

Date..... January 23, 2012

WHEREAS, on January 9, 2012, by Roll Call No. 12-0036, the City Council duly resolved that a public hearing be held on January 23, 2012 at 5:00 p.m., in Council Chambers at City Hall, to consider a proposal from K G Store, 573, LLC to amend the approved Kum and Go 573 PUD Planned Unit Development Conceptual Plan for property located in the vicinity of 5830 Southeast 14<sup>th</sup> Street to allow for the sale of alcoholic liquor as a permitted use in addition to the permitted gas station/convenience store use, subject to the following conditions which must be stated clearly on the amended PUD Conceptual Plan:

1. Any sale of alcoholic liquor, wine, and/or beer shall be accessory to a gas station/convenience store, where no more than 40% of the business' gross revenue is derived from the sale of tobacco products, alcoholic liquor, wine, and/or beer.
2. Any sale of alcoholic liquor, wine, and/or beer shall be in accordance with the proper license obtained through the Office of the City Clerk as approved by the City Council.
3. Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one footcandle of light on the parking surface at all times.
4. The business shall comply with article IV of chapter 42 of this Code pertaining to noise control.
5. No sale of alcoholic beverages shall be made from a drive-through window.
6. Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.
7. The PUD Conceptual Plan shall be subject to a legislative amendment to preclude the sale of alcoholic liquor if the Zoning Enforcement Officer determines that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions of approval.

WHEREAS, due notice of the hearing was published in the Des Moines Register on January 12, 2012, as provided by law, setting forth the time and place for hearing on the proposed amendment to the approved PUD Conceptual Plan; and,

WHEREAS, the Plan and Zoning Commission has recommended that the proposed amendment to the approved PUD Conceptual Plan be approved, subject to the Conceptual Plan being first amended as set forth in the attached letter from the Planning Administrator; and,

Date..... January 23, 2012

WHEREAS, in accordance with the published notice those interested in the proposed amendment to the approved PUD Conceptual Plan, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, as follows:

1. Upon due consideration of the facts, statements of interested persons and arguments of counsel, the objections to the proposed amendments to the approved PUD Conceptual Plan for the property in the vicinity of 5830 Southeast 14<sup>th</sup> Street, and more specifically described below, are hereby overruled and the hearing is closed:

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER (NW1/4 SE1/4) OF SECTION 27, TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE 5TH P.M., DES MOINES, POLK COUNTY, IOWA.

ALSO PART OF LOT 1, BOWLARAMA PLACE, AN OFFICIAL PLAT, DES MOINES, POLK COUNTY, IOWA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER (NW1/4 SE1/4); THENCE S89°04'35"E, 59.87 FEET TO THE POINT OF BEGINNING; THENCE ON THE WESTERLY RIGHT OF WAY LINE OF SOUTHEAST 14TH STREET, S00°07'25"E, 285.71 FEET; THENCE CONTINUING ON SAID WESTERLY RIGHT OF WAY LINE, S45°04'47"W, 10.68 FEET TO A POINT INTERSECTING THE RIGHT OF WAY LINES OF SOUTHEAST 14TH STREET AND EAST DIEHL AVENUE; THENCE ON THE NORTHERLY RIGHT OF WAY LINE OF EAST DIEHL AVENUE, N89°27'52"W, 143.15 FEET; THENCE CONTINUING ON SAID NORTHERLY RIGHT OF WAY LINE, S88°27'11"W, 159.60 FEET; THENCE N00°00'26"E, 75.36 FEET; THENCE N39°24'40"E, 31.74 FEET; THENCE N00°00'26"E, 199.31 FEET TO THE NORTH LINE OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER (NW1/4 SE1/4); THENCE ON SAID NORTH LINE, N89°24'44"W, 289.46 FEET TO THE POINT OF BEGINNING, CONTAINING 2.00 ACRES MORE OR LESS.


2. The proposed amended PUD Conceptual Plan is hereby found to be in conformance with the Des Moines 2020 Community Character Land Use Plan, subject to the conditions identified below.

Date January 23, 2012

3. The amended PUD Conceptual Plan for the Property described above, which is on file in the Community Development Department, is hereby approved, subject to the plan being first amended to satisfy the conditions recommended by the Plan and Zoning Commission as set forth in the attached letter from the Planning Administrator, and subject to approval of such amendments by the Community Development Director.

MOVED by \_\_\_\_\_ to adopt and approve the amendment to the PUD Planned Unit Development Conceptual Plan.

FORM APPROVED:

  
 \_\_\_\_\_  
 Michael F. Kelley  
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
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.

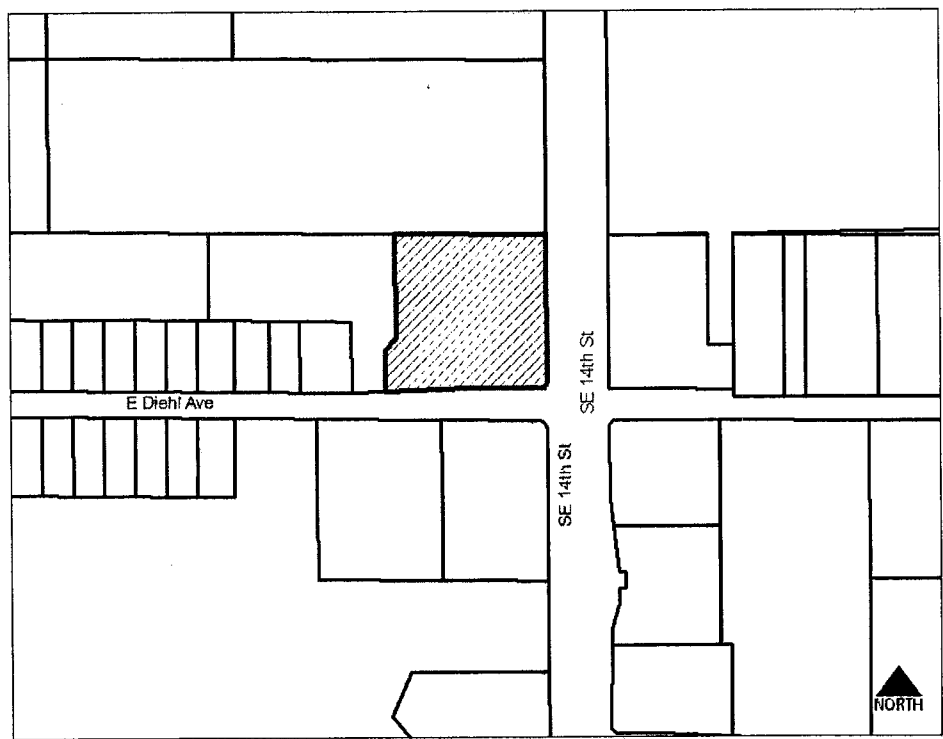
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED APPROVED  
 \_\_\_\_\_ Mayor

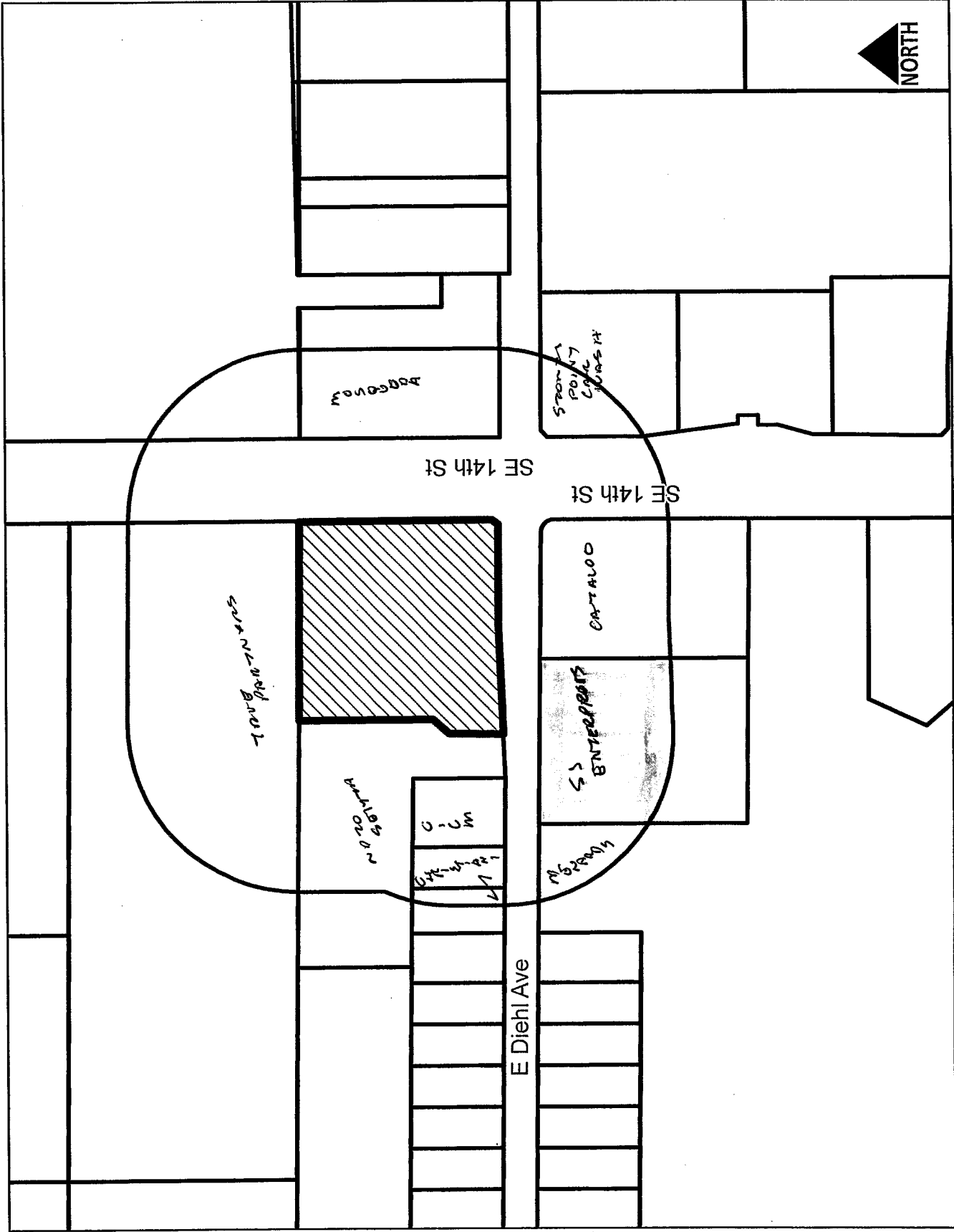
\_\_\_\_\_ City Clerk

Request from K G Store 573, LLC represented by Charles Campbell (officer) for an amendment to the Kum and Go Store 573 PUD Conceptual Plan for property located at 5830 Southeast 14 <sup>th</sup> Street.			File #	
			ZON2011-00233	
<b>Description of Action</b>	Review and approval for an amendment to the Kum and Go Store 573 PUD Conceptual Plan for property located at 5830 Southeast 14 <sup>th</sup> Street, to allow for the sale of alcoholic liquor as a permitted use in addition to the permitted gas station/convenience store use.			
<b>2020 Community Character Plan</b>	Commercial: Auto-Oriented Community Commercial			
<b>Horizon 2035 Transportation Plan</b>	SE 14 <sup>th</sup> Street from Watrous Avenue to Army Post Road to widen from 4 lanes divided to 6 lanes divided			
<b>Current Zoning District</b>	"PUD" Planned Unit Development District			
<b>Proposed Zoning District</b>	"PUD" Planned Unit Development District			
<b>Consent Card Responses</b>	In Favor	Not In Favor	Undetermined	% Opposition
Inside Area	1	0		
Outside Area				
<b>Plan and Zoning Commission Action</b>	Approval	11-0-1	<b>Required 6/7 Vote of the City Council</b>	Yes
	Denial			No

K G Store 573 LLC (PUD Amendment) - 5830 Southeast 14th Street ZON2011-00233



K G Store 573 LLC (PUD Amendment) - 5830 Southeast 14th Street ZON2011-00233



December 20, 2011

Honorable Mayor and City Council  
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held December 15, 2011, the following action was taken:

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 11-0-1 as follows:

Commission Action:	Yes	Nays	Pass	Absent
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley	X			
Tim Fitzgerald	X			
Dann Flaherty	X			
John "Jack" Hilmes	X			
Joel Huston			X	
Ted Irvine	X			
Greg Jones	X			
William Page				X
Christine Pardee	X			
Mike Simonson	X			
Kent Sovern				X
CJ Stephens	X			

**APPROVAL** of a request from K G Store 573, LLC represented by Charles Campbell (officer) for an amendment to the Kum and Go Store 573 PUD Conceptual Plan for property located at 5830 Southeast 14<sup>th</sup> Street, to allow for the sale of alcoholic liquor as a permitted use in addition to the permitted gas station/convenience store use, subject to the following conditions which must be stated clearly on the amended PUD Conceptual Plan:

ZON2011-00233

1. Any sale of alcoholic liquor, wine, and/or beer shall be accessory to a gas station/convenience store, where no more than 40% of the business' gross revenue is derived from the sale of tobacco products, alcoholic liquor, wine, and/or beer.
2. Any sale of alcoholic liquor, wine, and/or beer shall be in accordance with the proper license obtained through the Office of the City Clerk as approved by the City Council.



CITY PLAN AND ZONING COMMISSION  
ARMORY BUILDING  
602 ROBERT D. RAY DRIVE  
DES MOINES, IOWA 50309 -1881  
(515) 283-4182

ALL-AMERICA CITY  
1949, 1976, 1981  
2003

3. Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one footcandle of light on the parking surface at all times.
4. The business shall comply with article IV of chapter 42 of this Code pertaining to noise control.
5. No sale of alcoholic beverages shall be made from a drive-through window.
6. Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.
7. The PUD Conceptual Plan shall be subject to a legislative amendment to preclude the sale of alcoholic liquor if the Zoning Enforcement Officer determines that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions of approval.

Written Responses

1 In Favor

0 In Opposition

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

Staff recommends approval of the proposed amendment to the PUD Conceptual Plan, subject to the following conditions, which must be stated clearly on the amended PUD Conceptual Plan:

1. Any sale of alcoholic liquor, wine, and/or beer shall be accessory to a gas station/convenience store, where no more than 40% of the business' gross revenue is derived from the sale of tobacco products, alcoholic liquor, wine, and/or beer.
2. Any sale of alcoholic liquor, wine, and/or beer shall be in accordance with the proper license obtained through the Office of the City Clerk as approved by the City Council.
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7. The PUD Conceptual Plan shall be subject to a legislative amendment to preclude the sale of alcoholic liquor if the Zoning Enforcement Officer determines that the

operation of the business becomes a nuisance or exhibits a pattern of violating the conditions of approval.

## STAFF REPORT

### I. GENERAL INFORMATION

1. **Purpose of Request:** The proposed PUD amendment would allow for the sale of alcoholic liquor as an allowed accessory use to the primary gas station/convenience store use. The site includes a 4,958 square-foot Kum & Go convenience store under construction that will have 10 fueling pumps (20 fueling locations).

A recent change in State law allows gas stations/convenience stores to sell alcoholic liquor. A request to sell alcoholic liquor at a gas station/convenience store within the City of Des Moines would typically require a Conditional Use Permit as granted by the Zoning Board of Adjustment. However, in this instance, the site is zoned "PUD" District, which precludes any consideration by the Zoning Board of Adjustment. Instead, the PUD Conceptual Plan must specifically state that the sale of alcoholic liquor is an allowed accessory use to the gas station/convenience store.

2. **Size of Site:** 2 acres.
3. **Existing Zoning (site):** "PUD" Planned Unit Development District with "VDL" Vehicle Display Lot Overlay District.
4. **Existing Land Use (site):** The site includes a 4,958 square-foot Kum & Go convenience store under construction with 10 fueling pumps (20 fueling locations).
5. **Adjacent Land Use and Zoning:**
  - North* – "C-2"; Use is undeveloped land.
  - South* – "C-2"; Uses are East Diehl Avenue, Bowlerama bowling alley, and a commercial center.
  - East* – "C-2"; Use are SE 14<sup>th</sup> Street and Tasty Tacos.
  - West* – "C-2"; Use is undeveloped land.
6. **General Neighborhood/Area Land Uses:** The site is located along the Southeast 14<sup>th</sup> Street commercial corridor at the northwest corner of its intersection with East Diehl Avenue.
7. **Applicable Recognized Neighborhood(s):** South Park Neighborhood Association.
8. **Relevant Zoning History:** On March 14, 2011, the City Council adopted Ordinance #15,005 to rezone the site from "C-2" General Retail and Highway-Oriented Commercial District to "PUD" District to allow development of a convenience store (Docket ZON2011-00012) and adopt the Kum & Go 573 PUD Conceptual Plan.
9. **2020 Community Character Land Use Plan Designation:** Commercial" Auto-Oriented Community Commercial.



**10. Applicable Regulations:** The Commission reviews all proposals to amend zoning regulations or zoning district boundaries 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 recommend that certain conditions be applied to the subject property if the property owner agrees in writing, in addition to the existing regulations. The recommendation of the Commission will be forwarded to the City Council.

**II. ADDITIONAL APPLICABLE INFORMATION**

**1. 2020 Community Character Plan:** Staff believes that the proposed amendment to the PUD Conceptual Plan conforms to the Des Moines' 2020 Community Character Plan Future Land Use designation of Commercial: Auto-Oriented Commercial Corridor so long as the sale of liquor at a gas station/convenience store satisfies that requirements in effect if the site were zoned "C-2" General Retail and Highway-Oriented Commercial District (City Code Chapter 134 Section 954) rather than "PUD" District.

In accordance with City Code Section 134-954(a), a Conditional Use Permit for a gas station/convenience store in the "C-2" District would require at least 150 feet of separation from any church, school, public park or licensed child care center, and allow no more than 40% of gross receipts being from the sale of liquor, wine, beer or tobacco products.

*The site provides at least 150 feet of separation from any church, school, public park or licensed child care center and the applicant agrees to the 40% limitation on gross receipts being from the sale of liquor, wine, beer or tobacco products.*

In accordance with City Code Section 134-954(b), any use of a premise for the sale of alcoholic liquor, wine and beer should be granted only where the business, when operated in conformance with such reasonable conditions, satisfies the following criteria:

- The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding residential area.

*The subject property is located along the west side of the Southeast 14<sup>th</sup> Street major commercial corridor. The nearest residential property is located 944 feet to the west at 1100 East Diehl Avenue. Staff believes that the sale of alcoholic liquor at this location would adequately safeguard the health, safety and general welfare of persons residing in the area so long as it is accessory to a gas station/convenience store.*

- The business is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses.

*Staff believes that this site is sufficiently separated from any residential uses by distance and landscaped bufferyard along the west site boundary.*

- The business will not unduly increase congestion on the streets in the adjoining residential area.

*The subject property fronts Southeast 14<sup>th</sup> Street, which is a major thoroughfare. The proposed business would have minimal impact on the Southeast 14<sup>th</sup> Street traffic pattern and would not likely increase congestion in the area.*

- The operation of the business will not constitute a nuisance.

Staff recommends that any approval be subject to amendment or revocation if the Zoning Enforcement Officer determines that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the "PUD".

In accordance with City Code Section 134-954(c), any use of a premise for the sale of alcoholic liquor, wine and beer shall be subject to the following general conditions:

- Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one footcandle of light on the parking surface at all times.
- The business shall comply with article IV of chapter 42 of this Code pertaining to noise control.
- No sale of alcoholic beverages shall be made from a drive-through window. Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.
- The approval is subject to amendment or revocation if the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth.

*Staff recommends these criteria be conditions of approval by the Plan & Zoning Commission.*

2. **Liquor License:** Any sale of alcoholic liquor, wine, and/or beer must be in accordance with the proper license obtained through the Office of the City Clerk as approved by the City Council.

## **SUMMARY OF DISCUSSION**

*There was no discussion.*

## **CHAIRPERSON OPENED THE PUBLIC HEARING**

*There was no one to speak in favor or in opposition of the applicant's request*

## **CHAIRPERSON CLOSED THE PUBLIC HEARING**

## **COMMISSION ACTION:**

Greg Jones moved staff recommendation to approve the proposed amendment to the PUD Conceptual Plan, subject to the following conditions, which must be stated clearly on the amended PUD Conceptual Plan:

1. Any sale of alcoholic liquor, wine, and/or beer shall be accessory to a gas station/convenience store, where no more than 40% of the business' gross revenue is derived from the sale of tobacco products, alcoholic liquor, wine, and/or beer.
2. Any sale of alcoholic liquor, wine, and/or beer shall be in accordance with the proper license obtained through the Office of the City Clerk as approved by the City Council.
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7. The PUD Conceptual Plan shall be subject to a legislative amendment to preclude the sale of alcoholic liquor if the Zoning Enforcement Officer determines that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions of approval.

Motion passed 11-0-1 (Joel Huston abstained)

Respectfully submitted,



Michael Ludwig, AICP  
Planning Administrator

MGL:clw

Attachment

Item **2011 00233** Date Dec. 12, 2011

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

**RECEIVED**  
**COMMUNITY DEVELOPMENT**

DEC 12 2011

DEPARTMENT

Print Name DAN J BOBENHOUSE

Signature Dan J Bobenhouse

Address 1313 EWS Diehl Ave.

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

A  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12/14/2011

City Plan & Zoning Commission  
City of Des Moines  
City Hall  
400 Robert D. Ray Drive

Dear members of Des Moines City Plan and Zoning Commission,

South Park Neighborhood Association (SPNA) is writing in regards to Item # 4 of the Dec 15<sup>th</sup> 2011, Planning & Zoning Agenda, request from Kum & Go Store 573 to allow for sale of alcoholic liquor as a permitted use in addition to the permitted gas station/convenience store use.

It has traditionally been SPNA's position to oppose businesses who wish to sell hard liquor within or near our neighborhood association's boundaries. We have opposed these requests in the past due to the problems and issues that tend to arise and ultimately affect the quality of life of those in the surrounding neighborhoods. However, we understand that recent legislation has now made it possible for gas stations and convenience stores to begin selling hard liquor.

We feel that Kum & Go is a responsible business and we have more trust in them than other less reputable businesses when it comes to selling hard liquor. In addition, they have assured us that their staff is adequately trained to handle hard liquor sales. Therefore, we do support Kum & Go with their request to allow for sale of alcoholic liquor subject to the conditions of the city staff recommendations outlined in the City of Des Moines Plan and Zoning Commission Staff Report.

When Kum & Go initially approached the South Park Neighborhood Association about developing a new convenience store at SE 14<sup>th</sup> and Diehl, they were very polite and eager to answer our questions. We felt their architects and site planners took adequate consideration for our concerns with the project. Representatives from Kum & Go made appearances at our neighborhood meetings and have continuously followed up with SPNA to provide updates on the project. Kum & Go has even demonstrated their commitment to our community by becoming a corporate member of the South Park Neighborhood Association!

Overall, SPNA is completely satisfied with the new store. The staff is friendly and professional. The store is neat and clean. This new convenience store is a big improvement from the eye sore that our neighborhood has had to deal with over the last several years.

Sincerely,

Andy Clark  
President – South Park Neighborhood Association  
5800 SE 8<sup>th</sup>  
Des Moines, IA 50315  
515-577-4855