

★ **Roll Call Number**

Agenda Item Number

58 A

Date September 24, 2007

An Ordinance entitled, "AN ORDINANCE to amend the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, by rezoning and changing the district classification of certain property located in the vicinity of 2121 Hubbell Avenue from the "R1-60" One-Family Low-Density Residential District to a Limited "C-2" General Retail and Highway Oriented Commercial District classification",

presented.

MOVED by _____ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)

Roger K. Brown

Roger K. Brown

Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

CERTIFICATE

I, DIANE RAUH, 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

MOTION CARRIED

APPROVED

.....
Mayor

ORDINANCE NO. _____

AN ORDINANCE to amend the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, by rezoning and changing the district classification of certain property located in the vicinity of 2121 Hubbell Avenue from the "R1-60" One-Family Low-Density Residential District to a Limited "C-2" General Retail and Highway Oriented Commercial District classification.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, be and the same is hereby amended by rezoning and changing the district classification of certain property located in the vicinity of 2121 Hubbell Avenue, more fully described as follows, from the "R1-60" One-Family Low-Density Residential District to a Limited "C-2" General Retail and Highway Oriented Commercial District classification:

The East 88 feet of the South 10.0 feet of Lot 7; the East 88 feet of Lot 8; the East 88 feet, and the South 10.0 feet of the West 40.0 feet of Lot 9; and, the South 10 feet of Lot 20, all in Block 1, Easdale, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa (hereinafter referred to as the "Property").

Sec. 2. That this ordinance and the zoning granted by the terms hereof are subject to the following imposed additional conditions which have been agreed to and accepted by execution of an Acceptance of Rezoning Ordinance by all owners of said property and are binding upon the owners and their successors, heirs, and assigns as follows:

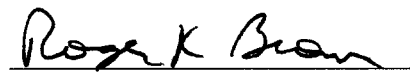
- A. Any commercial use of the Property, or of land that includes the Property, shall be in conformance with an approved Site Plan, and the Site Plan shall conform with the Landscape Standards applicable within the "C-2" District.
- B. The following uses of structures and land shall be prohibited upon the Property:
 - 1) Adult entertainment business.
 - 2) Automobile display, hire, rental, and sales.

- 3) Financial service centers that provide check cashing and loans secured by post dated checks or payroll guarantee as their primary activity.
- 4) Garage for general motor vehicle repair.
- 5) Off-premises advertising signs.
- 6) Package goods stores for the sale of alcoholic beverages.
- 7) Pawn Brokerages.
- 8) Taverns/nightclubs.

Sec. 3. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

Sec. 4. The City Clerk is hereby authorized and directed to cause a certified copy of the Acceptance of Rezoning Ordinance, this ordinance, a vicinity map, and proof of publication of this ordinance, to be properly filed in the office of the Polk County Recorder.

FORM APPROVED:



Roger K. Brown

Assistant City Attorney

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58A

Request from Jeff Brands (purchaser) to rezone property located at 2121 Hubbell Avenue. The subject property is owned by Hickory Park, Inc.			File # ZON2007-00110	
Description of Action	Rezone property from "R1-60" One-Family Low-Density Residential District to "C-2" General Retail and Highway Oriented Commercial District, to allow overall site redevelopment for a drive-through restaurant.			
2020 Community Character Plan	Commercial: Auto-Oriented Small-Scale Strip Development			
Horizon 2025 Transportation Plan	No Planned Improvements.			
Current Zoning District	"R1-60" One-Family Low-Density Residential District			
Proposed Zoning District	"C-2" General Retail and Highway Oriented Commercial District			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Inside Area				
Outside Area	3	1	0	<20%
Plan and Zoning Commission Action	Approval	12-0	Required 6/7 Vote of the City Council	Yes
	Denial			No

Jeff Brands (Taco Johns) - 2121 Hubbell Avenue

ZON2007-00110



Prepared by: Roger K. Brown, Assistant City Attorney, 400 Robert Ray Dr., Des Moines, IA 50309
515/283-4541
Return Address: City Clerk - City Hall, 400 Robert Ray Dr., Des Moines, IA 50309
Taxpayer: No change
Title of Document: Acceptance of Rezoning Ordinance
Grantor's Name: Hickory Park, Inc., and Taco John's of Iowa, Inc.
Grantee's Name: City of Des Moines, Iowa
Legal Description:

The East 88 feet of the South 10.0 feet of Lot 7; the East 88 feet of Lot 8; the East 88 feet, and the South 10.0 feet of the West 40.0 feet of Lot 9; and, the South 10 feet of Lot 20, all in Block 1, Easdale, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa (hereinafter referred to as the "Property").

ACCEPTANCE OF REZONING ORDINANCE

The undersigned hereby state, warrant and agree as follows:

1. That Hickory Park, Inc., as titleholder, and Taco John's of Iowa, Inc., as contract purchaser, are the sole owners of the Property in the vicinity of 2121 Hubbell Avenue, more specifically described above.

2. That in the event the City of Des Moines, Iowa, acts to rezone the Property from the "R1-60" One-Family Low-Density Residential District to a Limited "C-2" General Retail and Highway Oriented Commercial District classification, we agree and accept on behalf of the owners to the imposition of the following conditions to run with the land and be binding upon all successors, heirs and assigns as part of the ordinance so rezoning the Property:

- A. Any commercial use of the Property, or of land that includes the Property, shall be in conformance with an approved Site Plan, and the Site Plan shall conform with the Landscape Standards applicable within the "C-2" District.
- B. The following uses of structures and land shall be prohibited upon the Property:

- 1) Adult entertainment business.
- 2) Automobile display, hire, rental, and sales.
- 3) Financial service centers that provide check cashing and loans secured by post dated checks or payroll guarantee as their primary activity.
- 4) Garage for general motor vehicle repair.
- 5) Off-premises advertising signs.
- 6) Package goods stores for the sale of alcoholic beverages.
- 7) Pawn Brokerages.
- 8) Taverns/nightclubs.

3. A certified copy of the rezoning ordinance shall be attached hereto, and a certified copy of this document and the rezoning ordinance shall be recorded by the City in the land records of the County Recorder to memorialize the rezoning of the Property as identified above.

4. That in the event any portion of the Property is hereafter rezoned to a district classification different from Limited "C-2", then this Acceptance shall be immediately terminated as applied to the real estate so rezoned on the effective date of such rezoning, and the conditions agreed to herein shall be rendered null and void, provided, if there be any such rezoning to a more restricted zoning classification, any then legal actual use of such real estate shall become a legal non-conforming use.

The words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Hickory Park, Inc.,
an Iowa corporation

By: _____
David E. Wheelock, President

State of Iowa)
) ss:
County of _____)

This instrument was acknowledged before me on September ____, 2007, by David E. Wheelock, as President of Hickory Park, Inc., on behalf of whom the instrument was executed.

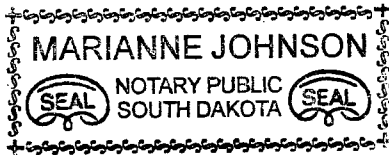
Notary Public in the State of Iowa
My commission expires: _____

Taco John's of Iowa, Inc.,
an Iowa corporation

By: *Jeff Brands*
Jeff Brands, Secretary & Treasurer

State of ~~Iowa~~ *South Dakota*
) SS:
County of ~~Polk~~ *Minnehaha*

This instrument was acknowledged before me on September 17, 2007, by Jeff Brands, as Secretary and Treasurer of Taco John's of Iowa, Inc., on behalf of whom the instrument was executed.



Marianne Johnson
Notary Public in the State of ~~Iowa~~ *South Dakota*
My commission expires: 7/13/2012