

.....  
**Date** February 6, 2023

**RESOLUTION SETTING PUBLIC HEARING REGARDING REQUEST FROM LDS ENTERPRISES, LLC (OWNER) REPRESENTED BY LARRY D. SPRAGUE (OFFICER) FOR THE FOLLOWING REGARDING PROPERTY LOCATED AT 4415 HUBBELL AVENUE, TO CONFIRM REQUESTED REZONING IS IN CONFORMANCE WITH PLANDSM CREATING OUR TOMORROW PLAN, AND TO REZONE THE PROPERTY FROM “MX3” MIXED USE DISTRICT TO LIMITED “CX” MIXED USE DISTRICT TO ALLOW THE USE OF THE PROPERTY FOR AUTO BODY PAINTING**

**WHEREAS**, the City Plan and Zoning Commission has advised that at a public hearing held on January 19, 2023, its members voted 9-5 in support of a motion to recommend **APPROVAL** of a request from LDS Enterprises, LLC (Owner), represented by Larry D. Sprague (Officer), for the proposed rezoning from “MX3” Mixed-Use District to Limited “CX” Mixed-Use District be found in conformance with the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation of Community Mixed Use; and

**WHEREAS**, the City Plan and Zoning Commission has further advised that at a public hearing held on January 19, 2023, its members voted 9-5 in support of a motion to recommend **APPROVAL** of a request from LDS Enterprises, LLC (Owner) represented by Larry D. Sprague (Officer), for property located at 4415 Hubbell Avenue, to rezone the “MX3” Mixed-Use District to Limited “CX” Mixed-Use District, to allow the use of the property for auto body painting, subject to the following conditions:

1. Use restricted shall be limited to the following:
  - a. Any use as permitted and limited in “MX3” Mixed-Use District.
  - b. An auto painting use that is fully contained within a building.
2. Prohibition of outdoor storage, pavement or parking within the rear yard.

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

LOT 5 IN CAPITOL HEIGHTS, NO. 2, EXCEPT THE NORTHWEST 2.0 FEET (LYING ADJACENT TO AN PARALLEL TO THE SOUTH RIGHT OF WAY LINE OF AVENUE FREDERICK M. HUBBELL), AN OFFICIAL PLAT, IN 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.



**Roll Call Number**

**Agenda Item Number**

17

**Date** February 6, 2023

- 2. That the meeting of the City Council at which the proposed rezoning is to be considered, and at which time the City Council will hear both those who oppose and those who favor the proposals, shall be held at City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa, at 5:00 p.m. on February 20, 2023.
- 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.

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

SECOND BY \_\_\_\_\_.

FORM APPROVED:

/s/ Chas M. Cahill

Chas M. Cahill  
Assistant City Attorney

(ZONG-2022-000103)

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

MOTION CARRIED

APPROVED

\_\_\_\_\_  
Mayor

**CERTIFICATE**

I, LAURA BAUMGARTNER, 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.

\_\_\_\_\_  
City Clerk

Date February 16, 2023

Agenda Item 17

Roll Call # \_\_\_\_\_

January 31, 2023

Communication from the City Plan and Zoning Commission advising that at their January 19, 2023 meeting, the following action was taken regarding a request from LDS Enterprises, LLC (owner), represented by Larry D Sprague (officer) to rezone property located at 4415 Hubbell Avenue from “MX3” Mixed Use District to “CX” Mixed Use District, to allow use of the property for an auto body use, which is within the “Vehicle Sales and Service - Vehicle Maintenance/Repair, Major” use category.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 9-5 as follows.

<u>Commission Action:</u>	<u>Yes</u>	<u>Nays</u>	<u>Pass</u>	<u>Absent</u>
Francis Boggus		X		
Dan Drendel	X			
Leah Rudolphi		X		
Carol Maher	X			
Abby Chungath	X			
Kayla Berkson	X			
Chris Draper				X
Todd Garner		X		
Johnny Alcivar	X			
Justyn Lewis	X			
Carolyn Jenison	X			
William Page		X		
Andrew Lorentzen		X		
Emily Webb	X			
Katie Gillette	X			

**APPROVAL** of Part A) The requested rezoning be found in conformance with PlanDSM: Creating Our Tomorrow Comprehensive Plan future land use designation of Community Mixed Use.

Part B) Approval of the request to rezone the property from “MX3” Mixed-Use District to “CX” Mixed-Use District, subject to the following conditions:

1. Use of the property shall be limited to the following:
  - a. Any use as permitted and limited in the “MX3” Mixed-Use District.



- b. An auto painting use that is fully contained within a building.
2. Prohibition of outdoor storage, parking or pavement for vehicular access within the rear yard, and overhead doors from the building that provide access to the rear yard.

#### Written Responses

1 in Favor

0 in opposition

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

Part A) Staff recommends that the requested rezoning be found in conformance with PlanDSM: Creating Our Tomorrow Comprehensive Plan future land use designation of Community Mixed Use.

Part B) Staff recommends approval of the request to rezone the property from "MX3" Mixed-Use District to "CX" Mixed-Use District.

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

#### **I. GENERAL INFORMATION**

1. **Purpose of Request:** The applicant is proposing to change the use of the existing building from a commercial office use to an vehicle repair business that would perform auto body work, including fender repair, as well as installation of a paint booth inside the building structure. The proposed use falls within the "Vehicle Sales and Service - Vehicle Maintenance/Repair, Major" use category, which is not permitted in the "MX3" Mixed Use District. Therefore, the applicant has requested the property be rezoned to "CX" Mixed Use District.

Should the rezoning be approved, any change in use of the property would be subject to conformance with a Site Plan that complies with City Code Chapter 135.

2. **Size of Site:** 23,091 square feet (0.53 acres).
3. **Existing Zoning (site):** "MX3" Mixed Use District.
4. **Existing Land Use (site):** The subject property has been used as an office use, with accessory storage space.
5. **Adjacent Land Use and Zoning:**

**North** – "MX3"; Uses are Hubbell Avenue, office, warehouse and surface parking.

**South** – "N2b"; Uses are one-household and two-household residential.

**East** – "MX3"; Uses are retail businesses and one-household residential.

**West** – "MX3"; Uses are commercial and retail.



6. **General Neighborhood/Area Land Uses:** The subject property is located along the south side of Hubbell Avenue to the west of East 44<sup>th</sup> Street. It is located along a corridor that contains a mix of higher intensity commercial uses, including retail, office, and warehouses. There are one-household and two-household residential uses to the south.
7. **Applicable Recognized Neighborhood(s):** The subject property is not located within a designated neighborhood association. All neighborhood associations were notified of the public hearing by emailing of the Preliminary Agenda on January 3, 2023, and by emailing of the Final Agenda on January 13, 2023. Additionally, separate notifications of the hearing for this specific item were emailed on December 30, 2022 (20 days prior to the public hearing) and January 9, 2023 (10 days prior to the public hearing) to the Neighborhood Associations and mailed to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All agendas and notices are emailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division on the date of the mailing.

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

8. **Relevant Zoning History:** None.
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 area 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 future land use designation for the property is "Community Mixed Use". PlanDSM describes this designation 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.*

The subject parcel is currently zoned "MX3" District. The Zoning Ordinance describes "MX3" district as, "intended for mixed-use nodes and corridors within the city, where

residents and visitors may access multiple uses by walking and automobile. This district accommodates higher intensity commercial uses at a smaller scale.”

The applicant is proposing to rezone the subject property to the “CX” District. The Zoning Ordinance describes “CX” district as, “intended for nodes and corridors with larger-scale single-use commercial accommodating higher levels of vehicular traffic than MX districts and more intensive commercial uses, especially with outdoor sales and storage.”

Staff believes that the proposed rezoning to “CX” District would be consistent with the Community Mixed Use future land use designation and consistent with the general character with the existing uses along the Hubbell Avenue corridor and the surrounding area.

- 2. 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.

Any future construction or development of the site must comply with all applicable site plan and design regulations of the Planning and Design Ordinance (Chapter 135 of City Code).

The proposed use is subject to the following supplemental use regulations, per Section 134-3.5.19, including but not limited to the following:

- No more than 3 vehicles per bay may be stored outdoors while awaiting repair or pickup.
- No long-term outdoor storage of vehicles beyond 72 hours is allowed.
- Vehicles awaiting repair or pickup may not occupy required parking spaces.
- All vehicles must have current license tags.
- Outdoor storage of junk, debris, tires, or vehicle parts is prohibited.
- All repairs must occur within a completely enclosed building.

## SUMMARY OF DISCUSSION

Sreyoshi Chakraborty presented staff report and recommendation.

Will Page asked how confident we can be with enforcement actions if something was to go wrong.

Jason Van Essen stated enforcement can be tricky given legal non-conforming rights or an existing site plan on a property that has been occupied for a long period of time. Specific to this request, the city would be in a better situation with a site plan that meets current standards.

Francis Boggus stated there needs to be stronger enforcement actions with repair shops given the problem that exist around the city with these types of businesses.

Dan Drendel clarified that a site plan would be required after approval of the rezoning.



Jason Van Essen states correct.

Todd Garner stated going from commercial use to a body shop will be a difficult change of use from a building code perspective.

Wally Pelds, Pelds Design Services, 2323 Dixon Street stated this request is for the addition of an internal paint booth. There will be no external changes to the building but potentially additional storage in the rear yard.

Carol Maher asked if the building is currently being used for car repair.

Tom Hudson, 6365 NE 8<sup>th</sup> Ct. stated half of the building is vacant and the other half is occupied by a building painting contractor.

Carol Maher asked if the existing tenant would leave.

Wally Pelds states yes, it will become a new business.

Carol Maher asked if LDS Enterprises has experience with auto repair and painting.

Jason Van Essen stated LDS Enterprises is the current owner of the building. The current building owner is required to sign the rezoning application as they would need to accept any zoning conditions placed on the property.

Carol Maher asked if the current buyer has experience with auto repair and painting.

Tom Hudson stated they run a painting operation; they will only be doing vehicle painting.

Carol Maher asked if there are requirements for paint booths.

Wally Pelds stated those are controlled by building and fire codes.

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

No one was present or requested to speak.

Justyn Lewis asked if the proposed layout is required at the rezoning phase.

Jason Van Essen stated no, this is a question of use and is it in conformance with the future land use plan.

### **CHAIRPERSON CLOSED THE PUBLIC HEARING**

Will Page stated he would recommend denial of this request given the complex situation around ownership, use and function of the property.

### **COMMISSION ACTION:**

Will Page made a motion for:



Part A) The requested rezoning be found not in conformance with PlanDSM: Creating Our Tomorrow Comprehensive Plan future land use designation of Community Mixed Use.

Part B) Denial of the request to rezone the property from "MX3" Mixed-Use District to "CX" Mixed-Use District.

**THE VOTE: 7-7 (Katie Gillett, Johnny Alcivar, Abby Chungath, Justyn Lewis, Emily Webb, Carolyn Jension and Dan Drendel voted in opposition to the motion).**

**The motion failed.**

Emily Webb made a motion for:

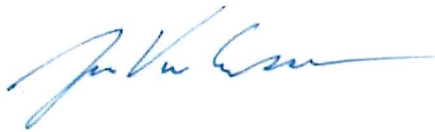
Part A) The requested rezoning be found in conformance with PlanDSM: Creating Our Tomorrow Comprehensive Plan future land use designation of Community Mixed Use.

Part B) Approval of the request to rezone the property from "MX3" Mixed-Use District to "CX" Mixed-Use District, subject to the following conditions:

1. Use of the property shall be limited to the following:
  - a. Any use as permitted and limited in the "MX3" Mixed-Use District.
  - b. An auto painting use that is fully contained within a building.
2. Prohibition of outdoor storage, parking or pavement for vehicular access within the rear yard, and overhead doors from the building that provide access to the rear yard.

Motion passed: 9-5

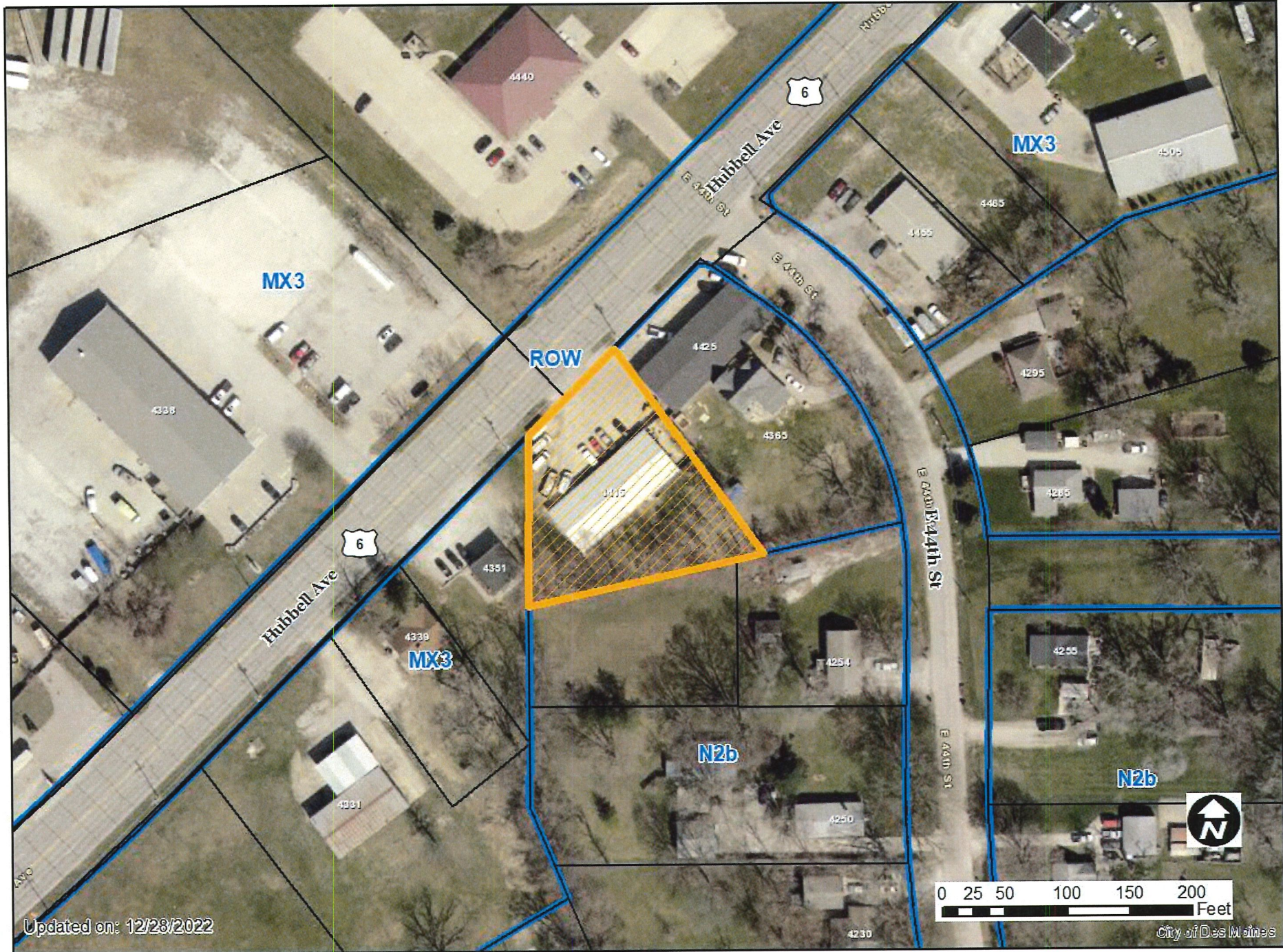
Respectfully submitted,



Jason Van Essen, AICP  
Planning & Urban Design Administrator

JMV:tjh





Updated on: 12/28/2022

1 inch = 102 feet







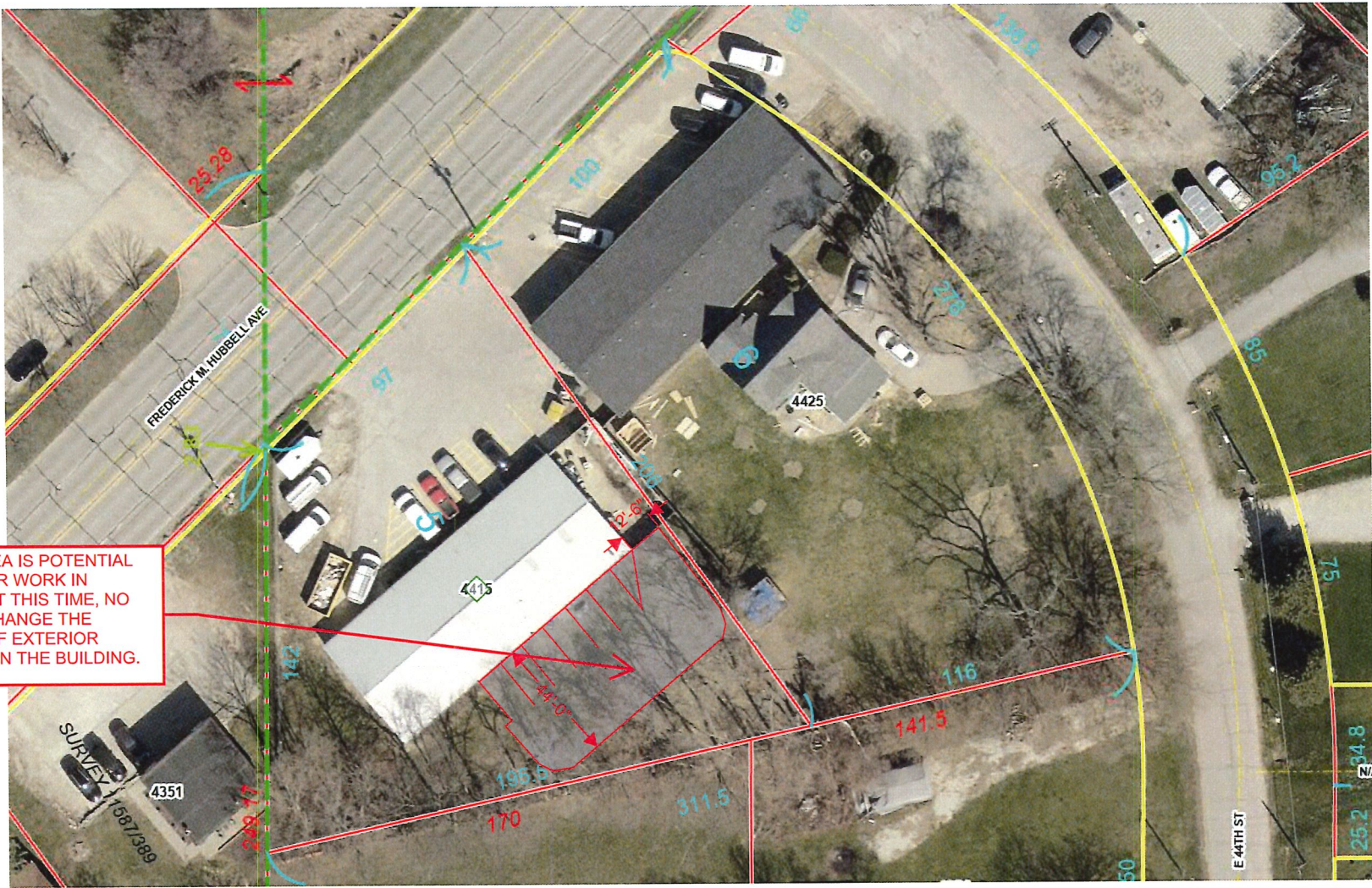








4415 HUBBELL AVENUE



SHADED AREA IS POTENTIAL PARKING FOR WORK IN PROCESS. AT THIS TIME, NO PLANS TO CHANGE THE LOCATION OF EXTERIOR OPENINGS ON THE BUILDING.





January 12, 2023

RE: Rezoning at 4415 Hubbell

To Whom it May Concern:

I am writing to summarize the neighborhood meeting efforts for the proposed re-zoning at 4415 Hubbell Ave.

The attached letter was sent by mail on January 4, 2023, to the neighbors on the list provided by the City of Des Moines. The address list is attached as well. In the letter, contact information was provided for Daniel Willrich of Pelds Design Services so that recipients would be able to contact him via email or phone should they be unable to attend the meeting.

The meeting was scheduled for and held on January 11, 2023 at 5:00 pm at Pelds Design Services' office. It was attended by representatives of the developer (Daniel Willrich), and Tom Hudson, Commercial Real Estate Broker representing the potential property owner. There were no neighbors in attendance and no written comments were submitted.

No changes are proposed due to the neighborhood meeting.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Willrich', is located below the 'Sincerely,' text.

Daniel Willrich, AIA  
Director of Architecture, Business Development

Item: ZONG-2022-000103

Date: 1/15/23

Please mark one of the following:

- I support the request
- I am undecided
- I oppose the request

Staff Use Only
<b>RECEIVED</b>
COMMUNITY DEVELOPMENT
JAN 19 2023

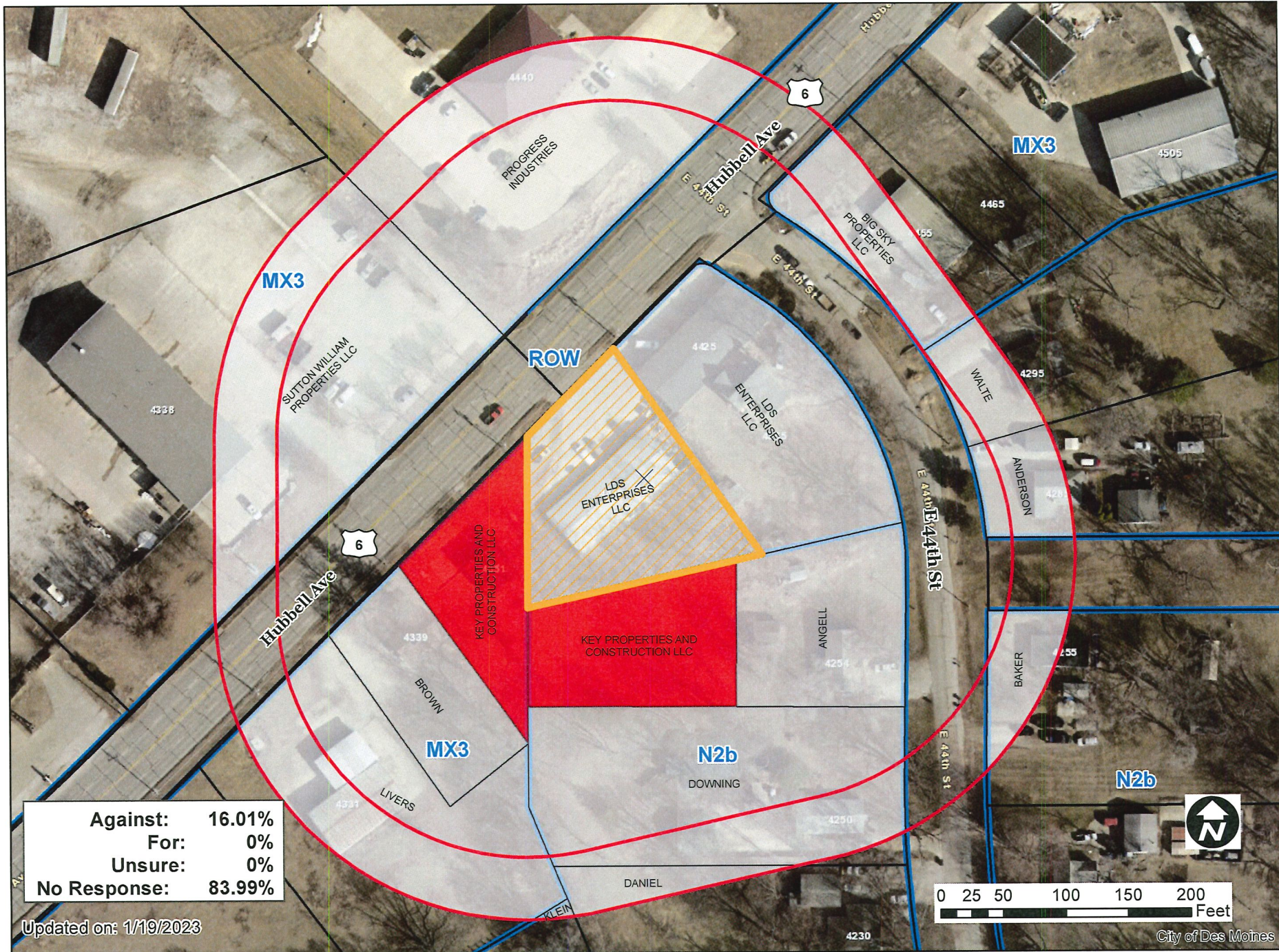
Titleholder Signature: [Signature]

Name/Business: Key Properties

Impacted Address: 4415 Hubbell Ave D.m.

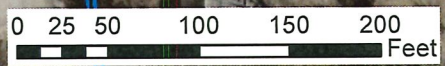
Comments: Traffic, parking, failure to maintain the area  
We do not want car parts, vehicles that need repair,  
stacking up next to our property, nor do we want the  
noise associated with compressors - noise pollution -  
We are also concerned about the foot traffic ->  
And improper disposing of hazardous waste





Against:	16.01%
For:	0%
Unsure:	0%
No Response:	83.99%

Updated on: 1/19/2023



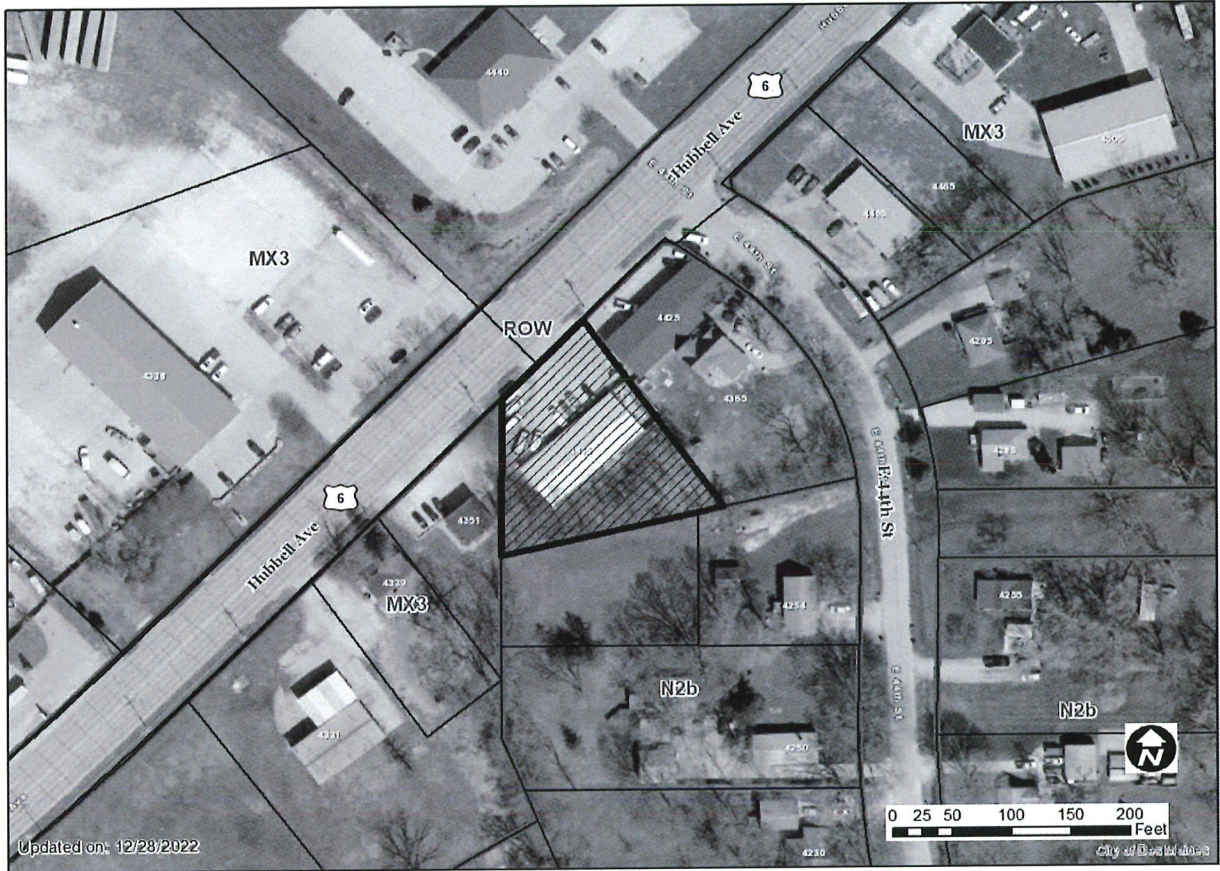
City of Des Moines

1 inch = 102 feet



LDS Enterprises, LLC, 4415 Hubbell Avenue

ZONG-2022-000103



1 inch = 102 feet