



Date December 21, 2015

RESOLUTION HOLDING HEARING ON REQUEST FROM TONJA BOGGS FOR THE 6TH AMENDMENT TO THE SOMERSET PUD CONCEPTUAL PLAN RELATING TO PROPERTY LOCATED AT 6615 SOUTHEAST 3RD STREET

WHEREAS, on December 7, 2015, the City Council received a communication from the City Plan and Zoning Commission advising that at a public hearing held on November 19, 2015, its members voted 8-0 in support of a motion to recommend **DENIAL** of a request from Tonja Boggs (owner) for the 6th Amendment to the Somerset PUD Conceptual Plan relating to real property locally known as 6615 Southeast 3rd Street (“Property”), to allow the single-family dwelling owner to conduct a 24-hour commercial child care business for up to 12 minors as an accessory home occupation; and

WHEREAS, on December 7, 2015, by Roll Call No. 15-2058, it was duly resolved by the City Council that the application of Tonja Boggs for the 6th Amendment to the Somerset PUD Conceptual Plan relating to real property locally known as 6615 Southeast 3rd Street, legally described as follows, be set down for hearing on December 21, 2015 at 5:00 p.m. in the Council Chamber at City Hall:

Lot 50 in SOMERSET, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.

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

WHEREAS, in accordance with said notice, those interested in said proposed amendment to the Somerset 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 and any statements of interested persons and arguments of counsel, any and all comments for and against the proposed 6th Amendment to the Somerset PUD Conceptual Plan are hereby received and filed, and the hearing is closed.

Alternative A

MOVED by _____ to adopt and **DENY** the proposed 6th Amendment to the Somerset PUD Conceptual Plan, and to make the following findings of fact regarding the proposed amendment:

(continued)

Date December 21, 2015

- a. The City Plan and Zoning Commission voted 8-0 to recommend denial of the requested 6th Amendment to the Somerset PUD Conceptual Plan relating to real property known as 6615 Southeast 3rd Street, to allow the single-family dwelling owner to conduct a 24-hour commercial child care business for up to 12 minors as an accessory home occupation.
- b. A childcare business for up to 12 unrelated children is not incidental to or secondary to the residential use of the premises. The level of traffic generated as a result of having a childcare business for more than six (6) children is not typical of a single-family residential use and can be detrimental to the use and enjoyment of surrounding residential properties.

Alternative B

MOVED by _____ to continue the public hearing until January 11, 2016, at 5:00 p.m. in the Council Chambers, and to direct the City Manager and Legal Department to prepare the necessary legislation to **APPROVE** the proposed 6th Amendment to the Somerset PUD Conceptual Plan subject to conditions acceptable to the City and the owner.

FORM APPROVED:



 Lawrence R. McDowell
 Deputy City Attorney

(ZON2015-00199)

NOTE: Six affirmative votes are required to approve the proposed amendment due to the Commission's recommendation for denial. Des Moines City Code §134-4.

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
MOORE				
TOTAL				
MOTION CARRIED			APPROVED	

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.

 Mayor

 City Clerk



SOMERSET NEIGHBORHOOD ASSOCIATION

President – Mel Pins – 210 E. Bundy Ave – Des Moines, Iowa 50315
Tel. 953-4289 email: melpins69@msn.com

December 17, 2015

Honorable Frank Cownie and
City Council Members
City of Des Moines
400 Robert D. Ray Drive
Des Moines, Iowa 50309

RE: 12/21/15 Public Hearing at City Council for PUD Amendment at 6615 SE 3rd St.

Mayor Cownie and Council Members:

The Council will hold a public hearing on December 21st, 2015 to consider a request by Tonja Boggs (owner) for a 6th Amendment to the Somerset PUD Conceptual Plan to allow the single-family dwelling owner to conduct a 24-hour commercial child care business for up to 12 minors as an accessory home occupation, at 6615 SE 3rd St.

This letter is written in the strongest opposition from the Somerset Neighborhood Association to any amendment to the Somerset PUD that would allow this kind of use in this residential PUD. Somerset is a residential neighborhood, developed in 1993, that contains 90 houses on densely developed lots, (similar to an R1-60), along with an apartment complex. While R-1 zoning allows for up to 6 children, in a day-care only settings, the owner at this address has been operating a 24/7 commercial child care center at this address, with up to 12 children, with 3 additional employees, without obtaining proper zoning permission. Although the address has a State of Iowa issued child care license, that license specifically dictates that the operation must be operated in compliance with local zoning and land use laws.

Area residents have complained numerous times to the neighborhood association about excessive traffic in and out of this residence, blocked sidewalks from vehicles, and the general character, harmony, and serenity of the neighborhood that has been negatively impacted by this use.

The current land use at this address exploits the property from a residential home with an accessory use, to a commercial enterprise wherein the owner simply resides there. It is operations like this that undermine the intent of a residential PUD, affects the quality of life for residents throughout the neighborhood, and erodes residents' confidence in the sustainable property value of their home.

At its November 19, 2015 the City's Plan and Zoning Commission voted 8-0 to recommend denial of this PUD amendment request. This issue has been reviewed thoroughly, and with the unanimous recommendation by the Commission, I hope that the Council will arrive at a similar conclusion, and deny this PUD amendment request.

Sincerely,

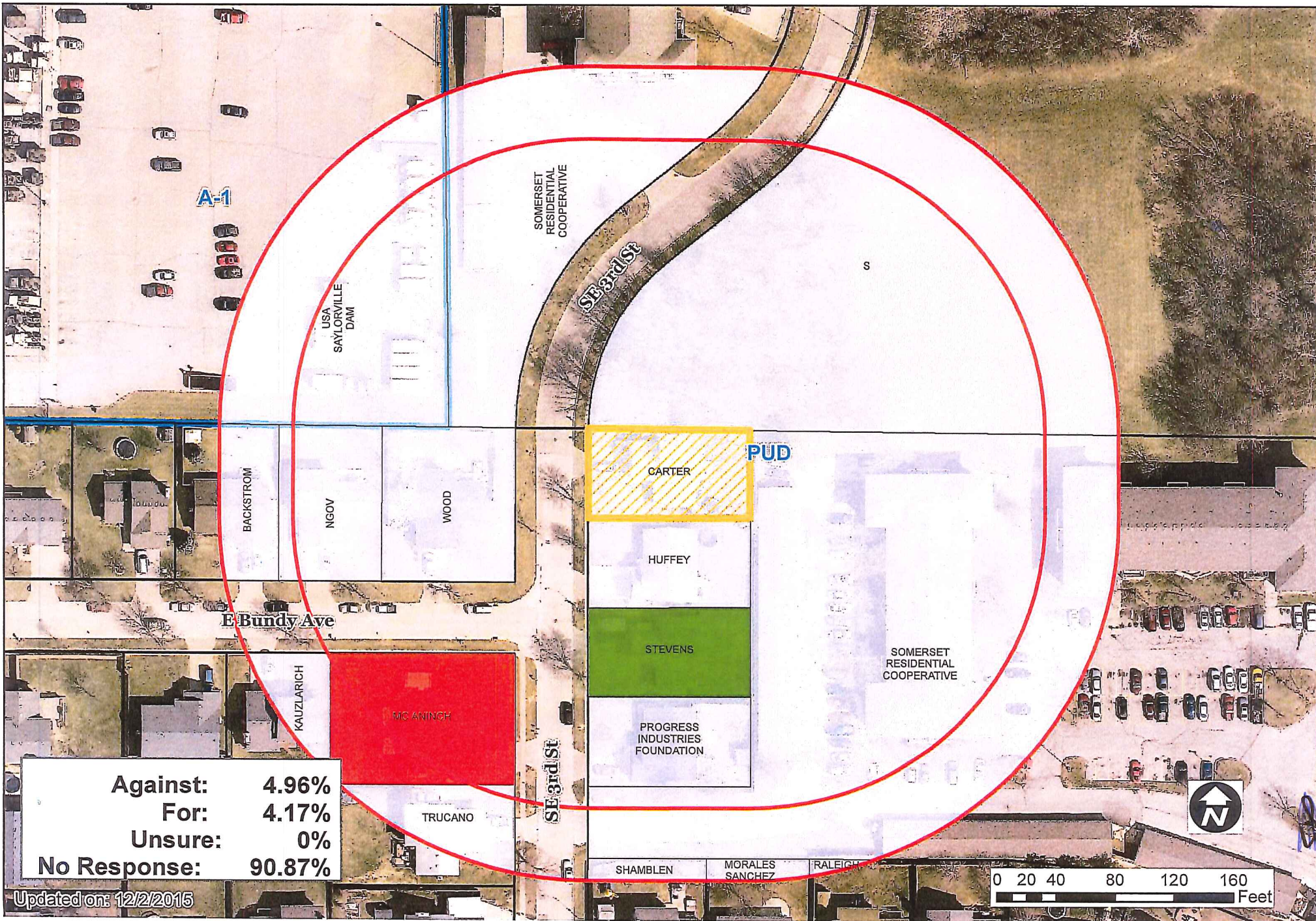
Mel Pins
President

Somerset Neighborhood Association

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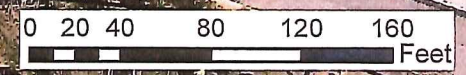
Tonja Boggs, 6615 Southeast 3rd Street

ZON2015-00199



Against:	4.96%
For:	4.17%
Unsure:	0%
No Response:	90.87%

Updated on: 12/2/2015





December 2, 2015

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 November 19, 2015, the following action was taken regarding a request from Tonja Boggs (owner) for a 6th Amendment to the Somerset PUD Conceptual Plan on property located at 6615 Southeast 3rd Street.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 8-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Dory Briles	X			
JoAnne Corigliano				X
Jacqueline Easley	X			
Tim Fitzgerald	X			
Jann Freed				X
John "Jack" Hilmes				X
Greg Jones	X			
Sasha Kamper				X
Brian Millard	X			
William Page	X			
Jonathan Rosenbloom	X			
Mike Simonson	X			
CJ Stephens				X
Greg Wattier				X

DENIAL of the requested amendment to the Somerset PUD Conceptual Plan. Therefore, the applicant should either reduce the scope of their business to no more than six (6) unrelated children and comply with Building Codes, or relocate to a commercially-zoned property. (ZON2015-00199)

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends denial of the requested amendment to the Somerset PUD Conceptual Plan. Therefore, the applicant should either reduce the scope of their business to no more than six (6) unrelated children and comply with Building Codes, or relocate to a commercially-zoned property.

Written Responses

- 1 In Favor
- 2 In Opposition

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The proposed PUD amendment would allow the applicant to continue to operate a commercial childcare business for up to 12 minors within the single-family dwelling. The business currently has 3 non-resident employees and operates 24 hours per day. The applicant has indicated that the business has been in operation for over five (5) years.

The Zoning Ordinance allows in-home childcare businesses to operate accessory to a residential use by right so long as they do not provide care for more than six (6) unrelated children. Any business providing care for more than six (6) unrelated children is considered to be a “day nursery, day care center or nursery school”, which is defined in the City Code Section 134-3 as “any private agency, institution, establishment or place which provides supplemental parental care and/or educational work, other than lodging overnight, for seven (7) or more unrelated children, for compensation”. Therefore, if the proposed PUD amendment is denied, the applicant will either have to reduce the scope of their business to six (6) unrelated children or relocate to a commercially-zoned property.

2. **Size of Site:** 6,810 square feet or 0.16 acres.
3. **Existing Zoning (site):** Somerset “PUD” Planned Unit Development.
4. **Existing Land Use (site):** The property contains a split-level single-family dwelling with an attached two-car garage. The dwelling contains 1,893 square feet of finished floor area, including 1,217 square feet on the main levels and 676 square feet in the lower level.
5. **Adjacent Land Use and Zoning:**
 - North** – “PUD”; Use is the YMCA.
 - South** – “PUD”; Use is a single-family dwelling.
 - East** – “PUD”; Use is a multiple-family residential complex.
 - West** – “PUD”; Use is a single-family dwelling.

6. **General Neighborhood/Area Land Uses:** The subject property is located at the northeast corner of a single-family residential neighborhood known as Somerset.
7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Somerset Neighborhood. This neighborhood association was notified of the public hearing by mailing of the Preliminary Agenda on October 16, 2015 prior to the initial public hearing. Additionally, separate notifications of the hearing for this specific item were mailed on October 16, 2015 (20 days prior to the initial public hearing) and October 26, 2015 (10 days prior to the initial public hearing) to the Somerset Neighborhood Association and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site. A Final Agenda for the meeting was mailed to all the recognized neighborhood associations on October 30, 2015 and November 13, 2015.

All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division. The Somerset Neighborhood Association notices were mailed to Mel Pins, 210 East Bundy Avenue, Des Moines, IA 50315.

8. **Relevant Zoning History:** The property was rezoned on November 5, 1990 by the City Council to "PUD" on along with the approval of the Somerset I Conceptual Plan for 90 single-family lots and 210 unit multiple family apartment complex with managers residence. Subsequent amendments related to revision of the approved development signage, revision of dimensions for multiple-family garages, reduction in lot area for one of the single-family lots, switching sidewalk from the west side of Southeast 3rd Street to the east side, adding a second access drive for the clubhouse, and allowing a pet grooming business within the single-family dwelling at 223 East Burnham Avenue.
9. **2020 Community Character Land Use Plan Designation:** The subject property is located within an area designated on the Des Moines' 2020 Community Character Plan future land use map as Low Density Residential.
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 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, prior to the City Council hearing. The recommendation of the Commission will be forwarded to the City Council.

Section 134-704(a) of the City Code states "All uses proposed in a PUD planned unit development district plan shall be in harmony with the existing or anticipated uses of other properties in the surrounding neighborhood and shall generally be in conformance with the city's land use plan." Section 134-707 of the City code states "Because the PUD planned unit development district is intended to provide relief from the rigid regulations of more conventional zoning districts pursuant to a carefully integrated overall development plan, the board of adjustment shall have no jurisdiction to grant any variation, exception or special permit relating to any property in the PUD district."

II. ADDITIONAL APPLICABLE INFORMATION

1. **Review standards:** Because the property is zoned “PUD” Planned Unit Development, the applicant is unable to apply to the Zoning Board of Adjustment to request a Special Permit for a Home Occupation that would allow a home-based business. However, Staff believes that the requirements applicable to such a Special Permit should be used as guidance or as a baseline in considering the same request in a “PUD” District. The following requirements applicable for Special Permits are found in Section 134-1326(10) of the City Code:

- a. The occupation shall be clearly incidental to or secondary to the residential use of the premises.

Staff does not believe a childcare business for up to 12 unrelated children is incidental to or secondary to the residential use of the premises. The level of traffic generated as a result of having a childcare business for more than six (6) children is not typical of a single-family residential use and can be detrimental to the use and enjoyment of surrounding residential properties.

- b. No more than two non-resident individuals shall be engaged or employed in the business upon the premises.

The application indicates that the applicant is the primary operator of the business and has three (3) non-residential employees, including two (2) assistants and a “substitute teacher” that is present when the applicant is away.

- c. One sign advertising the business is allowed, attached to the residence. Such sign not to exceed one square foot in total area. Free-standing signs are not permitted.

No signs are proposed.

- d. The occupation shall not cause or produce noise, vibration, smoke, dust, odor, or heat or any other impact of a type or quantity not in keeping with the residential character of the neighborhood.

Staff believes the business would generate a level of traffic that is not in keeping with the residential character of the neighborhood.

- e. No toxic, explosive, flammable, combustible, corrosive, etiologic, radioactive, or other restricted material of a type or quantity not ordinarily used for household purposes shall be used or stored on the premises, and the applicant must identify the proper disposition of any hazardous waste. No activity will be allowed which is hazardous to the public health, safety or welfare.

There is no reported use of such materials with this application.

- f. There are no outside operation, storage or display of materials or products.

The rear yard of the property is used for an outdoor play area. This is typical of many residential uses in the area.

- g. Not more than one-half of the area of one floor level of the dwelling or accessory building shall be used for such business, including the storage of materials or products.

The applicant indicates that the business occupies less than one-half of the main level of the dwelling.

- h. No alteration of the residential appearance of the premises shall occur.

No exterior alterations are proposed.

- i. Hours of operation must not infringe on the residential atmosphere of the neighborhood. All outside activity related to the business must cease between the hours of 9:30 p.m. and 7:00 a.m.

The business has the potential to infringe on the residential atmosphere of the neighborhood since it would operate 24 hours per day.

- j. The home occupation, including any business storage, shall not displace or impede use of parking spaces required by this chapter. The home occupation shall not displace, interfere with or impede access to public parking.

Staff is concerned that the amount of traffic generated by a childcare business for up to 12 children would interfere with or displace available on-street parking to the south of the subject property.

- k. The home occupation shall not cause the congregation of business employees at the site or congestion in the availability of on-street parking.

Staff is concerned that drop-off and pick-up traffic may present congestion along Southeast 3rd Street.

- l. The business must be of a type that would be permitted anywhere in the C-2 general retail and highway oriented commercial district without approval from the board of adjustment.

Such a business would be permitted within a building for commercial occupancy in a "C-2" District.

- m. Any special permit for a home occupation shall be in effect only for so long as the premises are owned and occupied by the applicant.

This would not be applicable, as the PUD amendment would allow future property owners of the premises to operate a similar business.

- n. Any special permit for a home occupation shall be subject to reconsideration by the board if at any time the zoning enforcement officer determines that the conduct of the occupation has become detrimental to the neighborhood.

This would not be applicable. However, the Zoning Officer would be able to request that the City Council initiate an amendment at any time to remove any approved use should the use present a nuisance or other adverse impact on the surrounding neighborhood. The removal would follow the same process as the current requested amendment.

- 2. Parking & Access:** On October 26, 2015, the City Council approved Roll Call 15-1801, which prohibits on-street parking along Southeast 3rd Street from East Bundy Avenue to the north in order to address visibility concerns. As a result, the nearest on-street parking is located 60 feet to the south of the subject property. Therefore, customers picking up and dropping off children are most likely limited to parking in the driveway, which can reasonably only accommodate two (2) vehicles at a time.
- 3. Building & Fire Codes:** If the home will continue to be used for childcare for more than five (5) children, the Building Code requires the provision of fire sprinklers or an equivalent alternative design proposal that is approved by Permit and Development Center Staff. Successful alternative design proposals must provide an equivalent level of safety to what is required by code. This information was conveyed to the applicant at a Pre-Application Conference on August 11, 2015.
- 4. Staff Rationale:** Staff does not believe that the use of the property for a childcare business for up to 12 unrelated children is appropriate or compatible with the residential character of the neighborhood. A childcare business for up to 12 unrelated children is not incidental to or secondary to the residential use of the premises. The level of traffic generated is not typical of a single-family residential use and can be detrimental to the use and enjoyment of surrounding residential properties. Furthermore, drop-off and pick-up traffic may present congestion along Southeast 3rd Street.

SUMMARY OF DISCUSSION

Jann Freed and John "Jack" Hilmes left the meeting @ 7:38 pm

Erik Lundy presented the staff report and recommendation.

Brian Millard asked is this one of those situations where they have to come through the Plan and Zoning Commission and the City Council and get denied and go on to the Zoning Board of Adjustment.

Erik Lundy stated this property is zoned PUD. Board of Adjustment review is precluded in PUD's. If the City Council denies the zoning request, the applicant would have to appeal the decision in District Court.

Tim Fitzgerald asked for clarification of the code.

Erik Lundy stated by the Des Moines zoning ordinance states once there are more than six children it is then considered a commercial daycare, which is not a use allowed in a single-family zoning and is not allowed in the PUD.

Rod Powell. 3737 Woodland Avenue, Suite 601 West Des Moines. He stated he is the attorney representing the applicant. He stated that this is really an issue about a

neighborhood family run in-home daycare that is not impersonal like a more commercial daycare that is found on a commercial road. It services primarily the people in the neighborhood. It is state licensed and one of approximately 400 to 500 such licensees in the City of Des Moines. It's been an in-home daycare at this location for roughly over a quarter of a century. The applicant is only asking that she be allowed to continue to provide this service to her community and provide the warmth of a family run in-home daycare as opposed to something that might be impersonal. She maintains that she probably has less traffic at this location than the dog groomer down the street. Her daycare children are dropped off at different times during the day and does not create a huge congestion. Therefore, the applicant is asking that she be permitted to continue to operate her in-home daycare.

Tonja Boggs 6615 SE 3rd Street stated she wanted to clarify a few things:

- She does have employees. Her 14 year old son, who is considered an assistant, the other is her niece who is a neighbor next door and her actual substitute comes to the home only when she is leaving the premises who is her 33 year old daughter.
- The parents come and pull in her driveway and they leave. They are not all over the neighborhood.
- For a home daycare there has not been a complaint about the safety of her children. At times there are 12 children in the daycare. No complaint about her daycare children being in the streets, tore up someone's home or even walked to the bus stop by themselves. She is always there onsite with her children. She usually allows them to play in the backyard and she is present.

She knows the neighbors were really upset about the parking that was in front of her house. At the time it was her parents parking there and it was a legal parking space. It has since been termed as an illegal parking space so everyone uses her driveway. She has been operating like this for five years. She took over the daycare from her sister. She believes the reason she is before the Commission tonight is because the State of Iowa and the City of Des Moines codes do not match. She was unaware that she was running an illegal daycare according to the City of Des Moines. The State does not give out the information that the City's code is different from theirs. There are over 400 daycares operating with 8 or more children. Class A can have eight children, Class B can have 12 and Class C can have 16 with two providers. She spoke to someone from the City and was told that the State of Iowa and the City of Des Moines' codes do not match up, she is sorry. In approximately 18 months a new zoning code will be created and will be one of the things that will be looked at. However, at this time that doesn't help her when the City of Des Moines is saying to reduce her income to half that she uses to feed her children.

She believes the Neighborhood Association goal is to put her out of her home and they will succeed if half of her income is taken. It started with the parking, and then little things here and there. She is not sure if the neighborhood association realizes that the City codes and the State codes does not match or the impact that this will have on her livelihood. She does not believe that the neighborhood is that vindictive to run her out of her home. She believes that she and the neighborhood association could have worked this out a little bit better. Her understanding is this has come about because of a complaint. She believes someone could have knocked on her door and talked with her about the complaint. Instead

they took pictures of her home and everything that was going on. She believes they violated her. There are 500 apartments behind her therefore believing that it is not her daycare that is causing the traffic congestion. She is asking to continue to operate in the safe environment that she is providing for the daycare children and mothers that the other 400 daycares in Des Moines are operating under. Then in 18-months, maybe they can all come together and say this is the number of children that the state feels is safe and this is the number of children that the City feels is safe.

Brian Millard commented he understands her feelings about somebody turning her in. However, his understanding a violation of an ordinance is the City's responsibility to enforce, if there is someone who points it out to the City.

Tonja Boggs stated her main concern is both the State of Iowa and the City of Des Moines codes do not match up. She is in compliance with her State license and everything she is required to do but is not in compliance with the City of Des Moines code.

Mike Simonson asked if the daycare has been operating in this location for 25 years.

Tonja Boggs stated her sister ran the daycare prior to her.

Debra Carter stated she built the house in 1997. She has been in the early child education for almost 35 years. She previously owned a home on the west side of Des Moines and as her business, Carter Care Daycare Service, began to grow she moved to the south side of Des Moines at this location where she operated a daycare. She is also State licensed since approximately 1983. She is also licensed for foster care and adoption through the State of Iowa for almost 30 years. She is certified under the category of Class C 16 children with two providers. However, she has never carried that many children at one time. The most she had was eight to nine children in her in-home daycare and has never had a complaint or issue. In 2010 she sold the home and the business to her sister where she took over her established business. She still continues to operate a daycare in West Des Moines with plans to open up a daycare center. She also was unaware that this property was not in compliance with the City zoning.

CHAIRPERSON OPENED THE PUBLIC HEARING

Mel Pins the president of Sommerset Neighborhood Association and lives within a block of this address. He has lived in this neighborhood for 14 years and has been the president of the Sommerset Neighborhood Association for 12 years. He is present as a citizen and to also represent the position of the neighborhood association. The Commission is charged with issues of City ordinance, planning districts and zoning. He is also charged with the same as a neighborhood leader. They are not out to attack anybody or make people move. But these are tough issues. He showed the PUD which was platted in 1990's and one of the reasons it was created was it was kind of a small parcel to redevelop. The PUD specifically covered 90 single-family homes combine with 10 units for multi-family housing. It was developed by Clark Development. Houses were built between 1993 and 1997 so the neighborhood has not existed for 25 years. This development has the character of a single-family neighborhood. He described the character of the homes in this area and the progression of things, such as on rental properties the neighborhood association worked with the City to find out if the homes that were being used as rental property did they have a rental inspection. A couple of people thought they could run a mattress sales business

out of their garage. He pointed out that it is not his job to knock on somebodies door and explain to them they are not in compliance but it is the City's job. They also had an issue with someone buying and selling motorcycles and repairing cars in the garage and the noise they were making going up and down the street. The City dealt with it. He admits that this family has been at this location for quite some time. They knew that a daycare was being ran out of the home, but because they have a big family they did not know home many daycare children. They also have known for some time that if you are watching 6 or less children then no special permit needed. However, over the years the number of children has built and built at this address. Ten years ago, the City established a no parking zone in front of this house. The congestion and density is not a new issue. There is nothing the association can do if there are a lot of people living in a home. However, if someone is running a commercial business out of their house the neighborhood association can care about the intensity. Ten years when speaking to the applicant about the parking problem it did not go very well. He pointed out that for in-home daycare, daycare centers Class A, B and C the State of Iowa regulation on page 3 specifically says "beware that local building codes and zoning applies". This issue is affecting property values and people's interest in staying in the neighborhood. He showed pictures of people parking in the wrong direction, kids being loaded and unloaded, cars where they shouldn't be. The neighborhood association asks that it is limited to no more than six as it is congruent with the City ordinance.

Arnold Hill 6701 SE 2nd Court about a block away stated when they built their home in 1995 they were under the assumption that it was a planned single-family development. He has not objection to anyone running a daycare out of their house as long as it is within the guidelines. He has a concern about safety for 12 children with 3 people watching them plus their own children in case of an emergency. His other concern is the traffic. He admits that the applicant does a very good job at keeping children out of the street. However, during the summer they do play out in the street. Kids are going to play in the street and need to play but with the line of sight of traffic at that particular area that's a problem. He applauds the applicant for what she does and does not want to take her home away from her. However, when there is 12 or more daycare children 24 hours a day that becomes a full time business.

Robert Probasco 456 E. Burnham Avenue stated he has a vested interest in keeping his neighborhood quiet and peaceful. When our neighborhood became a Planned Unit Development he knew it would be residential homes. He would like for it to stay that way, especially if it does not meet the current code.

Ron Miller 235 E. Burnham Avenue stated he built his house in August 1994 down the street from where the applicant lives. Problems did not start until the early part of her daycare. Older kids were running around in the street playing basketball. No one turned her in then, but now that she wants to have a 24 hour daycare there is a problem. With her family and the daycare children there are a lot of people in a single-family dwelling. He believes that many people in one house has to be a fire hazard and that is a big concern.

Molly Pins 210 E. Bundy Avenue stated the applicant runs a fabulous daycare. That is not the issue. This is not personal, not about the applicant and not about the daycare kids. The issue is about the rezoning of their residential neighborhood, this is not a commercial district these are their homes, and they bought their homes in a residential place and expect to keep it that way.

Rebuttal

Tonja Boggs pointed out that Mr. Pins made her point about them taking pictures invading her privacy by showing he had quite a few pictures of her residence. She pointed out the before pictures of the parking and since the parking has changed there has been no cars parking there. She also pointed out that there are not 12 children, she is allowed to have up to 12 children. She can handle 12 children, she was raised in a house of 21, so she does know how to handle her household. She has adopted 4 children and she has 2 of her own along with a few grown children. Twelve kids are not a daycare center, if you were to go to a daycare center there could be 12 kids in one room. Her biggest issue is the State code and the City code not being the same for an in-home daycare. She is asking for her home, her income, her family stays the way it is until this issue resolved by an updated zoning code. She is willing to work with the neighborhood association. She has been to one meeting and she did not feel she was well received.

Jacqueline Easley asked what transpired at the neighborhood meeting.

Tonja Boggs stated she tried to explain that she felt very violated that they couldn't as a neighbor just come and say something to her or send her an email. There had been several emails that went out about her and her property that were not delivered to her. Finally, one of her neighbors came to her and informed her that there were some emails going out about her and they were not good. So she went to the neighborhood meeting and she began to ask them. She was told by the president Mr. Pins that he was not in the habit of knocking on other people's door. Then make a phone call. She had called Mr. Pins a couple of times but did not get an answer or a return phone call. She pointed out at that time it was about the parking in front of her house. She didn't know they were going after the daycare. She addressed the children being in the street a few years ago, they were teenage boys but it was when her sister was living there so it has been over five years ago. She would not let her toddlers or her children play in that street. Besides the parking some things was said to her like how does she live in there like that, why don't you clean out your garage and use it. Finally, they stated "this meeting is over".

CHAIRPERSON CLOSED THE PUBLIC HEARING

Jonathan Rosenbloom asked where the number six for in-home daycare comes from. He asked if the PUD directly states that there should only be six, or does the PUD say that areas within the PUD have to be in harmony with that kind of zoning.

Erik Lundy stated the PUD allows for single-family dwelling use. All other aspects of the zoning ordinance treats in-home daycare with six or fewer children within the normally, customarily, acceptable use of a single family dwelling. The PUD does not expressly allow commercial daycare center, which by City Code, is defined as providing care for more than 6 children.

Jonathan Rosenbloom asked if when PUD was approved in 1990 was daycare in a single-family home limited to six or fewer children.

Erik Lundy stated the code has always specified six or fewer children for daycare in a single-family dwelling.

Jacqueline Easley asked about the previous times this issue has come up. Was it the same circumstances that the neighborhood or neighbor complained about the number of occupants or a daycare situation?

Erik Lundy stated it has been a daycare situation where the number of individuals that were on premise was questioned. There are multiple situations that have occurred that has been enforced across the City.

Will Page stated because the neighborhood would have no problem with the applicant's daycare operations being six or fewer children then he believes that staff recommendation has validity and he would move approval of the staff recommendation.

Brian Millard stated if he had complaints he would also have to have the City investigate. The vote is not about her but the ordinance that is in place.

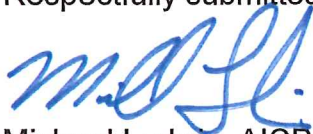
Jonathan Rosenbloom stated for a point of clarification if the Commission approves staff recommendation then any of the children that are related to the applicant do not count towards the six or fewer requirement.

COMMISSION ACTION:

Will Page moved staff recommendation for denial of the requested amendment to the Somerset PUD Conceptual Plan. Therefore, the applicant should either reduce the scope of their business to no more than six (6) unrelated children and comply with Building Codes, or relocate to a commercially-zoned property.

Motion passed 8-0.

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

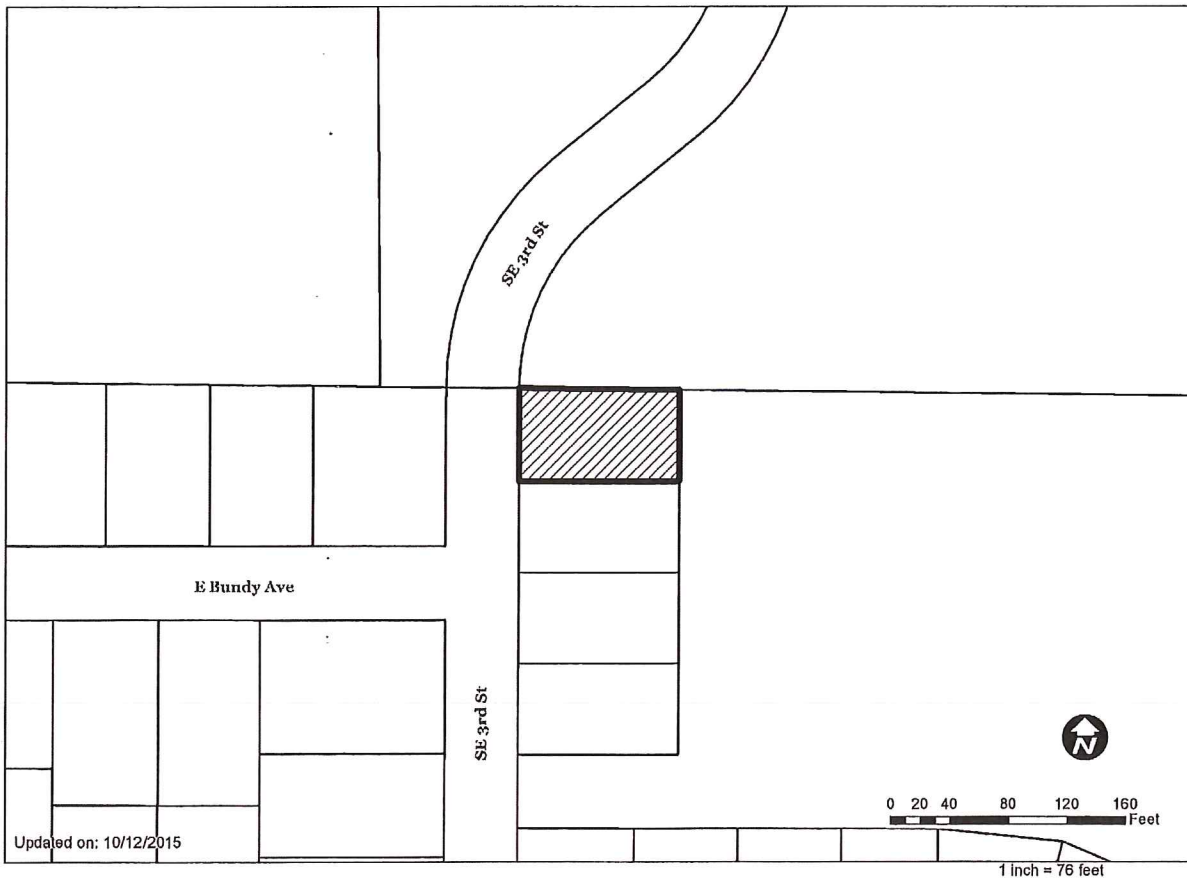
MGL:clw
Attachment

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Tonja Boggs (owner) on property located at 6615 Southeast 3rd Street.				File #		
				ZON2015-00199		
Description of Action		Denial of the requested 6th Amendment to the Somerset PUD Conceptual Plan, to allow the single-family dwelling owner to conduct a 24-hour commercial child care business for up to 12 minors as an accessory home occupation.				
2020 Community Character Plan		Current: Low Density Residential. Proposed: Low Density Residential.				
Mobilizing Tomorrow Transportation Plan		N/A				
Current Zoning District		"PUD" Planned Unit Development and "FSO" Freestanding Signs Overlay District.				
Proposed Zoning District		N/A.				
Consent Card Responses		In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area		1	2			
Outside Area						
Plan and Zoning Commission Action		Approval		Required 6/7 Vote of the City Council	Yes	X
		Denial	8-0		No	

Tonja Boggs, 6615 Southeast 3rd Street

ZON2015-00199



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ZON2015-00199

Item _____ Date 10/28

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

RECEIVED
(Circle One)
COMMUNITY DEVELOPMENT

Print Name Kinda Mithrich

Signature [Signature]

NOV 04 2015

DEPARTMENT

Address 10100 Se 3rd St

Perm, IA

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

5091E
causes complete loss of
visibility around corner, causes
traffic jams, causes complete chaos
in winter. They do not have the right
to endanger others as they have.

ZON2015-00199

Item _____ Date 10/28/15

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

RECEIVED
(Circle One)

COMMUNITY DEVELOPMENT

Print Name TONETTE & JOHNNY STEVENS

NOV 02 2015

Signature [Signature]

DEPARTMENT

Address 6701 SE 3rd STREET

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

They have been doing this already and
we haven't had any problems, nor do we
expect any. It is ran very professionally.
[Signature]

ZON2015-00199

Item _____ Date 11/3/15

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

RECEIVED
(Circle One)

COMMUNITY DEVELOPMENT

Print Name SOMERSET NEIGHBORHOOD ASSO

NOV 04 2015

Signature [Signature]

DEPARTMENT

Address 210 E BUNDY AVE

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

THIS IS A QUIET, DENSELY DEVELOPED R-1/PUD
RESIDENTIAL NEIGHBORHOOD. ILLEGAL CHILD CARE
CENTER HAS CAUSED TRAFFIC CONGESTION,
ILLEGAL PARKING, AND STREET UNLOADING HAZARDS.
INTENSE, COMMERCIAL USE DOESN'T BELONG IN A HOUSE!



SOMERSET NEIGHBORHOOD ASSOCIATION

President – Mel Pins – 210 E. Bundy Ave – Des Moines, Iowa 50315
Tel. 953-4289 email: melpins69@msn.com

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November 13, 2015

Plan & Zoning Commission
City of Des Moines
602 Robert D. Ray dr.
Des Moines, IA 50309-9603

RE: Opposition to Commercial Child Care Business in Residential PUD at 6615 SE 3rd St.

Dear Commission:

As this item was continued from the Nov 5th Commission agenda, the Somerset Neighborhood Association wishes to restate its firm opposition to the residential PUD amendment request from Tonja Boggs, regarding the single-family, residential home at 6615 SE 3rd St., in order to operate a 24-hour commercial child care business for up to 12 minors as an accessory home occupation.

The illegal land use at this residence has caused excessive issues with illegal parking, blocking of sidewalks by vehicles, street unloading of passengers, and general traffic safety at and near this property.

The Somerset Neighborhood Association would propose the following remedy to this situation:

- 1) The property owner reduces the amount of children under her hired care from twelve (12) to six (6) within any 24 hour period within 60 days.
- 2) The business must operate as a "day" care accessory use only, with no overnight lodging of children (suggested 5am – 7pm maximum operating hours)
- 3) Within 60 days the property owner provides evidence to the City that they have amended any licenses or permits for the premises with the state of Iowa Department of Human Services to note that the premises will only have 6 or less children under hired day care within any 24 hour period (Child Development Home Category "A" State License).

The current land use at this address exploits the property from a residential home with an accessory use, to a commercial enterprise wherein the owner simply resides there. It is operations like this that begin to erode residents' confidence in the sustainable property value of their home, undermines the intent of a residential PUD, and ultimately affects the quality of life for residents throughout the neighborhood.

Sincerely,

Mr. Mel Pins
President



SOMERSET NEIGHBORHOOD ASSOCIATION

President – Mel Pins – 210 E. Bundy Ave – Des Moines, Iowa 50315
Tel. 953-4289 email: melpins69@msn.com

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56

November 3, 2015

Plan & Zoning Commission
City of Des Moines
602 Robert D. Ray dr.
Des Moines, IA 50309-9603

RE: Commercial Child Care Business at 6615 SE 3rd St.

Dear Commission:

This letter is submitted from the Somerset Neighborhood Association in opposition to the residential PUD amendment request from Tonja Boggs, regarding the single-family, residential home at 6615 SE 3rd St., in order to operate a 24-hour commercial child care business for up to 12 minors as an accessory home occupation.

For many years the Somerset Neighborhood Association has received numerous complaints about illegal parking, blocking of sidewalks by vehicles, street unloading of passengers, and general traffic safety at and near 6615 SE 3rd St., due to the operation of the child care center. More than 2/3 of all residential traffic must pass by this house to get into the Somerset Neighborhood, and the mismanagement of land use on this property results in a traffic "bottleneck" all day, every day on this frontage of SE 3rd St.

In June of 2015 the Association asked the Zoning Enforcement Officer if the child care operation at this address was in compliance with residential zoning and the Somerset PUD. Records obtained by the City noted that the owner of the property was clearly marketing and using the property as a 24-7 child care center, with up to 4 employees. The owner is now seeking rezoning and amendment to the PUD, only after being called out on running an illegal business from a land use perspective.

This property use is not within the intent, spirit, nor practice of the Somerset Residential PUD, which has been in place for almost 25 years, with a neighborhood of commensurate residential, single-family living, with no commercial business. Lots are an average of 55'-60' in width, so there is a great deal of density in residential use already, without the added burden of business traffic congestion from the operation of a commercial day care center out of a single, residential home and lot.

The current land use at this address exploits the property from a residential home with an accessory use, to a commercial enterprise wherein the owner simply resides there. It is operations like this that begin to erode residents' confidence in the sustainable property value of their home, undermines the intent of a residential PUD, and ultimately affects the quality of life for residents throughout the neighborhood.

Sincerely,

Mr. Mel Pins
President