



**Date** ..... August 5, 2024 .....

**RESOLUTION HOLDING PUBLIC HEARING REGARDING REQUEST FROM TASTY KING OF IOWA, LLC (OWNER), REPRESENTED BY NEIL THOMSON (OFFICER), TO AMEND PLANDSM TO REVISE THE FUTURE LAND USE DESIGNATION AND TO REZONE THE PROPERTY LOCATED AT 205 UNIVERSITY AVENUE**

**WHEREAS**, the City Plan and Zoning Commission has advised that at a public hearing held on June 20, 2024, its members voted 11-0 in support of a motion to recommend **APPROVAL** of a request from Tasty King of Iowa, LLC (Qwner), represented by Neil Thomson (Officer), for the proposed rezoning from “MX2” Mixed Use District to “MX3” Mixed Use District be found not in conformance with the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation of Industrial within a Community Node; and

**WHEREAS**, the City Plan and Zoning Commission has advised that at a public hearing held on June 20, 2024, its members voted 11-0 in support of a motion to recommend **APPROVAL** of a request from Tasty King of Iowa, LLC (Qwner), represented by Neil Thomson (Officer), for the PlanDSM: Creating Our Tomorrow Plan Land Use Plan designation for the subject property from Industrial within a Community Node to Community Mixed Use within a Community Node; and

**WHEREAS**, the City Plan and Zoning Commission has further advised that at a public hearing held on June 20, 2024, its members voted 11-0 in support of a motion to recommend **APPROVAL** of a request from Tasty King of Iowa, LLC (Qwner), represented by Neil Thomson (Officer), to rezone the Property from “MX2” Mixed Use District to “MX3” Mixed Use District to bring an existing restaurant with a drive-through use into conformance with zoning regulations; and

**WHEREAS**, the Property is legally described as follows:

**LOT 131, EXCEPT THE EAST FIVE FEET (5) THEREOF, AND ALL OF LOT 130 IN RUTHERFURD HEIGHTS, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, IOWA; AND**

**LOT 132, (EXCEPT THE EAST 5 FEET THEREOF) IN RUTHERFURD HEIGHTS, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, IOWA; AND**

**LOT 133 AND THE NORTH ONE-HALF OF LOT 134 IN RUTHERFURD HEIGHTS, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, IOWA (EXCEPT THE EAST FIVE FEET THEREOF).**

**EXCEPT**

**THAT PART OF LOTS 130 THROUGH 134, RUTHERFURD HEIGHTS, AN OFFICIAL PLAT, DESCRIBED AS FOLLOWS: BEGINNING IN THE NORTHEAST CORNER OF**



Date August 5, 2024

SAID LOT 130, THENCE SOUTH 0° (DEGREES) 00' (MINUTES) 00" (SECONDS) EAST ALONG THE EAST LINE OF SAID LOT 130, A DISTANCE OF 49.93 FEET; THENCE NORTH 89°28'20" WEST ALONG THE SOUTH LINE OF SAID LOT 130, A DISTANCE OF 5.00 FEET; THENCE SOUTH 0°00'00" EAST ALONG THE WEST RIGHT-OF-WAY LINE OF 2ND AVENUE, A DISTANCE OF 174.76 FEET; THENCE NORTH 89°31'33" WEST ALONG THE NORTH RIGHT-OF-WAY LINE OF UNIVERSITY AVENUE, A DISTANCE OF 20.50 FEET; THENCE NORTH 45°12'13" EAST, A DISTANCE OF 14.09 FEET; THENCE NORTH 0°00'00" EAST, A DISTANCE OF 84.28 FEET; THENCE NORTH 2°17'26" EAST, A DISTANCE OF 50.04 FEET; THENCE NORTH 0°00'00" EAST, A DISTANCE OF 80.39 FEET; THENCE SOUTH 89°27'28" EAST ALONG THE NORTH LINE OF SAID LOT 130, A DISTANCE OF 13.50 FEET TO THE POINT OF BEGINNING, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.; and

WHEREAS, on July 15, 2024, by Roll Call No. 24-0959, it was duly resolved by the City Council that the request for approval of the proposed amendment and rezoning be set down for hearing on August 5, 2024, at 5:00 p.m., at the City Council Chambers; and

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 proposals; and

WHEREAS, in accordance with said notice, those interested in said proposals, 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 and all statements of interested persons and arguments of counsel, any objections to the proposed amendment and rezoning are hereby overruled, and the hearing is closed.
2. The proposed amendment to PlanDSM: Creating Our Tomorrow Plan to revise the future land use classification for the Property from Industrial within a Community Node to Community Mixed Use within a Community Node is hereby approved.
3. The proposed rezoning of the Property, as legally described above, from "MX2" Mixed Use District to "MX3" Mixed Use District to bring an existing restaurant with a drive-through use into conformance with zoning regulations, is hereby approved, subject to final passage of an ordinance rezoning the Property as set forth herein.





**Roll Call Number**

**Agenda Item Number**

41

**Date** August 5, 2024

MOVED BY \_\_\_\_\_ TO ADOPT. SECOND BY \_\_\_\_\_.

FORM APPROVED:

/s/ Chas M. Cahill

Chas M. Cahill

Assistant City Attorney

(ZONG-2024-000014) (COMP-2024-000011)

| COUNCIL ACTION | YEAS | NAYS     | PASS | ABSENT |
|----------------|------|----------|------|--------|
| BOESEN         |      |          |      |        |
| SIMONSON       |      |          |      |        |
| VOSS           |      |          |      |        |
| COLEMAN        |      |          |      |        |
| WESTERGAARD    |      |          |      |        |
| MANDELBAUM     |      |          |      |        |
| GATTO          |      |          |      |        |
| TOTAL          |      |          |      |        |
| MOTION CARRIED |      | APPROVED |      |        |

**CERTIFICATE**

I, LAURA BAUMGARTNER, 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

June 24, 2024

Communication from the City Plan and Zoning Commission advising that at their June 20, 2024 meeting, the following action was taken on request from Tasty King of Iowa, LLC (owner), represented by Neil Thomson (officer), for the following regarding property located at 205 University Avenue:

- A) Determination as to whether the requested rezoning is in conformance with the PlanDSM Creating Our Tomorrow Comprehensive Plan.
- B) Amend the PlanDSM: Creating Our Tomorrow Comprehensive Plan to revise the future land use classification of the property from Industrial within a Community Node to Community Mixed Use within a Community Node.
- C) Rezone property from "MX2" Mixed Use District to "MX3" Mixed Use District, to bring an existing restaurant with a drive-through use into conformance with zoning regulations.

#### COMMISSION RECOMMENDATION:

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

| Commission Action: | Yes | Nays | Pass | Abstain | Absent |
|--------------------|-----|------|------|---------|--------|
| Francis Boggus     | X   |      |      |         |        |
| Leah Rudolphi      | X   |      |      |         |        |
| Abby Chungath      |     |      |      |         | X      |
| Kayla Berkson      | X   |      |      |         |        |
| Chris Draper       | X   |      |      |         |        |
| Laura Kessel       | X   |      |      |         |        |
| Todd Garner        | X   |      |      |         | X      |
| Johnny Alcivar     |     |      |      |         |        |
| Justyn Lewis       |     |      |      |         | X      |
| Carolyn Jenison    | X   |      |      |         |        |
| William Page       | X   |      |      |         |        |
| Andrew Lorentzen   | X   |      |      |         |        |
| Emily Webb         |     |      |      |         | X      |
| Katie Gillette     | X   |      |      |         |        |
| Rick Trower        | X   |      |      |         |        |



**Approval of Part A)** The proposed rezoning be found not in conformance with the PlanDSM: Creating Our Tomorrow Comprehensive Plan, which designates the property as Industrial within a Community Node.

Part B) Approval of the request to amend the PlanDSM future land use designation from Industrial to Community Mixed Use within a Community Node.

Part C) Approval of the rezoning of the property from “MX2” Mixed Use District to “MX3” Mixed Use District.

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

Part A) Staff recommends that the proposed rezoning be found not in conformance with the PlanDSM: Creating Our Tomorrow Comprehensive Plan, which designates the property as Industrial within a Community Node.

Part B) Staff recommends approval of the request to amend the PlanDSM future land use designation from Industrial to Community Mixed Use within a Community Node.

Part C) Staff recommends approval of the rezoning of the property from “MX2” Mixed Use District to “MX3” Mixed Use District.

## **STAFF REPORT TO THE PLANNING COMMISSION**

### **I. GENERAL INFORMATION**

- 1. Purpose of Request:** The applicant is considering either renovating or demolishing the existing building. The existing building has legal non-conforming rights as a restaurant with an accessory drive-through use for a drive-through on the interior side of the building. The proposed rezoning would allow any renovation or redevelopment of the property to maintain an accessory drive-through use on the rear or the interior side of the building.

Any future construction or change in use must comply with all applicable site plan and design regulations of the Planning and Design Ordinance (City Code Chapter 135). Furthermore, a Site Plan and building elevations would be required for any future development before the property can be legally occupied by the proposed use.

- 2. Size of Site:** 0.699 Acres (30,427 square feet).
- 3. Existing Zoning (site):** “MX2” Mixed Use District.
- 4. Existing Land Use (site):** The subject property consists of one parcel with an existing 3,780 square feet building with a paved surface parking lot and two driveway accesses via University Avenue and one access via 2<sup>nd</sup> Avenue.

**5. Adjacent Land Use and Zoning:**

**North** – “MX2”; Use is warehousing.

**South** – “PUD”; Use is a hospital campus (Mercy Hospital Center PUD).

**East** – “I1”; Use is a fuel station.

**West** – “RX2”; Use is hospital (continuous care or assisted-living).

- 6. General Neighborhood/Area Land Uses:** The subject property is located on the northwest corner of the University Avenue and 2<sup>nd</sup> Avenue intersection. The area includes a mix of commercial, institutional, and industrial uses.

- 7. Applicable Recognized Neighborhood(s):** The subject property is located in the River Bend Neighborhood Association and within 250 feet of Cheatom Park Neighborhood Association. All neighborhood associations were notified of the June 20, 2024, public hearing by emailing of the Preliminary Agenda on May 31, 2024, and by mailing of the Final Agenda on June 14, 2024. Additionally, separate notifications of the hearing for this specific item were mailed on May 31, 2024 (20 days prior to the public hearing) and June 10, 2024 (10 days prior to the public hearing) to the River Bend Neighborhood Association and the Cheatom Park Neighborhood Association and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Services Department on the date of the mailing. The River Bend Neighborhood mailings were sent to Kathy Hellstern, 803 Hickman Road, Des Moines, IA 50314. The Cheatom Park Neighborhood mailings were sent to Debra Carr, 1105 14<sup>th</sup> Place, Des Moines, IA 50314.

The applicant can provide a summary of the neighborhood meeting at the public hearing.

- 8. Relevant Zoning History:** NA.

- 9. PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:** Industrial within a Community Node centered on the intersection of University Avenue and 6<sup>th</sup> Avenue.

- 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 boundaries or regulations 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 make recommendations to the City Council on conditions to be made in addition to the existing regulations so long as the subject property owner agrees to them in writing. The recommendation of the Commission will be forwarded to the City Council.



## II. ADDITIONAL APPLICABLE INFORMATION

1. **PlanDSM Creating Our Tomorrow:** The applicant has requested the property be rezoned to “MX3” Mixed Use District to allow any renovation or redevelopment of the property to maintain an accessory drive-through use on the rear or the interior side of the building.

PlanDSM designates the subject property as “Industrial” within a Community Node. The proposed “MX3” Mixed Use District is not consistent with this land use designation, which PlanDSM describes as follows:

*Industrial: Accommodates industrial development and limited supporting commercial uses. Development in this classification could have a large impact on adjoining properties and the environment which would need to be mitigated.*

*Community Node: Mid-sized centers providing a range of daily needs and specialized services within a larger neighborhood context. Consist of a mix of housing, retail, and offices serving a larger population and geographical area than a neighborhood node. May include a shopping district including a grocery and drug store. Residential development including medium and high densities may occur.*

In order for the proposed rezoning to “MX3” District to be in conformance with PlanDSM, the future land use designation must be amended to “Community Mixed Use within a Community Node”. PlanDSM describes this designation as follows:

*Community Mixed Use: Small- to medium-scale mixed use development, located on high-capacity transit corridors or at the intersection of transportation corridors. Community mixed use areas include both a mix of medium density residential and a mix of retail and service establishments designed to attract customers from a large service area encompassing multiple neighborhoods and may include specialty retail that attracts regional customers.*

The Zoning Ordinance states that the “MX3” District is intended for mixed-use nodes and corridors within the city, where residents and visitors may access multiple uses by walking and automobile. This district accommodates higher intensity commercial uses at a smaller scale.

Staff believes that small scale commercial uses within the “MX3” District should be focused along major corridors and small neighborhood nodes within the City where there are similar established or complementary uses. A “Restaurant” use with an accessory drive-through use is an appropriate use for this location so long as the site is designed such that it can be accessed safely by either foot or vehicles.

2. **Access and Traffic Circulation:** Driveway approaches or portions of the approach that are no longer used are to be removed with the curb and/or area in the street right-of-way restored.



- 3. Planning and Design Ordinance:** Any construction or change in use must comply with all applicable site plan and design regulations of the Planning and Design Ordinance (City Code Chapter 135). Furthermore, a Site Plan and building elevations would be required for any future development before the property can be legally occupied by the proposed use.

### **SUMMARY OF DISCUSSION**

Leah Rudolphi asked if any member of the public or commission desired to speak on the item. No one requested to speak.

### **COMMISSION ACTION:**

Todd Garner made a motion for approval for the following:

Part A) The proposed rezoning be found not in conformance with the PlanDSM: Creating Our Tomorrow Comprehensive Plan, which designates the property as Industrial within a Community Node.

Part B) Approval of the request to amend the PlanDSM future land use designation from Industrial to Community Mixed Use within a Community Node.

Part C) Approval of the rezoning of the property from "MX2" Mixed Use District to "MX3" Mixed Use District.

### **THE VOTE 11-0**

Respectfully submitted,

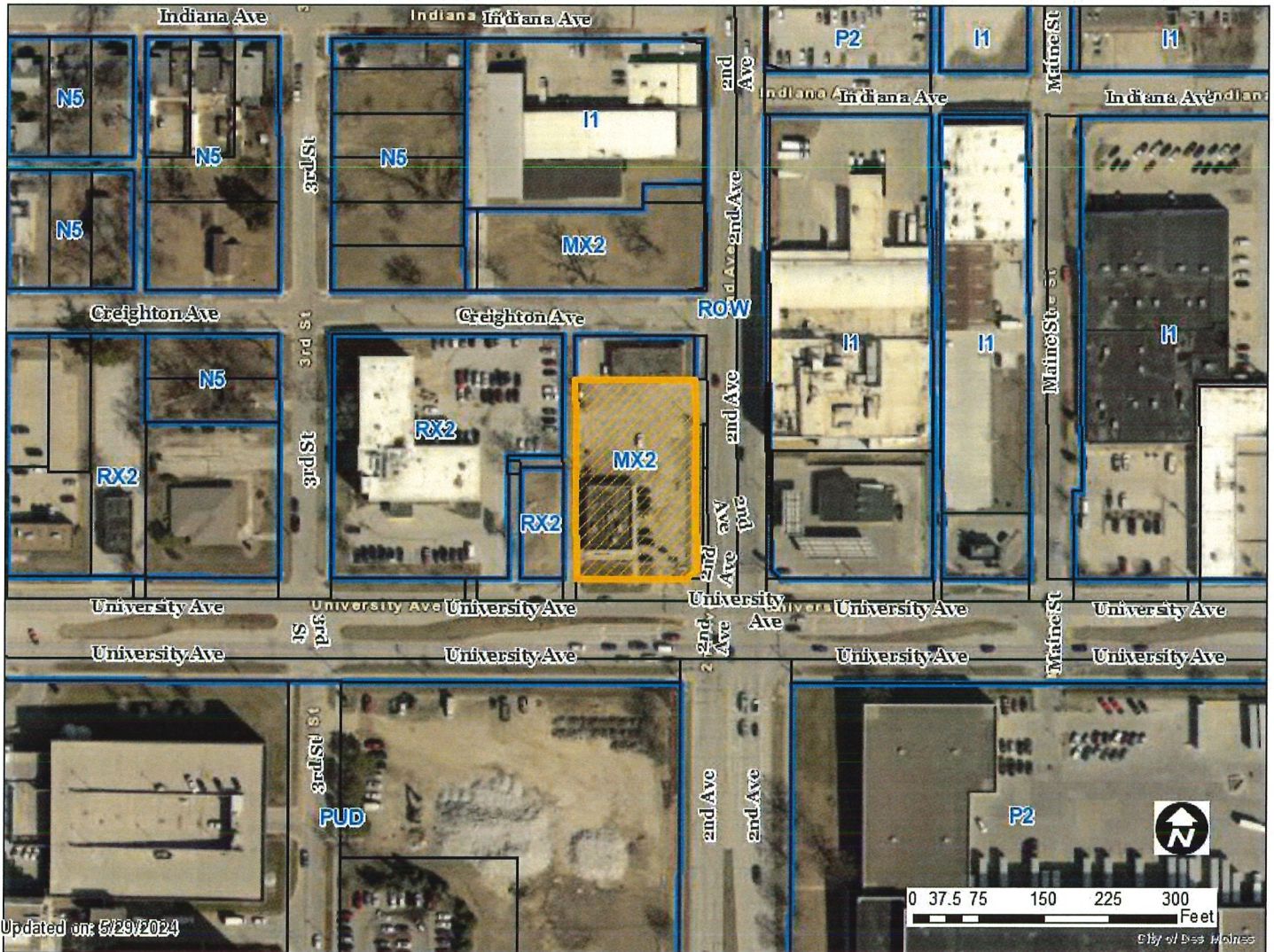


Planning & Urban Design Administrator

JMV:mrw

Tasty King of Iowa, LLC 205 University Avenue

ZONG-2024-000014



1 inch = 143 feet





















June 11, 2024

Dear Property Owner:

You are receiving this letter and information because you own property that is located within 250 feet of 205 University Avenue, Des Moines. This is the Burger King (BK) restaurant at the NW corner of 2<sup>nd</sup> Avenue and University Avenue. The City requires that we contact you as this property is seeking to be rezoned to MX3. You have likely already received information from the City regarding their meeting dates.

The City of Des Moines, Iowa rezoned the entire City in 2019 and designated the BK property as MX2, which does not allow for a drive-up window and requires a minimum 3-story building. The intent of this rezoning is to place the property in a zoning district that will allow a single-story building with a drive-up window should the owners decide to construct a new restaurant on the property.

We will hold an informal informational neighborhood meeting on Monday, June 17, 2024 from 5:30 – 6:30 p.m. at the Forest Avenue Library, 1326 Forest Avenue, Des Moines, Iowa in their conference room where you can ask questions about this rezoning.

If you have any questions or can't attend the meeting, you may call or email:

Civil Engineer: Doug Saltzgaver, CGA, [dsaltzgaver@cgaconsultants.com](mailto:dsaltzgaver@cgaconsultants.com) 515-288-4823

We hope we can have your support for this rezoning and ask that when you receive the comment card from the city that you respond in favor.

Thank you.

Clapsaddle-Garber Associates, Inc.

Doug Saltzgaver, P.E.  
Office Lead

DJS/kee

J:\24-ST-0039\REZONING\Neighbor\_Letter.docx

# 205 University Neighborhood Meeting

41

Address of Prop. Owner

803 Hickman 50314 - River Bend Assn

1810 - School

1190-10th St DSM, IA 50314

1105 14th St DSM, IA 50314

1145 14th St DSM, IA 50314

Name

Kathy Hellstern

Frank Jackson

Journal Clinton

John Lane

John Lane

**From:** [Doug Saltsgaver](#)  
**To:** [Neighborhood Meeting](#)  
**Subject:** 205 UNIVERSITY  
**Date:** Monday, June 17, 2024 6:47:53 PM  
**Attachments:** [image001.png](#)  
[Neighbor Invitation-Letter.pdf](#)  
[scans-dsm@cgaconsultants.com\\_20240617\\_184255.pdf](#)

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

The required neighborhood meeting for the rezoning of the property was held 06/17/24 from 5:30 pm to 6:30 pm at the Forest Avenue Library at 1326 Forest Avenue.

The attached letter was mailed to the property owners from the City supplied list.

I represented the property owner at the meeting. Several people from the neighborhood attended the meeting to learn about what is being proposed, and why the site needs to be rezoned.

The following questions/concerns were raised by those attending:

No concerns, everyone happy that BK is willing to put money into the facility and site and keep the restaurant there.

No changes were made based on the meeting.

Attached is a copy of the sign up sheet of those attending.

Doug Saltsgaver, PE  
Office Leader



Clapsaddle-Garber Associates, Inc. (CGA)  
2413 Grand Avenue  
Des Moines, IA 50312

Office: 515-288-4823  
[DSaltsgaver@cgaconsultants.com](mailto:DSaltsgaver@cgaconsultants.com)



[www.cgaconsultants.com](http://www.cgaconsultants.com)

Ackley | Ames | Cedar Falls | Des Moines | Marshalltown

Item: ZONG-2024-000014Date: 6-17-2024

Please mark one of the following:

- ☒ I support the request  
☐ I am undecided  
☐ I oppose the request

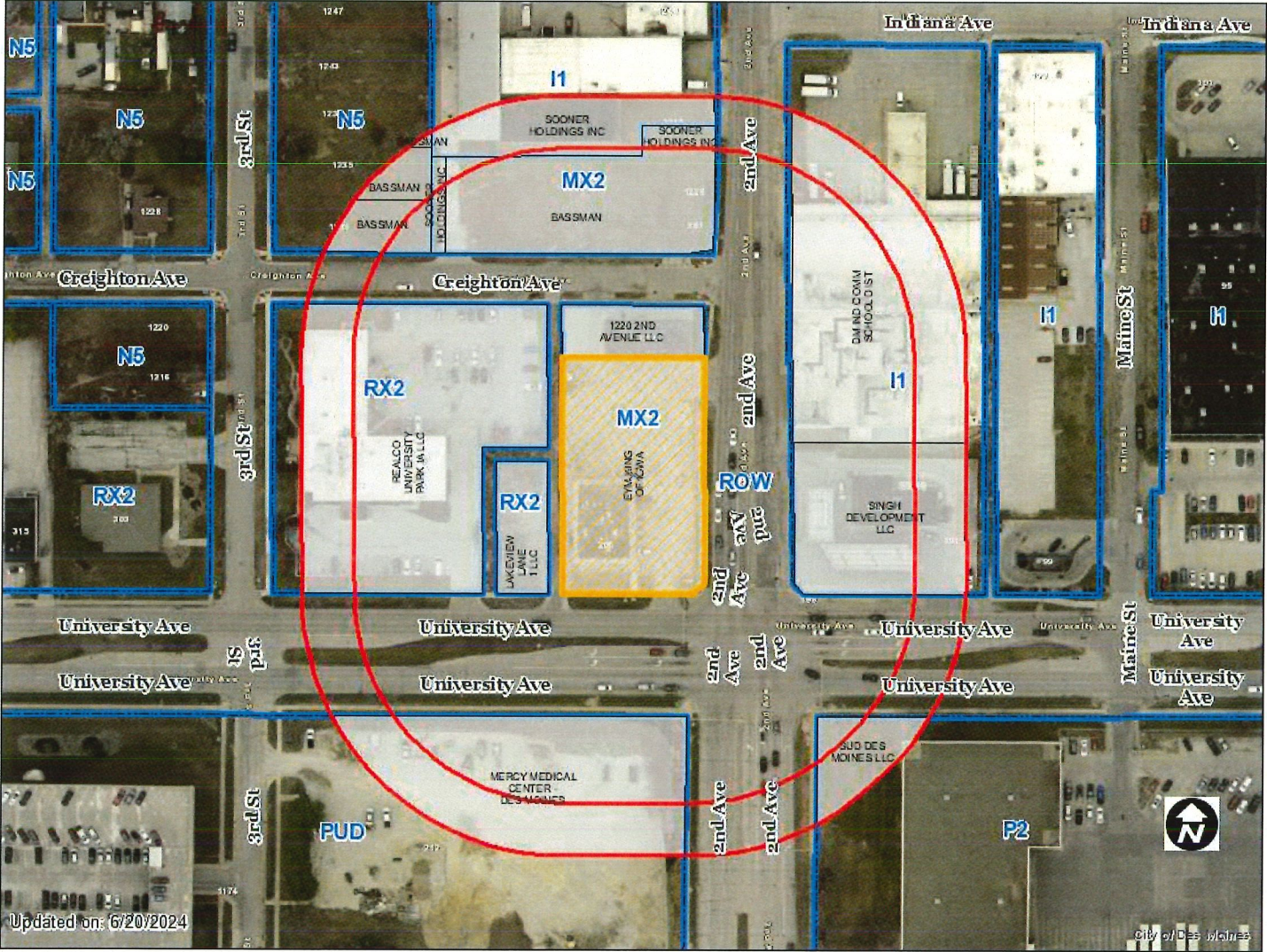
Staff Use Only  
**RECEIVED**  
COMMUNITY DEVELOPMENT  
JUN 20 2024

Titleholder Signature: Kathy HellsternName/Business: KATHY HELLSTERNImpacted Address: RIVER BEND NEIGHBORHOOD ASSN.Comments: The zoning request makes  
sense for the property.



Tasty King of Iowa, LLC 205 University Avenue

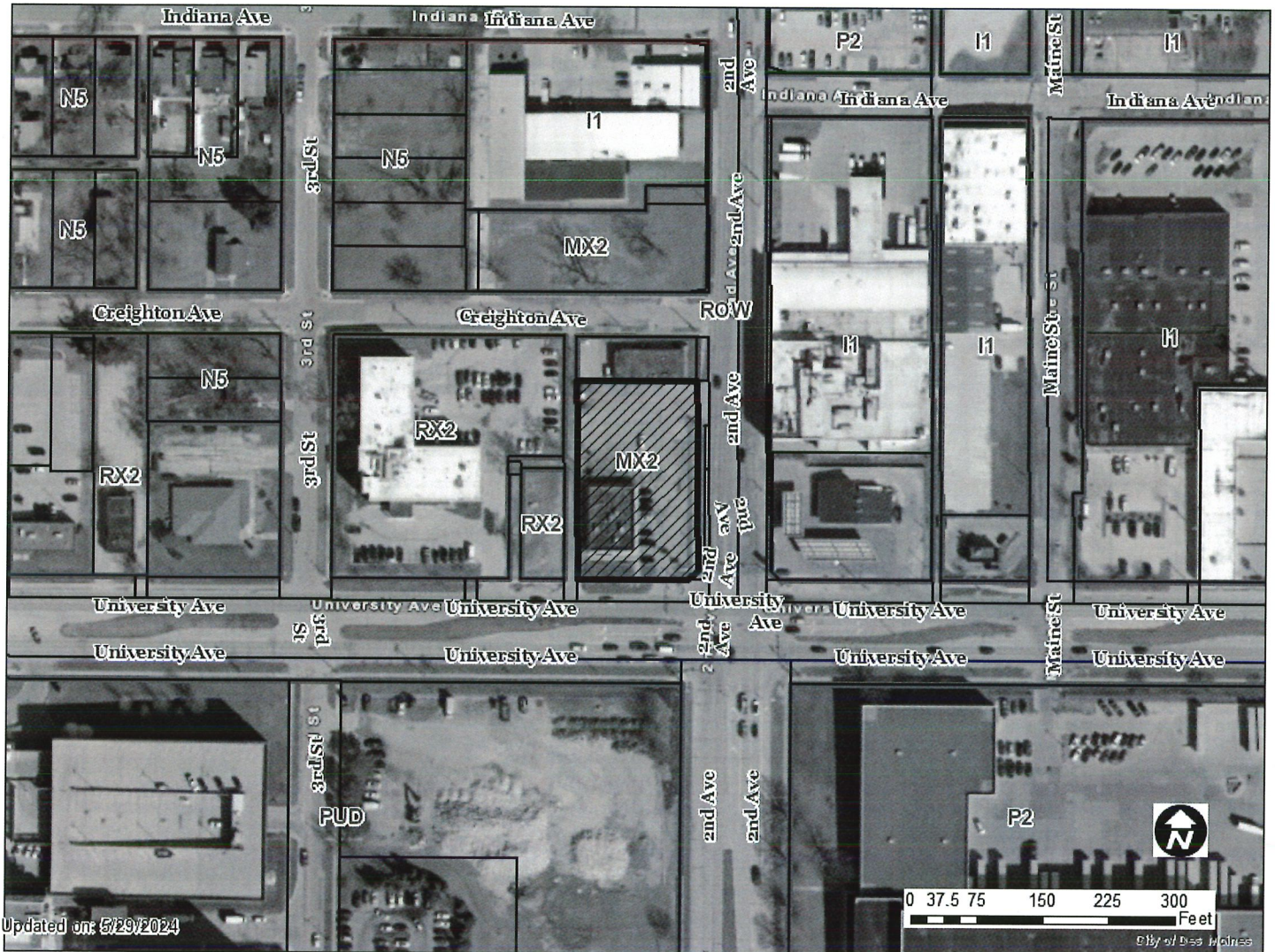
ZONG-2024-000014





Tasty King of Iowa, LLC 205 University Avenue

ZONG-2024-000014



1 inch = 143 feet