

**Docket Number:** #20/8709

**Applicant:** LMO Investments, LLC represented by Bret Nehring (property owner), 4300 NE 14<sup>th</sup> Street, Des Moines, IA 50313, being represented by Erik Nikkel with Snyder & Associates, Inc., 2727 Snyder Boulevard, Ankeny, IA 50023

**Request:** Approval of a Conditional Use Permit to establish a Moderate Industry use of a Heavy Construction Contractor at the subject property located at 5582 NE 14<sup>th</sup> Street, Des Moines, IA 50313.

**Subject Property / Surrounding Land Uses:**

The subject property is approximately 8.06 acres in size and legally described as Lot 2 of Saydel Commercial Plat 1, within Section 11 of Township 79 North, Range 24 West of the 5<sup>th</sup> P.M. (Saylor Township). The property is vacant open space, and contains no development at this time. The property is rectangular shaped having approximately 166 feet of frontage to the east along NE 14<sup>th</sup> Street (Hwy 69), and over 1,200 feet of depth. The lot widens to approximately 328 feet after the initial approximately 366 feet of depth. The subject property is zoned “LI” Light Industrial District. The property was recently rezoned from the “GC” General Commercial District to the “LI” Light Industrial District, with conditions. That rezoning included four (4) additional properties adjacent to the south of the subject property.

Surrounding properties are primarily commercial and industrial in zoning and use. The City of Des Moines corporate limits are located approximately one (1) mile to the south where they extend north along NE 14<sup>th</sup> Street near the intersection with Interstate 80/35. Directly adjacent to the north of the subject property is Thomas Bus Sales at 5636 NE 14<sup>th</sup> Street, which is a heavy retail services use zoned “GC” General Commercial District. Adjacent to the south is Des Moines Truck and Trailer at 5554 NE 14<sup>th</sup> Street, also a heavy retail services use, as well as the property at 5546 NE 14<sup>th</sup> Street, both of which were recently rezoned to Light Industrial with the subject property. The property at 5546 NE 14<sup>th</sup> Street contains a non-conforming mobile home established in approximately 1975, as well as a number of accessory structures utilized for personal storage. Under the conditions of the recent rezoning, all non-conforming uses and structures shall be discontinued and removed or converted to a permitted use, at time of redevelopment. Adjacent to the east is a property at 5635 NE 14<sup>th</sup> Street zoned “HI” Heavy Industrial District. This property contains a large warehouse building recently constructed and operated by Graham Group, Inc. Adjacent to the west of the subject property is Saydel Community High School at 5601 NE 7<sup>th</sup> Street, which is zoned “LDR” Low Density Residential District. Immediately southwest of the subject property is a regional storm water detention basin owned and constructed by Polk County. See *Attachment A* for a vicinity map of the subject property and surrounding area, including zoning.

**Application Details / Discussion:**

The applicant requests approval to allow the siting of a Heavy Construction Contractor, specifically a residential and commercial paving contractor, on the subject property. Heavy Construction Contractors are classified as a Moderate Industry use under the Polk County Zoning Ordinance. *Article 4 Use Regulations, Division 2 Table of Uses* of the Ordinance permits Moderate Industry uses within the “LI” Light Industrial District only upon the granting of a Conditional Use

Permit by the Polk County Board of Adjustment. The Moderate Industry category of Heavy Construction Contractors covers large-scale and intensive construction contracting services. Such uses inherently utilize heavy equipment and require large amounts of outdoor storage. A paving contractor clearly fits in this category. A use description and narrative was provided as part of the application, and can be found at the end of this report as *Attachment B*.

The applicant owns and operates Nehring Construction, Inc. currently located at 4300 NE 14<sup>th</sup> Street. The intent is to relocate this existing operation to the subject property, including development of the site for a new office and shop. The description and narrative in *Attachment B*, in part, states the proposed use is consistent with the Moderate Industry category. Furthermore, it states there will be eight (8) full-time office and shop employees, as well as an additional eight (8) crew foreman. In addition to a shop and office building, the development of the subject property for this use will include parking for construction vehicles and equipment, including heavy and light duty pickup trucks, trailers, skid loaders, etc., as well as outdoor material storage.

Staff mailed out 13 notices regarding this request, including the date and time of the public hearing, to surrounding property owners within the 500-foot notification boundary. To-date staff has received one (1) response in support and zero (0) responses in opposition of this Appeal.

### **Outstanding Violations**

Following the purchase of the subject property in 2017, the applicant removed all existing tree cover on the property, consisting of approximately 2.50 acres of young woodlands, and began illegally parking vehicles on the site. Initially, the applicant submitted a site plan for a storage unit development, but has since abandoned that plan in favor of rezoning the property to Light Industrial. Staff has repeatedly requested the applicant provide a tree mitigation plan and begin onsite mitigation of the trees that were illegally removed from the property. Under the Polk County Zoning Ordinance, a minimum of 50% of the young woodlands should have been preserved. At this time, the only remedy is to mitigate/replant onsite the 50% of those removed woodlands. Staff has also repeatedly asked the applicant to discontinue the illegal parking/storage of vehicles on the site. Staff urged the applicant to remedy these issues before submitting the rezoning application last Fall, as well as prior to submitting this Conditional Use Permit application. However, to-date these violations remain outstanding.

The recent rezoning of the property to the “LI” Light Industrial District included conditions, agreed to by the applicant, addressing these outstanding violations. The rezoning conditions can be found at the end of this report as *Attachment C*. The first condition requires the cleanup of all illegal vehicle parking on both the subject property and the adjacent Des Moines Truck and Trailer property at 5554 NE 14<sup>th</sup> Street, also owned by the applicant, prior to site plan submittal for development of the property. Staff has already accepted and provided comments on a site plan submittal for development of the subject property, and the illegal vehicle parking has not been addressed. Staff is recommending conditions of approval for this Conditional Use Permit requiring all illegal vehicle parking on the subject property and adjacent 5554 NE 14<sup>th</sup> Street property to be corrected prior to submittal/resubmittal of a development site plan, and no later than March 31, 2020. Non-compliance will result in enforcement action as outlined in the condition.

The fourth condition of the rezoning conditions (*Attachment C*) requires the tree mitigation be addressed by a site plan submittal for redevelopment of the subject property within three (3) months of the rezoning approval, or a separate tree mitigation plan shall be submitted and the onsite mitigation installed within 30 days of plan approval, weather dependent. The rezoning was approved on October 15, 2019, with the conditions of rezoning recorded on October 22, 2019. To-date, the property is in violation of this condition. Staff is recommending conditions of approval for this Conditional Use Permit requiring site plan or landscaping plan approval addressing the tree mitigation by April 30, 2020, including installation of the mitigation plantings within 30 days of that plan approval, weather dependent. Non-compliance will result in enforcement action as outlined in the condition.

### **Natural Resources / Environmental**

The property is vacant grassland. It does not contain mapped floodplain, wetland or other environmental hazards or resources. Prior to 2017, the subject property and a portion of the adjacent property to the north contained approximately 2.50 acres of young woodlands. The applicant illegally removed all of these woodlands – see discussion of this issue in the preceding section entitled “Outstanding Violations.” Under the Polk County Zoning Ordinance, the previous rezoning conditions, and the recommended conditions of approval under this Conditional Use Permit, the applicant is required to mitigate these trees onsite. The site topography gradually slopes downward from east to west across the property, with a high elevation along NE 14<sup>th</sup> Street of approximately 940 feet, and a low elevation of approximately 924 feet at the western property line.

### **Roads / Utilities**

The property fronts NE 14<sup>th</sup> Street (Hwy 69) to the east, which is a two-lane major arterial State highway maintained by the Iowa DOT. Over the next several years, the Iowa DOT will be widening NE 14<sup>th</sup> Street south from Interstate 80/35 north to the City of Ankeny corporate limits near Oralabor Road. The project engineer will need to account for the widening project during design of the subject property development to eliminate any conflicts. Water service is available through Des Moines Water Works. According to the latest data available from Des Moines Water Works, there is an existing eight-inch (8”) diameter water main located within NE 14<sup>th</sup> Street. Sanitary sewer is available through the City of Des Moines, with the main located along NE 14<sup>th</sup> Street. Any new development is required to connect to Des Moines sanitary sewer. If connection to City sewer is not possible, Polk County would allow an onsite septic system.

### **Analysis**

The Board of Adjustment in reviewing an application for a Conditional Use permit shall consider the proposal in terms of:

#### **1. Existing zoning and land use in the vicinity of the uses.**

The subject property is zoned “LI” Light Industrial District. Surrounding properties include a mixture of Light Industrial, Heavy Industrial, General Commercial, and limited Low Density Residential zoning. Surrounding uses include primarily light industrial and heavy commercial uses, as well as an institutional use of a community high school. Surrounding zoning and uses are compatible. The adjacent Saydel Community High School borders the western rear of

the subject property, but is a substantial distance away. Furthermore, development of the subject property will require the applicant install a heavy landscaping/screening buffer, which is in addition to the required tree mitigation, between the properties as required by the previous rezoning conditions.

**2. Planned and proposed public and private development, which may be adversely affected by the proposed use.**

The Iowa DOT is set to begin a several year project to widen NE 14<sup>th</sup> Street (Hwy 69). The site development of the subject property will need to account for any temporary or permanent easements and access restrictions in association with this project. There are no other major public or private developments planned in the area.

**3. Whether and to what extent the proposed use, at the particular location for which it is suggested, is necessary or desirable to provide a development which is in the interest of the public convenience or which will contribute to the general welfare of the area or Polk County.**

The subject property is well suited to accommodate the continued demand for light industrial uses, specifically construction contracting services. It is located on a major arterial roadway and is surrounded by similarly zoned and developed properties.

**4. Whether and to what extent all steps possible have been taken by the developer to minimize any adverse effects of the proposed use on the immediate vicinity and on the public health, safety and welfare in general.**

Through the recent rezoning of the subject property, a number of conditions were established requiring existing zoning violations be corrected, including illegal vehicle parking and tree mitigation. The rezoning conditions also required removal of adjacent non-conforming uses at time of redevelopment of those properties, as well as requires the provision of a heavy landscape buffer to shield the use from the adjacent Saydel High School property.

**Findings**

The application shall be denied if the Board of Adjustment finds any of the following:

**a. The application and record fail to establish compliance with the standard made applicable to the proposed development by the provision of this Ordinance.**

The proposed Moderate Industry use of a residential and commercial paving contractor is permitted upon approval of this Conditional Use Permit.

**b. The proposed use, developed in the proposed manner, and at the proposed location, would be inconsistent with the standards pursuant to the provisions of this Ordinance.**

If approved, the applicant is required to finish the required engineered site plan in order to

establish that all future improvements comply with the County's standards, prior to construction and occupancy.

- c. **The adverse impacts on the overall public health, safety and welfare are not balanced by the public or private benefits of the proposal. The Board of Adjustment shall include in this balance, any proposals of the applicant and any conditions that it might impose on the development, pursuant to the provisions of this Ordinance, to ameliorate problems associated with the development.**

Potential adverse impacts are mitigated by the existing conditions of rezoning as well as staff's recommended conditions of approval for this Conditional Use Permit. Furthermore, the subsequent site plan review by Polk County will guarantee these requirements, and all site plan standards for this development, are satisfied prior to construction and occupancy.

**In addition, no application for a Conditional Use Permit shall be approved unless the Board of Adjustment specifically finds the proposed conditional use appropriate in the location for which it is proposed. This finding shall be based on the following criteria:**

- A. **The proposed use is not in harmony with the general purpose, goals, objectives, and standards of the following:**
  - 1. **Polk County Comprehensive Plan:** The proposal is consistent with the goals and policies of the 2030 Polk County Comprehensive Plan.
  - 2. **Polk County Zoning Ordinance:** The Ordinance allows the proposed use pending approval of this Conditional Use Permit by the Board of Adjustment, and subsequent administrative site plan approval.
  - 3. **Other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the County:** None.
  
- B. **The proposed location of the use is not consistent with policies or provisions of the following:**
  - 1. **Comprehensive Plan:** The proposed use is consistent with the goals and policies of the 2030 Polk County Comprehensive Plan.
  - 2. **Polk County Zoning Ordinance:** The Ordinance requirements for parking, outdoor storage, building setbacks, landscaping, lighting, storm water detention, etc. will be addressed as part of staff's review of the development site plan.
  - 3. **Other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the County:** None.
  
- C. **The proposed use at the proposed location results in a substantial or undue adverse effect on any of the following either as they now exist or as they may in the future be developed**

as a result of the implementation of provisions and policies of the Comprehensive Plan, this Ordinance, or any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice, by the County or other governmental agency having jurisdiction to guide growth and development:

1. **Adjacent property:** Adjacent properties are similarly zoned and utilized with industrial and heavy commercial uses, including a commercial truck repair shop, trailer and bus sales business, as well as a large warehouse facility. A public high school is adjacent to the west, but is setback a substantial distance from the subject property and a heavy landscaping buffer is required as part of the subject property site development.
  2. **Character of the neighborhood:** The neighborhood character is defined by industrial and heavy retail service uses along a State highway corridor. These uses are supported by the Comprehensive Plan and the North Central Area Plan specifically, and have been realized through recent zone changes and continued development and redevelopment within the Area.
  3. **Traffic conditions:** The property fronts NE 14<sup>th</sup> Street (Hwy 69), which is classified as a major arterial State highway maintained by the Iowa DOT. The latest available Iowa DOT traffic data from 2016 indicates this stretch of NE 14<sup>th</sup> Street has an annual average daily traffic count of 12,400 vehicles. The proposed use will contribute to additional traffic. However, the site will have approximately 16 employees, and while generating additional construction vehicle traffic, it will generate significantly less overall traffic compared to any number of permitted retail uses.
  4. **Parking:** The applicant is required to provide onsite parking for employees and customers, as well as business vehicles and equipment.
  5. **Public improvements:** No impact upon future public improvements is anticipated. The future widening project for NE 14<sup>th</sup> Street shall be accounted for by the applicant and engineer within the development site plan to avoid any conflicts with future improvements.
  6. **Public sites or rights-of-way:** No impact upon public sites or adjacent rights-of-way is anticipated.
  7. **Other matters affecting the public health, safety, and general welfare:** None.
- D. **The proposed use in the proposed area is not adequately served by or imposes an undue burden on any of the following.**
1. **Public improvements:** Adequate for proposed use.
  2. **Public facilities:** Adequate for proposed use.

3. **Public utilities:** Adequate for proposed use.

4. **Public services:** Adequate for proposed use.

### **Recommendation**

Staff recommends approval of the requested Conditional Use Permit to establish a Moderate Industry use of a Heavy Construction Contractor, specifically a residential and commercial paving contractor, at the subject property located at 5582 NE 14<sup>th</sup> Street, Des Moines, IA 50313. Approval is subject to the following conditions:

1. The Conditional Use Permit only applies to the operation of Nehring Construction, Inc. at the subject property. An updated or new Conditional Use Permit is required if the business owner changes or if the Conditional Use expands or changes.
2. The Conditional Use Permit only permits to the Moderate Industry use of a Heavy Construction Contractor, specifically a residential and commercial paving contractor. No other Heavy Construction Contractors or Moderate Industry uses are allowed by this Conditional Use Permit.
3. The subject property may not be used to store concrete trucks, pumping trucks, or other heavy machinery/equipment.
4. All illegal vehicle parking on the subject property and the adjacent 5554 NE 14<sup>th</sup> Street property shall be corrected prior to submittal/resubmittal of a development site plan, and shall be corrected regardless of a site plan submittal no later than March 31, 2020. Also, a development site plan or separate landscaping plan addressing the required tree mitigation must be submitted for review and approved by Polk County no later than April 30, 2020. Furthermore, all tree mitigation shall be installed within 30 days of that plan approval, weather dependent. If any of these deadlines are not met, Polk County will begin immediate enforcement action, including citation, fine, and setting a court date to obtain a court order to correct these violations.
5. There shall be no light spillover onto the adjacent Saydel High School property. A lighting plan is required as part of the site plan review to establish compliance with this condition.



# Attachment B

## Conditional Use Permit Narrative

Currently, Nehring Construction Inc.'s (Nehring) office and shop are located at 4300 NE 14<sup>th</sup> Street, in Des Moines. It is Nehring's intent to build a new office and shop and relocate their operation to the 5582 NE 14<sup>th</sup> Street property located in Polk County. The 2017 NAICS number is 238990 (Concrete paving, residential and commercial driveway and parking area) which is consistent with a Moderate Industry – Industrial Use.

Once the office and shop buildings are constructed and functional, Nehring expects 8 employees (on-site) to operate out of the new facility. This would include office personnel and shop mechanics. An additional 8 paving crew foreman will at the beginning and ending of most business days.

When not on jobsites, the Nehring construction equipment will be kept on-site and parking in the paved area located behind the primary facility. Nehring's construction equipment will include pickup trucks (heavy and light duty), trailers, skidloaders, and such.

### Supporting information related to Section 1 – Review Standards.

- A. This property is currently zoned Light Industrial. The property is the northern most property of a block of properties that were recently rezoned to Light Industrial (LI). The neighboring properties to the north along NE 14<sup>th</sup> are zoned General Commercial (GC), while the Saydel CSD property located immediately to the west is zoned Low Density Residential (LDR). The land use surrounding the property features a variety of users that generate daily truck traffic as a whole. It is anticipated that the proposed use will blend with the surrounding businesses and will have a positive economic impact.
- B. Most of the surrounding properties are already developed. Many of the surrounding properties have concrete pavements associated with their properties. Having a concrete paving contractor nearby would be complimentary to future paving demands.
- C. As development within the Des Moines metro continues, concrete paving will continue to be necessary and demand will continue to grow. Nehring has contributed to numerous developments in the Des Moines metro area for years and intends to be a part of the Metro's continued growth for years to come. The new shop and office will allow Nehring to continue to grow which will result in job creation that will create an economic benefit.
- D. The proposed site will have a paved surfacing throughout the site, which will help eliminate dust and trackout from the site onto the surrounding streets. The site will also have storm water run-off controls and detention facilities as required by county ordinance to protect the downstream properties. On-site lighting will be designed to meet zoning standards, with no light emitting from the site.

### Supporting information related to Section 2 – General Standards

- A. The proposed use and location conform to the current County zoning and land use plan. The roadway network supporting this site consists primarily of the state highway (Hwy 69 / NE 14<sup>th</sup> St) immediately adjacent to the property.

- B. The proposed use will not adversely affect the surrounding properties. The traffic type and volume generated is typical to the Light Industry zoning classification. The Comprehensive Plan does not propose any changes to the zoning or land use in this area.
- C. The existing infrastructure, including the roadway network, public infrastructure and private owned infrastructure needed to support this use and the surrounding properties is adequate in size and capacity without needing upgrades or causing negative impact to the surrounding properties.

NE

# Attachment C



Doc ID: 034484220007 Type: GEN  
Kind: MISCELLANEOUS  
Recorded: 10/22/2019 at 08:58:57 AM  
Fee Amt: \$0.00 Page 1 of 7  
Revenue Tax: \$0.00  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2019-00036396

BK **17553** PG **714-720**

**RETURN TO:**  
**AFTER RECORDING RETURN**  
**TO BECKY DEWEY,**  
**AUDITOR'S OFFICE**

Prepared/Return To: Polk County Public Works, Planning Division, 5885 NE 14 Street, Des Moines, Iowa 50313 (515) 286-3705

### Conditions of Rezoning

We, LMO Investments, LLC; Larry L. Wurst; Swanwood Apartments, LLC; John M. Huot 2013 Revocable Trust; and Karen Celayne Huot 2013 Revocable Trust (current property owners), as owners of the properties located at 5582, 5554, 5546, 5500 and 5496 NE 14<sup>th</sup> Street, Des Moines, IA 50313, being located on the west side of NE 14<sup>th</sup> Street (Hwy 69) lying north of NE 54<sup>th</sup> Avenue and south of NE 58<sup>th</sup> Avenue, and legally described as follows:

LOTS 1 AND 2 OF SAYDEL COMMERCIAL PLAT 1, AN OFFICAL PLAT IN POLK COUNTY, IOWA; AND -EX BEG NW COR LT 1 FREEMANS PLACE THN N 165.3F E 349.22F S 165.75F W 348.84 TO POB- N 5A S 30A SE ¼ SE ¼ LESS RD SEC 11-79-24; AND -EX BEG SW COR LT A THN N 165.36F TO NW COR LT 1 THN E 399.83F TO NE COR LT 3 THN S 165.47F W 399.80F TO POB- LTS 1 THRU 10 & LOT A FREEMANS PLACE; AND N 5A S 20A SE ¼ SE ¼ LESS 0.19A RD SEC 11-79-24

Do hereby adopt the following "Conditions of Rezoning" as recommended by Planning Staff and the Polk County Zoning Commission, and as approved by the Polk County Board of Supervisors:

1. Prior to site plan submittal for development or redevelopment of any property covered under this application, the outstanding zoning violations shall be corrected for the properties located at 5554/5582 NE 14<sup>th</sup> Street and 5496 NE 14<sup>th</sup> Street. Specifically, these properties have illegally expanded to include vehicle parking/storage not on paved surfaces. Corrective action will require removal or relocation of these vehicles, and/or approval of an engineered site plan and construction of additional site improvements.
2. At time of redevelopment triggering an engineered site plan for of any specific property, all non-conforming uses and structures shall be discontinued and removed from that property, or converted to a permitted use. Specifically, the property at 5546 NE 14<sup>th</sup> Street contains a non-conforming residential dwelling and accessory buildings. The property at 5500 contains non-conforming commercial apartments. Any structure(s) with non-conforming setbacks may remain if converted to a permitted use and updated to comply with Building Codes.
3. Redevelopment of any property requires a Heavy Landscape Buffer be installed along the western property line to provide maximum screening from Saydel High School. The property at 5496 NE 14<sup>th</sup> Street shall also install a Heavy Landscape Buffer along its southern property line adjacent to all residential and institutional uses at time of redevelopment.
4. Future redevelopment of 5582 NE 14<sup>th</sup> Street requires a tree mitigation plan as part of the development site plan to provide the required onsite mitigation for the woodlands already removed from the property. If a development site plan is not submitted within three (3) months of final approval of this rezoning, the tree mitigation plan shall be

separately submitted and the onsite mitigation installed within 30 days following plan approval, weather dependent.

These conditions of rezoning shall apply and be binding to all present and future owners of the above legally described property.

Dated this 14<sup>th</sup> day of Oct, 2019

[Signature]

Representative(s) of LMO Investments, LLC (Owner)

STATE OF Iowa  
COUNTY OF Polk ) SS

On this 14<sup>th</sup> day of Oct, A.D., 2019 before me Lisa Harney  
a Notary Public in and for Polk County, State of Iowa personally appeared  
Drew Lehning and \_\_\_\_\_ to me personally  
known who being by me duly sworn did acknowledge being the \_\_\_\_\_ of

\_\_\_\_\_, which is the company executing the attached instruments,  
and the instrument was signed and sealed by the persons listed above on behalf of the  
company by authority of its Board of Directors or Trustees and the persons identified above  
acknowledge execution of the instrument to be the voluntary act and deed of the company by  
it voluntarily executed.

[Signature]



Notary Public in and for said County

Dated this 14<sup>th</sup> day of Oct, 2019

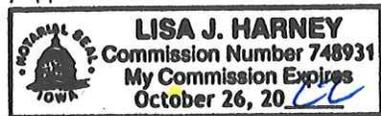
[Signature]

Larry L. Wurst. (Owner)

STATE OF Iowa  
COUNTY OF Polk ) SS

On this 14<sup>th</sup> day of Oct, A.D., 19 before me Lisa Harney  
a Notary Public in and for Polk County, State of Iowa personally appeared  
Larry Wurst, who voluntarily signed this instrument.

[Signature]



Notary Public in and for said County

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019

\_\_\_\_\_  
Representative(s) of Swanwood Apartments, LLC (Owner)

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D., \_\_\_\_\_ before me \_\_\_\_\_,  
a Notary Public in and for \_\_\_\_\_ County, State of \_\_\_\_\_ personally appeared  
\_\_\_\_\_, and \_\_\_\_\_ to me personally  
known who being by me duly sworn did acknowledge being the \_\_\_\_\_ of  
\_\_\_\_\_, which is the company executing the attached instruments,  
and the instrument was signed and sealed by the persons listed above on behalf of the  
company by authority of its Board of Directors or Trustees and the persons identified above  
acknowledge execution of the instrument to be the voluntary act and deed of the company by  
it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for said County

Dated this 11 day of October, 2019

John M Huot Trust  
\_\_\_\_\_  
Representative(s) of John M. Huot 2013 Revocable Trust (Owner)

STATE OF Iowa )  
 ) SS  
COUNTY OF Polk )

On this 11 day of October, A.D., 2019 before me Lori Kauffman  
a Notary Public in and for Polk County, State of Iowa personally appeared  
John Huot, and \_\_\_\_\_ to me personally  
known who being by me duly sworn did acknowledge being the Owner of  
John M. Huot Trust, which is the entity executing the attached instruments, and  
the instrument was signed and sealed by the persons listed above on behalf of the Revocable  
Trust by authority of being a legal representative of said Revocable Trust and the persons  
identified above acknowledge execution of the instrument to be the voluntary act and deed of  
the Revocable Trust by it voluntarily executed.

Lori Kauffman  
\_\_\_\_\_  
Notary Public in and for said County



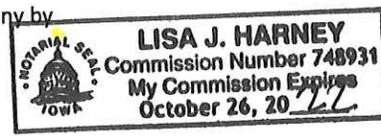
Dated this 16 day of Oct, 2019

[Signature]  
Representative(s) of Swanwood Apartments, LLC (Owner)

STATE OF Iowa,  
COUNTY OF Pott ) SS

On this 16<sup>th</sup> day of Oct, A.D., 19 before me Lisa Harney  
a Notary Public in and for Pott County, State of Iowa personally appeared  
Matt Deboth and \_\_\_\_\_ to me personally  
known who being by me duly sworn did acknowledge being the owner of  
Swanwood Apt. which is the company executing the attached instruments,  
and the instrument was signed and sealed by the persons listed above on behalf of the  
company by authority of its Board of Directors or Trustees and the persons identified above  
acknowledge execution of the instrument to be the voluntary act and deed of the company by  
it voluntarily executed.

[Signature]  
Notary Public in and for said County



Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019

\_\_\_\_\_  
Representative(s) of John M. Huot 2013 Revocable Trust (Owner)

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D., \_\_\_\_\_ before me \_\_\_\_\_,  
a Notary Public in and for \_\_\_\_\_ County, State of \_\_\_\_\_ personally appeared  
\_\_\_\_\_, and \_\_\_\_\_ to me personally  
known who being by me duly sworn did acknowledge being the \_\_\_\_\_ of  
\_\_\_\_\_, which is the entity executing the attached instruments, and  
the instrument was signed and sealed by the persons listed above on behalf of the Revocable  
Trust by authority of being a legal representative of said Revocable Trust and the persons  
identified above acknowledge execution of the instrument to be the voluntary act and deed of  
the Revocable Trust by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for said County

Dated this 11 day of October, 2019

Karon Celayne Huot  
Representative(s) of Karen Celayne Huot 2013 Revocable Trust (Owner)

Iowa Drivers License  
#181AD4595  
EXP 1-22-2020

STATE OF Florida )  
COUNTY OF Sarasota ) SS

On this 11 day of October, A.D., 2019, before me Dianne Wegner  
a Notary Public in and for Sarasota County, State of Florida personally appeared

Karon Celayne Huot, and \_\_\_\_\_ to me personally

known who being by me duly sworn did acknowledge being the OWNER of  
Karon Celayne Huot 2013 Rev. Trust, which is the entity executing the attached instruments, and  
the instrument was signed and sealed by the persons listed above on behalf of the Revocable  
Trust by authority of being a legal representative of said Revocable Trust and the persons  
identified above acknowledge execution of the instrument to be the voluntary act and deed of  
the Revocable Trust by it voluntarily executed.

Dianne Wegner  
Notary Public in and for said County



ORDINANCE NO. 345

WHEREAS, on August 28, 2007, the Polk County Board of Supervisors adopted the Zoning Ordinance and Map for the unincorporated territory of Polk County, Iowa; and

WHEREAS, the petitioners, LMO Investments, LLC represented by Bret Nehring, with consent from additional property owners Larry L. Wurst, Swanwood Apartments, LLC, John M. Huot 2013 Revocable Trust, and Karen Celayne Huot 2013 Revocable Trust, are requesting a Zoning Map Amendment from the "GC" General Commercial District to the "LI" Light Industrial District for the subject properties addressed as 5582, 5554, 5546, 5500 and 5496 NE 14<sup>th</sup> Street, Des Moines, totaling approximately 21.11 acres located on the west side of NE 14<sup>th</sup> Street (Hwy 69), lying north of NE 54<sup>th</sup> Avenue and south of NE 58<sup>th</sup> Avenue, all within Section 11 of Township 79 North, Range 24 West of the 5<sup>th</sup> P.M. (Saylor Township); and

WHEREAS, a Zoning Map Amendment was reviewed and heard by the Polk County Zoning Commission on Monday, August 26, 2019 at 7:00 P.M., at the meeting room of the Polk County Public Works Department, Planning Division, 5885 N.E. 14<sup>th</sup> Street, Des Moines, Iowa, due and timely notice published as provided by law; and

WHEREAS, the Polk County Zoning Commission, after hearing the evidence both in favor and opposed to the Zoning Map Amendment, voted three (3) in favor, three (3) against, with one (1) member absent to recommend approval to the Polk County Board of Supervisors that the Zoning Map Amendment from the "GC" General Commercial District to the "LI" Light Industrial District with conditions be approved. The motion did not pass due to a failure of a majority vote based on the membership of the Zoning Commission, and therefore effectively results in no recommendation; and

WHEREAS, the Zoning Map Amendment was heard by the Polk County Board of Supervisors on Tuesday, October 1, 2019 at 9:30 A.M., in Room 120 of the Polk County Administrative Office Building, 111 Court Avenue, Des Moines, Iowa, due and timely notice published as provided by law.

NOW, THEREFORE, BE IT ORDAINED that the Zoning Map Amendment (Attachment A) from the "GC" General Commercial District to the "LI" Light Industrial District, with conditions, for the 21.11-acre rezoning area and subject properties, legally described as follows:

LOTS 1 AND 2 OF SAYDEL COMMERCIAL PLAT 1, AN OFFICAL PLAT IN POLK COUNTY, IOWA; AND -EX BEG NW COR LT 1 FREEMANS PLACE THN N 165.3F

E 349.22F S 165.75F W 348.84 TO POB- N 5A S 30A SE ¼ SE ¼ LESS RD SEC 11-79-24; AND -EX BEG SW COR LT A THN N 165.36F TO NW COR LT 1 THN E 399.83F TO NE COR LT 3 THN S 165.47F W 399.80F TO POB- LTS 1 THRU 10 & LOT A FREEMANS PLACE; AND N 5A S 20A SE ¼ SE ¼ LESS 0.19A RD SEC 11-79-24

BE APPROVED.

The following conditions of rezoning shall apply, as agreed to in writing by the property owners:

1. Prior to site plan submittal for development or redevelopment of any property covered under this application, the outstanding zoning violations shall be corrected for the properties located at 5554/5582 NE 14<sup>th</sup> Street and 5496 NE 14<sup>th</sup> Street. Specifically, these properties have illegally expanded to include vehicle parking/storage not on paved surfaces. Corrective action will require removal or relocation of these vehicles, and/or approval of an engineered site plan and construction of additional site improvements.
2. At time of redevelopment triggering an engineered site plan for any specific property, all non-conforming uses and structures shall be discontinued and removed from that property, or converted to a permitted use. Specifically, the property at 5546 NE 14th Street contains a non-conforming residential dwelling and accessory buildings. The property at 5500 contains non-conforming commercial apartments. Any structure(s) with non-conforming setbacks may remain if converted to a permitted use and updated to comply with Building Codes.
3. Redevelopment of any property requires a Heavy Landscape Buffer be installed along the western property line to provide maximum screening from Saydel High School. The property at 5496 NE 14th Street shall also install a Heavy Landscape Buffer along its southern property line adjacent to all residential and institutional uses at time of redevelopment.
4. Future redevelopment of 5582 NE 14th Street requires a tree mitigation plan as part of the development site plan to provide the required onsite mitigation for the woodlands already removed from the property. If a development site plan is not submitted within three (3) months of final approval of this rezoning, the tree mitigation plan shall be separately submitted and the onsite mitigation installed within 30 days following plan approval, weather dependent.

POLK COUNTY, IOWA



Tom Hockensmith, Chairperson