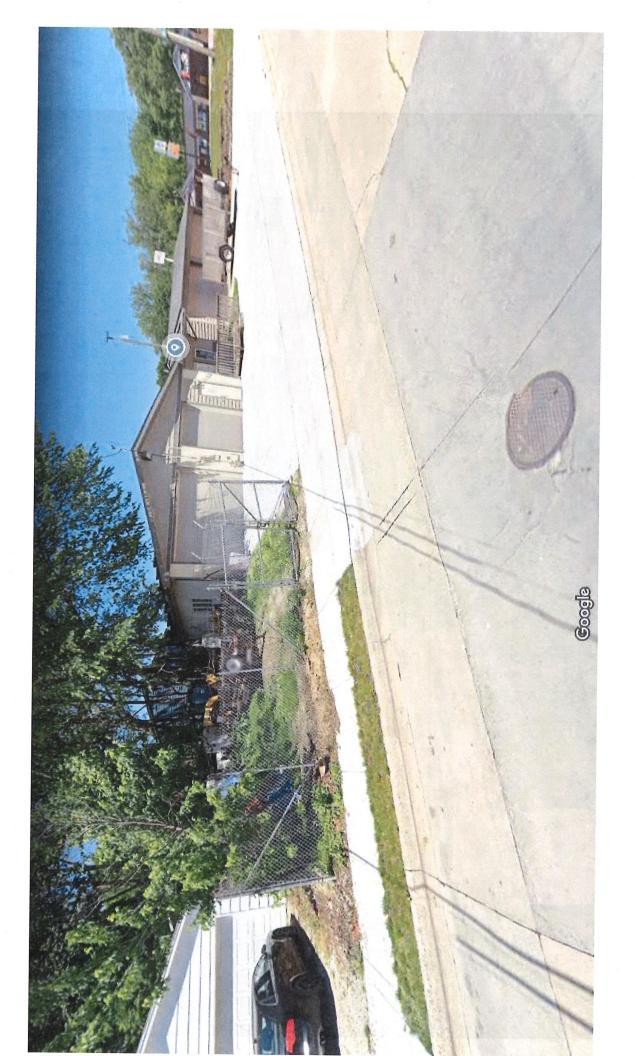


1 inch = 93 feet

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### Mark & Karen Lile, 1100 Army Post Road

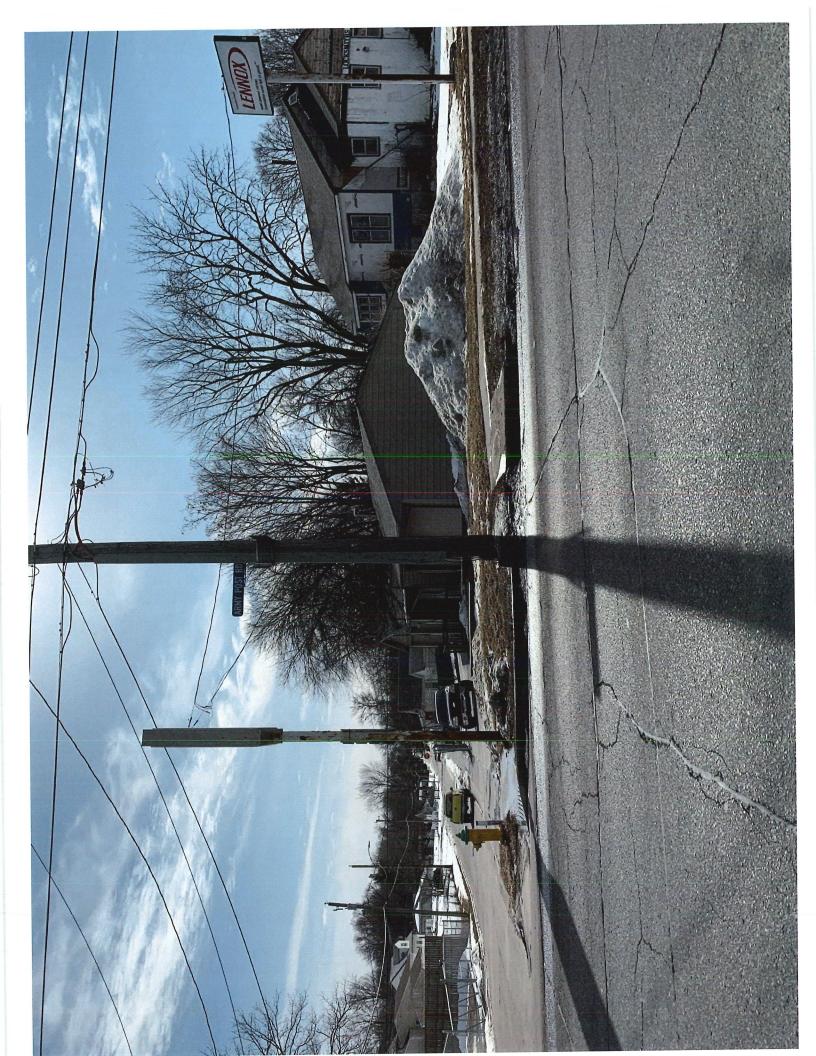




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Archived: Wednesday, February 16, 2022 3:20:33 PM From: karen lile Mail received time: Tue, 8 Feb 2022 02:35:55 Sent: Mon, 7 Feb 2022 20:35:35 To: Chakraborty, Sreyoshi Subject: Re: 1100 Army Post Rezoning Importance: Normal Sensitivity: None Attachments: image001.png;

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

### **Neighborhood Meeting Summary**

Attached is the letter we mailed out for our neighborhood rezoning meeting. We had 2 addresses represented with 3 people (in person, no emails or phone calls). One was concerned with the process of rezoning (as he is also having to go to rezoning for his property) but had no concerns about our rezoning request. The other two were confused with another piece of property that went to rezoning on February 3, 2022. We explained what we were trying to do with the outside storage and trailer parking. They did not care about the outside storage or trailer parking because they have 3 trailers on their property as well.

I did talk to Des Moines Heating and Cooling. Craig said he didn't care what we do on our property.

I did talk to the neighbor to the South. Konner, he used to work for me, and he also does not care about the outside storage or trailers. We also talked about the property line and what he wanted to do in the spring on his property.

I went to the Watrous South Neighborhood meeting in January. Talked to Mitch Harris about the rezoning of my property and he had no concerns about it. He was going to send you an email, his phone number is 515-565-4567.

At the neighborhood meeting I spoke with SuAnn Donovan. Explained what was going on with the rezoning. We talked about 10 minutes. She told me she was going to check into it. I gave her my email and phone number. I have not heard back from her. I reach out to her one more time with no return response.

I cannot find the Deed to the property, I called Polk County for the legal description, and this is what they sent.

Archived: Wednesday, February 16, 2022 3:20:38 PM From: Watrous South Neighborhood Association Mail received time: Tue, 8 Feb 2022 13:20:32 Sent: Tue, 8 Feb 2022 13:20:25 To: Drost, Bert A. Chakraborty, Sreyoshi Subject: 1100 Army Post Road - request for zoning change Importance: Normal Sensitivity: None

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning,

I wanted to let you both know that we have been in contact with Mark Lile who currently owns the property at 1100 Army Post Road. We are not always current with the cards that are mailed out, so please use this as our response to his request.

Mr. Lile is requesting a zoning change to accommodate his needs as a property owner at that location.

His address is not within any designated Neighborhood Association but does boarder with ours.

Watrous South Neighborhood Association has no opposition to his change and hope the City will entertain his request.

If you have any questions, please feel free to contact me.

Thank you.

#### Mitch

*Mitch Harris, Vice President Board of Directors* 

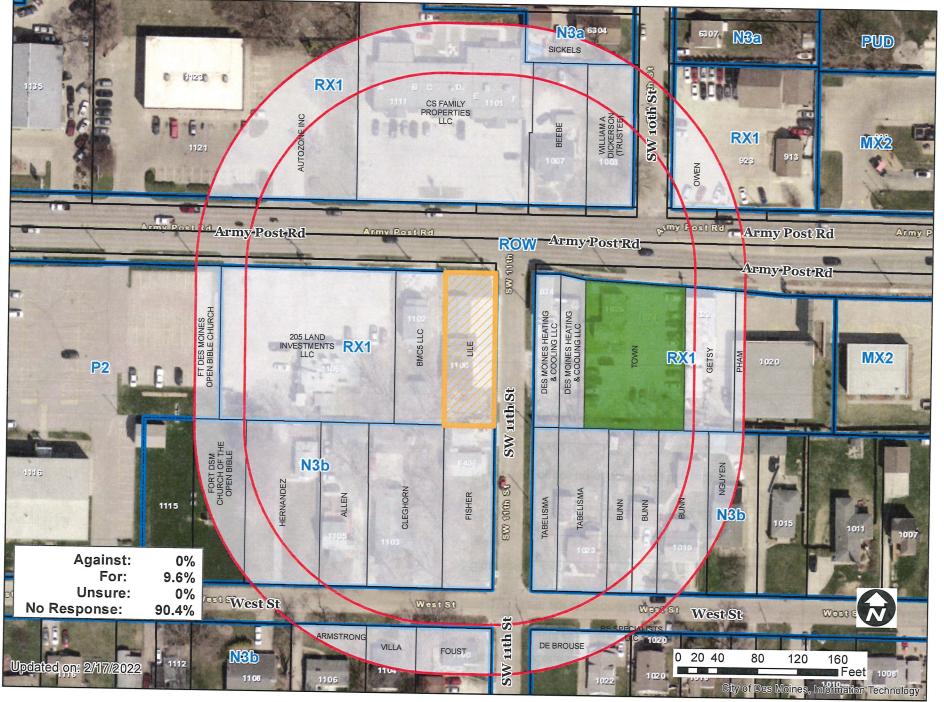


Neighborhood Association PO Box 35845 Des Moines, Iowa 50315 515-865-4567 (Cell)

\_\_\_\_\_Date: 02-09-20. ZONG-2022-000001 12 82 Item: Please mark one of the following Staff Use Only am in favor of the request RECEIVED I am not in favor of the request COMMUNITY DEVELOPMENT FEB 1 5 2022 Signature: own Howard Name: 1024 Address: (my 40 Reason for opposing or approving this request may be listed below: value Tr 0

# Mark & Karen Lile, 1100 Army Post Road

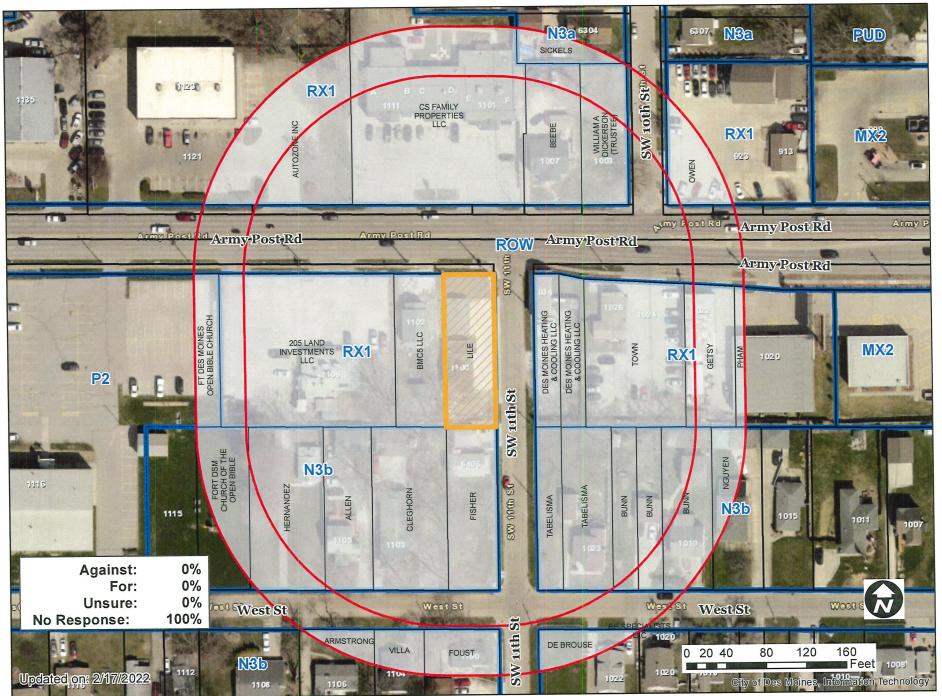
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1 inch = 93 feet

### Mark & Karen Lile, 1100 Army Post Road

ZONG-2022-000004



1 inch = 93 feet

Name Tina Rayburn	
Phone # 5/5-285-1720	
Address 1111, Army Post Rd	
DSM 117 50315	

Signature Ind Raybur date 2-10-22

Name Konnor Fisher
Phone # <u>515 - 727 - 0053</u>
Address 6406 SW 17+4 St
Des Moines

Signature \_\_\_\_\_\_\_ date 02/08/2022

Name\_ 208 Phone #\_ 6 1034 Address Army BitRo Signature \_date\_

Name Joe Thomas	
Phone #	
Address	
Signature 57	date 02/10/22

Name Corren Camo
Phone # 515 505 6155
Address 1024 Anny Cost Road
Signaturedatedate2

Name\_William Villa Phone # 515- 603-2284 Address 104 West Street DSM 11A 50315

Signature William VII a date 210 22

Name		
Phone #		
Address	1022 West St	
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Name\_Rebecca D. allen Phone # 515 238 0915 Address 1105 West StoreT

Signature Rebuce allen date 2-10-22

Name Mithael Santa Iduesor Phone # 515 - 422 - 4212Address 1037 GEil AUE

Signature Muer Aludate 3/10/2022

Name UEANNIE SONG	
Phone #72:695.8957	
Address_1204 WADE ST.	
DSM 1A 50315	
Signature date 10 FEPS 2022	·

Name <u>Alisa Beveridge</u> Phone # 515 718 3261 Address 902 Amy Post RD Dommos (manager)

Signature Cion date 2.10.2022

Name <u>Clarissa Rowe</u>
Phone # <u>(515)326 4397</u>
Address 902 Army Post Rd (Work)
1327 Birch Lane (Home)

Signature Clarissufferdate Dar10/2020

Name Kristina Campbell for USCellular/Cellular Advantage Phone # 515287 Address 400 Hr MLA date<u>2-10-2</u>d Signature 51533100C Corp

lame Daniel	
hone # <u>51528</u>	,77 BL
ddress <u>Q A 3</u>	Arny Post Rd

Signature Daniel Jan date 2-10-22

Name Ting Smith Phone #\_\_\_515.45 4690 Address // O OST ARMI B es moines 50315

<u>J. Smitt date 2-9-22</u> Signature

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Name	Tony passion	
Phone #	(35) 295-9952	
Address_	1201 Anny Post Rel.	
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Signature <u>Millan</u> date <u>2-10-2022</u>

Name Noe Solnchez Phone # 515 5593948 BD POS Address // Ha

\_\_\_\_\_date\_<u>2-10-22</u> 11/00 Signature\_

Name Aimee Sher - Vintage Barn Floral Phone # 515-953-8812 Address 1128 Army Post Rd, MOTINIA 50315

hotel\_date\_ Signature <u>></u> 22

Name\_Barry Ison Address 12 FMAY Moines ondate. Signature

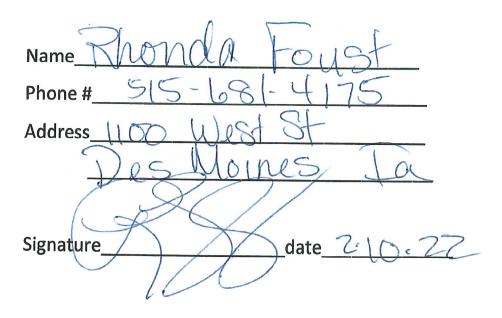
Name\_ Phone #\_ Address\_ 8 15 Inc 03 othe Signature date

Name Joe Brisbois	
Phone # 515) # 244-2802	
Address Address ADDRET 1210 ARMY POST ROAD	ン
DES MOINES IA, 50315	
Signature Jan date 2-10-2022	•

Name Unique Ploors	
Phone # (575) 901-9920	
Address 1202 Army Post Road	
Des Moines, 14 50315	
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Name Allan Kennedy	-
Phone #_515-985-9384	_
Address 1022 Army Post Rd	_
Des Moines, IA 50315	
Signature A 7	date 2-10-2027

Name <u><</u> VEVS Phone #\_ 5001 Address 2 date <u>2.10.22</u> Signature Q



Name (asandra Leyva R	
Phone # 515-553-71-81	
Address 1101 Geil Aue, Des	
moines 50315	

Signature Casandra Leyva date 02-10-2022

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Name	Brya-	Nemps Ry	
Phone #_	SIS	-770-3279	
Address_	1111	Bunly St.	
	Ne)	Mund JA	N311

Signature By Usy date 2-10-22

Name Alicia Pavers
Phone # 515 371-7681
Address 1023 Giel Ave
Des moines ta sozis

Signature alecia Pale date 2-10-22

Name	PAUL Quick
Phone #_	
Address_	1017 GEIL AVE, DM. IA.
Signature	( an Quines date 2-10-22

lave OVIKING Name\_ Phone # NZ Address 1011 Gril Moines

UNOUS date 2-10-22 Signature

Name Afilio Paredes castro
Phone # <u>5(5, 707, 2067</u>
Address Gen 1005 St West
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Name			

Phone #_				
Address	1100	Geil	AL	

Signature JOE - IATS date\_\_\_\_\_