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**Date** July 13, 2020

**RESOLUTION SETTING HEARING ON REQUEST FROM 3 SONS ENTERPRISES, LLC D/B/A SUNSET MEMORIAL GARDENS TO REZONE PROPERTY LOCATED AT 7601 FLEUR DRIVE**

**WHEREAS**, on April 25, 2016, by Roll Call No. 16-0717, the City Council adopted the PlanDSM: Creating Our Tomorrow Plan; and

**WHEREAS**, the City Plan and Zoning Commission has advised that at a public hearing held on July 2, 2020, its members voted 11-0 in support of a motion to recommend **APPROVAL** of a request from 3 Sons Enterprises, LLC (owner) d/b/a Sunset Memorial Gardens, represented by Blair Overton (officer), to rezone the real property locally known as 7601 Fleur Drive (“Property”) from P-1 Public, Civic and Institutional District to Limited P-2 Public, Civic and Institutional District, to allow redevelopment of the existing memorial chapel with a new chapel and to allow the future option to expand an existing non-City-owned cemetery use through conditional use consideration by the Zoning Board of Adjustment, subject to compliance with all supplemental use regulations in Des Moines Municipal Code Chapter 134, Section 134-3.4.3.B for any expansion of a non-City-owned cemetery and conditional use approval thereof by the Zoning Board of Adjustment; and

**WHEREAS**, the Property is legally described as follows:

Area is comprised of two out of three tracts from 2007 ALTA survey:

TRACT 1:

BEGINNING AT A POINT ON THE WEST LINE OF THE SOUTHEAST ¼ OF SECTION 32, TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE 5th P.M., POLK COUNTY, IOWA, SAID POINT BEING 640.77 FEET NORTH OF THE SOUTHWEST CORNER OF SAID SOUTHEAST ¼; THENCE NORTH 0 DEGREES 00 MINUTES WEST 165.00 FEET ALONG THE WEST LINE OF THE SOUTHEAST ¼ OF SAID SECTION 32, THENCE NORTH 89 DEGREES 34 MINUTES 58 SECONDS EAST 660.79 FEET; THENCE NORTH 0 DEGREES 09 MINUTES 53 SECONDS WEST 13.00 FEET; THENCE NORTH 89 DEGREES 34 MINUTES 58 SECONDS EAST 656.32 FEET TO THE EAST LINE OF THE WEST ½ OF THE SOUTHEAST ¼ OF SAID SECTION 32; THENCE SOUTH 0 DEGREES 12 MINUTES EAST 178.00 FEET ALONG SAID EAST LINE; THENCE SOUTH 89 DEGREES 34 MINUTES 58 SECONDS WEST 1,317.09 FEET TO THE POINT OF BEGINNING.

TRACT 3:

BEGINNING AT A POINT ON THE WEST LINE OF THE SOUTHEAST ¼ OF SECTION 32, TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE 5th P.M., POLK COUNTY, IOWA, SAID POINT BEING 805.77 FEET NORTH OF THE SOUTHWEST CORNER OF THE SOUTHEAST ¼ OF SAID SECTION 32; THENCE NORTH 0 DEGREES 00 MINUTES WEST 996.69 FEET TO THE NORTHWEST CORNER OF THE SOUTH 55 ACRES OF THE WEST ½ OF THE SOUTHEAST ¼ OF SAID SECTION 32; THENCE SOUTH 89 DEGREES 47 MINUTES 37 SECONDS EAST 657.93 FEET; ALONG THE NORTH LINE OF SAID SOUTH 55 ACRES; THENCE SOUTH 0 DEGREES 09 MINUTES 53 SECONDS EAST 989.53 FEET; THENCE SOUTH 89 DEGREES 34 MINUTES 58 SECONDS WEST 660.79 FEET TO THE POINT OF BEGINNING.

and

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST ¼ OF SECTION 32; TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE 5th P.M., POLK COUNTY, IOWA, THENCE NORTH 0 DEGREES 00 MINUTES 00 SECONDS WEST 1,802.46 FEET TO THE NORTHWEST CORNER OF THE SOUTH 55 ACRES OF THE WEST ½ OF THE SOUTHEAST ¼ OF SAID SECTION 32, THENCE SOUTH 89 DEGREES 47



Date July 13, 2020

MINUTES 37 SECONDS EAST 657.93 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89 DEGREES 47 MINUTES 37 SECONDS EAST 659.09 FEET TO THE NORTHEAST CORNER OF SAID SOUTH 55 ACRES; THENCE SOUTH 0 DEGREES 12 MINUTES 00 SECONDS EAST 969.36 FEET ALONG THE EAST LINE OF SAID SOUTH 55 ACRES; THENCE SOUTH 89 DEGREES 34 MINUTES 58 SECONDS WEST 656.32 FEET; THENCE NORTH 0 DEGREES 09 MINUTES 53 SECONDS WEST 976.53 FEET TO THE POINT OF BEGINNING.

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, including the Large-Scale Development Plan submitted by 3 Sons Enterprises, LLC in accordance with Chapter 135, Article 5 of the Des Moines Municipal Code.
2. That the meeting of the City Council at which the proposed rezoning is to be considered shall be held on August 3, 2020, at 5:00 p.m., to be held by electronic means to encourage and maintain social distancing to curb the spread of COVID19 in the community, with or without public access to the meeting location 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. The City Clerk is instructed to provide this notice including information about participation in the electronic meeting as indicated above.

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

FORM APPROVED:

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

(ZON2020-00060)

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





July 7, 2020

Date July 13, 2020

Agenda Item 27

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 July 2, 2020 meeting, the following action was taken regarding a request from 3 Sons Enterprises, LLC (owner) d/b/a Sunset Memorial Gardens represented by Blair Overton (officer) to rezone property located at 7601 Fleur Drive from “P-1” Public, Civic and Institutional District to “P-2” Public, Civic and Institutional District, to allow development of a place of worship use within a Civic Building Type and allow the future right to expand an existing non-City owned cemetery use through Conditional Use consideration.

**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			
Jacqueline Easley	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 in conformance with PlanDSM; Creating Our Tomorrow Plan, which designates the western portion of the property as “Public/Semi-Public”, Part B) **APPROVAL** of the submitted Large-Scale Development Plan subject to amendment for future significant site changes not shown and

Part C) **APPROVAL** of the requested rezoning of the property from “P-1” Public, Civic and Institutional District to “P-2” Public, Civic and Institutional District subject to compliance with all supplemental use regulations in Chapter 134 Section 134-3.4.3.B for any expansion of a Non-City-Owned Cemetery also subject to a Conditional Use approval by the Zoning Board of Adjustment.

(ZON2020-00060)

### Written Responses

1 in Favor

0 in opposition

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

Part A) Staff recommends that the Commission find the requested rezoning in conformance with PlanDSM; Creating Our Tomorrow Plan, which designates the western portion of the property as “Public/Semi-Public”.

Part B) Staff recommends approval of the submitted Large-Scale Development Plan subject to amendment for future significant site changes not shown.

Part C) Staff recommends approval of the requested rezoning of the property from “P-1” Public, Civic and Institutional District to “P-2” Public, Civic and Institutional District subject to compliance with all supplemental use regulations in Chapter 134 Section 134-3.4.3.B for any expansion of a Non-City-Owned Cemetery also subject to a Conditional Use approval by the Zoning Board of Adjustment.

## **STAFF REPORT TO THE PLANNING COMMISSION**

### **I. GENERAL INFORMATION**

1. **Purpose of Request:** The applicant is seeking to redevelop the existing memorial chapel on site for a new chapel. The Zoning Ordinance differentiates between City-Owned and Non-City-Owned Cemeteries. The latter is not a use that can be considered in the existing “P1” District, nor is the proposed new chapel, which would be defined as Assembly, Place of Worship by the Zoning Ordinance. With the proposed rezoning, the chapel development could be reviewed under a Site Plan administratively. The proposed internments or columbaria within the new chapel would require approval of a Conditional Use for a Non-City-Owned Cemetery by the Zoning Board of Adjustment. The property, without alteration or expansion, could continue as a legal nonconforming use under the existing “P1” District zoning.
2. **Size of Site:** Approximately 33.92 acres.
3. **Existing Zoning (site):** “P1” Public, Civic and Institutional District.
4. **Existing Land Use (site):** Non-City-Owned Cemetery with existing Assembly, Place of Worship.
5. **Adjacent Land Use and Zoning:**



Part C) **APPROVAL** of the requested rezoning of the property from “P-1” Public, Civic and Institutional District to “P-2” Public, Civic and Institutional District subject to compliance with all supplemental use regulations in Chapter 134 Section 134-3.4.3.B for any expansion of a Non-City-Owned Cemetery also subject to a Conditional Use approval by the Zoning Board of Adjustment.

(ZON2020-0060)

### Written Responses

1 in Favor

0 in opposition

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Part B) Staff recommends approval of the submitted Large-Scale Development Plan subject to amendment for future significant site changes not shown.

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- 4. Existing Land Use (site):** Non-City-Owned Cemetery with existing Assembly, Place of Worship.
- 5. Adjacent Land Use and Zoning:**

**North** – “P1”, Use is vacant, open space land with a utility Workshop/Warehouse Building.

**South** - “EX”, Uses is vacant land cultivated for agriculture.

**East** – “N3a” and “EX”, Uses are One Household Living Houses and vacant land.

**West** – Airport Crossroads “PUD”, Uses are office buildings and vacant land for business park development.

6. **General Neighborhood/Area Land Uses:** The subject property is on the Fleur Drive corridor just north of Iowa Highway 5 between business park development to the west and a low density residential development to the east.
7. **Applicable Recognized Neighborhood(s):** The subject property is not located in or within 250 feet of a recognized neighborhood. All neighborhoods were notified of the public hearing by mailing of the Preliminary Agenda on June 12, 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. Additionally, separate notifications of the hearing for this specific item were mailed on June 12, 2020 (20 days prior to the hearing) and June 22, 2020 (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. A Final Agenda was mailed to recognized neighborhoods on June 26, 2020.

During the Governors emergency declaration due to COVID-19 pandemic, the applicant is responsible for reaching out to the surrounding property owner within 250 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: PlanDSM Future Land Use Plan Designation:** Public/Semi-Public.
- 9 **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. **Conditional Use Permits:** In addition to the proposal to construct a new Assembly, Place of Worship (memorial chapel), any future expansion of the Non-City-Owned Cemetery such as setting aside additional land for burial internments or scattering sites, or for interment of remains within columbaria in other new structures such as



the chapel or mausoleum, would require a Conditional Use. This use would require review and approval by the Zoning Board of Adjustment after a determination of compliance with supplemental use regulations in Chapter 134 Section 134-3.4.3.B.

These regulations are as follows:

Cemeteries that are not owned by the city are subject to the following supplemental use regulations:

1. Surveys and records must be maintained of each cemetery, including plots of every interment and scattering area and the location of benches and columbaria, Records must indicate the GPS coordinates, name, death, burial and birth dates, last address, and name and address of contact person,
  2. A monument or marker of the name of all persons whose remains are scattered must be placed at the scattering site.
  3. Written authorization must be obtained and kept for each person whose remains are scattered, including cremation benches and columbaria, to allow removal and relocation of the scattered remains.
  4. The property must be maintained free of tall weeds and debris.
  5. Monuments and other markers or structures, fences, walk ways, paths, and roadways must be maintained in good and safe condition and appearance,
  6. The perimeter of the cemetery must be fenced.
  7. A portion of every lot sale, burial service fee, or scattering fee must be kept in a fund for maintenance of the cemetery grounds,
  8. The scattering of remains is allowed only in cemeteries operating in compliance with the Iowa Cemetery Act. Cremated remains may only be scattered in a designated area with dimensions of no more than 20 feet by 20 feet.
2. **Permit and Development Center Comments:** Any future redevelopment of the property for a chapel would be subject to compliance with all applicable Building Codes and compliance with Chapter 135 Planning and Design Ordinance requirement for Site Plan and Civic Building Type, along with issuance of a building permit by the Permit and Development Center.
  3. **Drainage/Grading:** Any Site Plan for an area over 10,000 square feet would require compliance with the stormwater management requirements of the City Code. Any improvements over an acre in area would require submittal of a Storm Water Pollution Protection Plans (SWPPP) with approval by Iowa DNR.
  4. **Large Scale Development Plan:** The recently updated Chapter 134 and 135 require rezoning of tracts larger than 5 acres in area be considered under provisions in Chapter 135 Article 5 for Large-Scale Development. There are not specific requirements of these provisions applicable to Public, Civic and Institutional zoning

districts. The proposed plan is going to exceed the open space provisions. There are not any proposed extensions of the public street network requiring consideration of the Block and Access provisions, the Street provisions, or the Primary Street Designation provisions of the Large-Scale Development Plan requirements in Chapter 135 Article 5.

In the Commission packet is a plan attachment comprising the submittal for this requirement. The Plan submitted essentially provides a master plan for the cemetery development including showing existing improvements and the proposed chapel project. There are not any significant plans proposed for changing access points to the public street network or adjoining properties. Additionally, the Plan is only contemplating a single zoning amendment for the property to "P2" District as the overall property is intended for a single purpose use of a Non-City-Owned Cemetery along with associated Assembly, Place of Worship.

## **SUMMARY OF DISCUSSION**

Erik Lundy presented staff report and recommendation.

David Bentz, Bishop Engineering 3501 10<sup>4</sup>th St., Urbandale representing the applicant stated there is currently a temporary chapel that has been in use for some time now. They will not be changing anything from what is already going on, just trying to make it into a nicer chapel for the cemetery.

## **CHAIRPERSON OPENED THE PUBLIC HEARING**

Mike Barnes, owns property on the west side of Fleur Drive across from the cemetery. They want to develop a convenience store on their property and want to make sure that a chapel on the cemetery won't prevent a future convenience store from selling beer, wine and liquor. They also want to develop a hotel, which would include a restaurant that would sell beer, wine and liquor. He was told the convenience store would be far enough away that it shouldn't cause any issue but the hotel might be too close.

Erik Larsen, stated he isn't against remodeling the chapel but more concerned what the 33 acers could potentially be rezoned to in the future if the chapel was no longer in use.

Mike Ludwig stated the property owner has the right to request a rezoning at any point in time but would go through the same process as we are tonight. Surrounding neighbors within 250 feet would be notified, the Plan and Zoning Commission would review the request and make a recommendation, and the City Council would hold a public hearing and make the final decision regarding any rezoning request.

David Bentz stated he doesn't know all the requirements for liquor license but they are currently doing everything they are proposing to do with the chapel. The owners of this property mainly focus on cemetery work and he doesn't believe they will rezone to anything else in the future.

Mike Ludwig stated regarding the liquor license requirements, the separation distances are in the ordinance, which are subject to review and potential variance from the Zoning Board of Adjustment. If a restaurant is located within a hotel, the restaurant can have beer, wine



or liquor if more than 50% of sales are derived from food. If it was a standalone bar they might need a conditional use and a variance to a separation requirement.

### **CHAIRPERSON CLOSED THE PUBLIC**

Will Page asked if there was only 1 response card received?

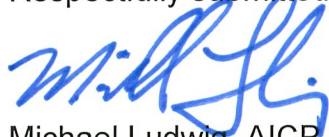
Erik Lundy stated staff only received 1 card in favor but have 2 present tonight that are expressing concerns.

### **COMMISSION ACTION:**

Greg Jones made a motion for approval of Part A) the Commission find the requested rezoning in conformance with PlanDSM; Creating Our Tomorrow Plan, which designates the western portion of the property as "Public/Semi-Public", Part B) **APPROVAL** of the submitted Large-Scale Development Plan subject to amendment for future significant site changes not shown and Part C) **APPROVAL** of the requested rezoning of the property from "P-1" Public, Civic and Institutional District to "P-2" Public, Civic and Institutional District subject to compliance with all supplemental use regulations in Chapter 134 Section 134-3.4.3.B for any expansion of a Non-City-Owned Cemetery also subject to a Conditional Use approval by the Zoning Board of Adjustment.

Motion passed: 11-0

Respectfully submitted,



Michael Ludwig, AICP  
Planning Administrator

MGL:tjh

3 Sons Enterprises, LLC (owner) d/b/a Sunset Memorial Gardens represented by Blair Overton (officer) for property located at 7601 Fleur Drive.			File # ZON2020-00060	
Description of Action	Rezone property from "P-1" Public, Civic and Institutional District to "P-2" Public, Civic and Institutional District, to allow development of a place of worship use within a Civic Building Type and allow the future right to expand an existing non-City owned cemetery use through Conditional Use consideration.			
PlanDSM Future Land Use	Current: Public/Semi-Public. Proposed: N/A.			
Mobilizing Tomorrow Transportation Plan	No Planned Improvements.			
Current Zoning District	"P1" Public, Civic and Institutional District.			
Proposed Zoning District	N/A.			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Outside Area (200 feet)	1	0		
Within Subject Property				
Plan and Zoning Commission Action	Approval	X	Required 6/7 Vote of the City Council	Yes
	Denial			No

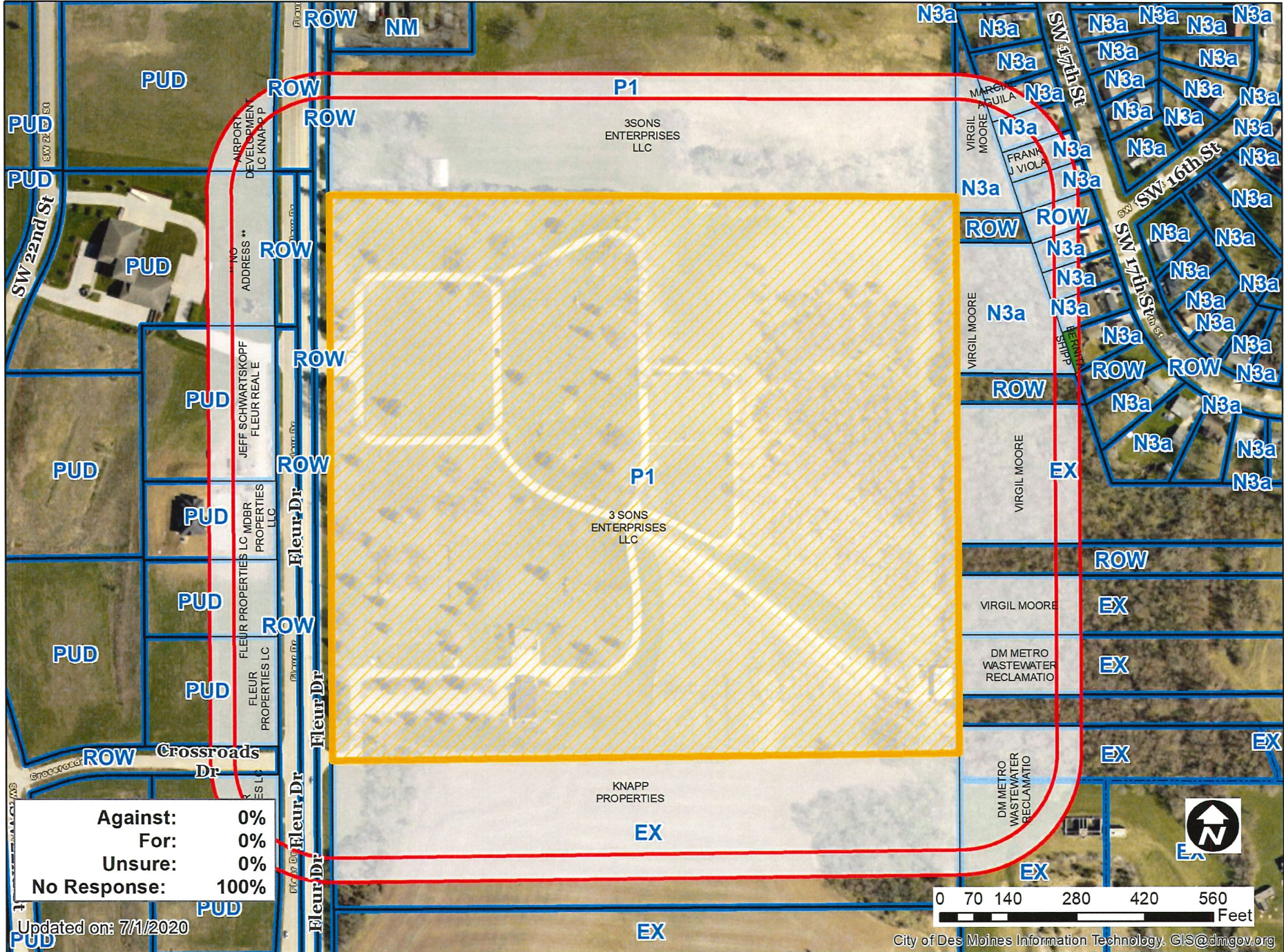
3 Sons Enterprises, LLC, 7601 Fleur Drive

ZON2020-00060



1 inch = 262 feet





1 inch = 262 feet

27



n: ZON2020-00060 Date: 06-24-2020

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

(Circle One) Print Name: Bernita R. Shipp

RECEIVED  
COMMUNITY DEVELOPMENT  
Signature: Bernita R Shipp

JUN 26 2020 Address: 7500 S.W. 17th ST, Des Moines, IA, 50315

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

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