

★ **Roll Call Number**

Agenda Item Number

64C

Date November 20, 2017

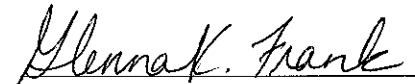
An Ordinance entitled, " AN ORDINANCE to amend the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, by rezoning and changing the district classification of certain property located in the vicinity of 2412 Merle Hay Road, 2416 Merle Hay Road and 2325 59th Street from the "R1-60" One-Family Low-Density Residential District to 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)


 Glenna K. Frank
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MOORE				
WESTERGAARD				
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

GHC

Prepared by: Glenna K. Frank, Assistant City Attorney, 400 Robert D. Ray Drive, Des Moines, IA 50309
Phone: 515/283-4530
Return Address: City Clerk - City Hall, 400 Robert D. Ray Drive, Des Moines, IA 50309
Title of Document: City of Des Moines, Ordinance No. _____
Grantor/Grantee: City of Des Moines, Iowa
Legal Description: See page 1, below.

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 2412 Merle Hay Road, 2416 Merle Hay Road and 2325 59th Street from the "R1-60" One-Family Low-Density Residential District to 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 2412 Merle Hay Road, 2416 Merle Hay Road and 2325 59th Street, more fully described as follows, from the "R1-60" One-Family Low-Density Residential District to Limited "C-2" General Retail and Highway-Oriented Commercial District classification:

The North ½ of Lot 2 (Except the West 125 feet and that portion conveyed to City of Des Moines for ROW acquisition along Merle Hay Road recorded in Book 6528, Page 438), BISHOP PLACE, an Official Plat; and the East ½ of the South ½ of Lot 2 (Except that portion conveyed to City of Des Moines for ROW acquisition along Merle Hay Road recorded in Book 6571, Page 827), BISHOP PLACE, an Official Plat; and Lot 7 BISHOP PLACE, an Official Replat; all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

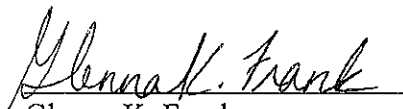
Section 2. That this ordinance and the zoning granted by the terms hereof are subject to the following imposed additional conditions which have been agreed to and accepted by execution of an Acceptance of Rezoning Ordinance by all owners of said property and are binding upon the owners and their successors,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

- (1) Any commercial use of the Property must be conducted in conjunction with the parcels to the south that have frontage on Merle Hay Road and Hickman Road. The Property shall not be developed separately with independent commercial uses. Communication towers/antennas uses are exempt from this provision.
- (2) Any accessory buildings, including but not limited to, a communication tower equipment building on the Property shall be sided with durable materials that are compatible with the primary building on the Property.
- (3) Any communication tower on the Property shall consist of a stealth tower design, including a maximum height of 120 feet and a monopole design with flush-mounted antenna arrays for up to a total of three carriers.
- (4) The following uses are prohibited:
 - a. Adult entertainment businesses,
 - b. Any business that derives more than 50% of its gross sales from the sale of tobacco products,
 - c. Billiard parlors/game rooms,
 - d. Delayed deposit services,
 - e. Liquor stores,
 - f. Off-premises advertising signs,
 - g. Pawn brokers,
 - h. Taverns or nightclubs, and
 - i. Vehicle display lots.

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

Section 4. That the City Clerk is hereby authorized and directed to cause certified copies of the Acceptance of Rezoning Ordinance, this ordinance, vicinity map and proof of publication of this ordinance to be properly filed in the office of the County Recorder of the county in which the subject property is located.

FORM APPROVED:

A handwritten signature in cursive script, reading "Glenna K. Frank", is written over a horizontal line.

Glenna K. Frank
Assistant City Attorney

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Prepared by: Glenna K. Frank, Assistant City Attorney, 400 Robert D. Ray Drive, Des Moines, IA 50309
Phone: 515/283-4530

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: David Nelsen and Yatnia Nelsen (Owners), MEM Investment II, LLC (Owner), Magdalena T. Shivvers (Owner), and Hy-Vee, Inc. (Purchaser)

Grantee's Name: City of Des Moines, Iowa

Legal Description: The North ½ of Lot 2 (Except the West 125 feet and that portion conveyed to City of Des Moines for ROW acquisition along Merle Hay Road recorded in Book 6528, Page 438), BISHOP PLACE, an Official Plat; and the East ½ of the South ½ of Lot 2 (Except that portion conveyed to City of Des Moines for ROW acquisition along Merle Hay Road recorded in Book 6571, Page 827), BISHOP PLACE, an Official Plat; and Lot 7 BISHOP PLACE, an Official Replat; all now included in and forming a part of the City of Des Moines, Polk County, Iowa.
(Herein "Property")

ACCEPTANCE OF REZONING ORDINANCE

The undersigned hereby state, warrant and agree as follows:

1. That David Nelsen and Yatnia Nelsen, MEM Investment II, LLC, and Magdalena T. Shivvers are the titleholders, and Hy-Vee, Inc. is the purchaser, of the properties locally known as 2412 Merle Hay Road, 2416 Merle Hay Road and 2325 59th Street and legally 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 Limited "C-2" General Retail and Highway-Oriented Commercial District, 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:


- (1) Any commercial use of the Property must be conducted in conjunction with the parcels to the south that have frontage on Merle Hay Road and Hickman Road. The Property shall not be developed separately with independent commercial uses. Communication towers/antennas uses are exempt from this provision.

- (2) Any accessory buildings, including but not limited to, a communication tower equipment building on the Property shall be sided with durable materials that are compatible with the primary building on the Property.
- (3) Any communication tower on the Property shall consist of a stealth tower design, including a maximum height of 120 feet and a monopole design with flush-mounted antenna arrays for up to a total of three carriers.
- (4) The following uses are prohibited:
 - a. Adult entertainment businesses,
 - b. Any business that derives more than 50% of its gross sales from the sale of tobacco products,
 - c. Billiard parlors/game rooms,
 - d. Delayed deposit services,
 - e. Liquor stores,
 - f. Off-premises advertising signs,
 - g. Pawn brokers,
 - h. Taverns or nightclubs, and
 - i. Vehicle display lots.

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.

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.

Hy-Vee, Inc.


By: Jeffrey Markey
Its: Vice President

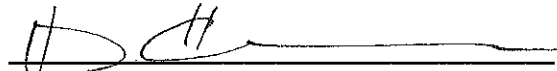
State of Iowa)
) ss:
County of Polk)

This instrument was acknowledged before me on November 13, 2017, by
Jeffrey Markey as Vice President of Hy-Vee,
Inc.

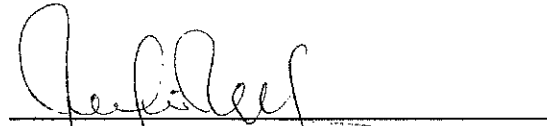
Vicki K. Archer
Notary Public in and for the State of Iowa



OWNER



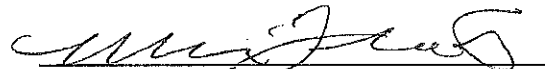
David Nelsen



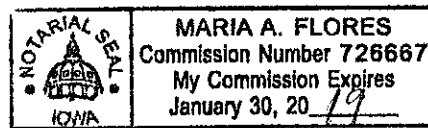
Yatnia Nelsen

State of Iowa)
) ss:
County of Polk)

This instrument was acknowledged before me on November 9, 2017, by David Nelsen and Yatnia Nelsen, husband and wife.

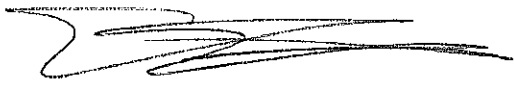


Notary Public in the State of Iowa



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MEM INVESTMENT II, LLC
an Iowa limited liability company

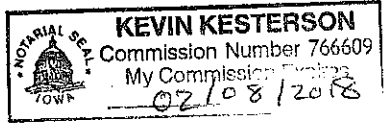


By: Eric Estes
Its: Member

State of Iowa)
) ss:
County of Polk)

This instrument was acknowledged before me on Nov. 10th, 2017, by
Eric Estes as a member of
MEM Investment II, LLC.





Notary Public in and for the State of Iowa

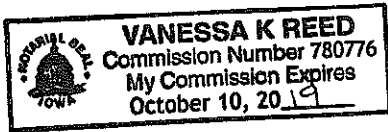
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OWNER

Magdalena Shivvers
Magdalena T. Shivvers

State of Iowa)
) ss:
County of Polk)

This instrument was acknowledged before me on November 10, 2017, by
Magdalena T. Shivvers.



Vanessa K. Reed
Notary Public in the State of Iowa

SPOUSE OF OWNER (IF ANY)

By: _____
(Print Name)

State of Iowa)
) ss:
County of Polk)

This instrument was acknowledged before me on _____, 2017, by
_____, as spouse of Magdalena Shivvers.

Notary Public in the State of Iowa