

★ **Roll Call Number**

08-1245

**Agenda Item Number**

62B

Date July 14, 2008

WHEREAS, on June 9, 2008, by Roll Call No. 08-993, it was duly resolved by the City Council, that the City Council consider a proposal from Central Iowa Developers, L.C., represented by William Kline, Managing Member, to rezone certain property it owns in the vicinity of 5100 NE 38th Avenue from the "A-1" Agricultural District classification to the "PUD" Planned Unit Development District classification, and to approve the proposed "PUD" Conceptual Plan for such property, and that such proposal be set down for hearing on July 14, 2008, at 5:00 P.M., in the Council Chambers at City Hall; and,

WHEREAS, due notice of said hearing was published in the Des Moines Register on June 12, 2008, as provided by law, setting forth the time and place for hearing on said proposed amendment to the Zoning Ordinance; and,

WHEREAS, on June 23, 2008, by Roll Call No. 08-1128, the public hearing on the proposed rezoning was continued until July 14, 2008, in light of the temporary evacuation of City Hall and the relocation of the hearing to temporary facilities in the Central Library Building and the City Council's desire to continue the hearing until the Council and the public could give a more thorough consideration of the matter; and,

WHEREAS, the Legal Department has prepared an amendment to the Zoning Ordinance of the City of Des Moines to rezone the property located in the vicinity of 5100 NE 38th Avenue, more fully described as follows (the "Property"):

A parcel of land in the South 1/2 of the Southeast 1/4 of Section 22, Township 79 North, Range 23 West of the 5th P.M., City of Des Moines, Polk County, Iowa which is more particularly described as follows:

Commencing as a point of reference at the SW corner of the SE 1/4 of the SE 1/4 of said Section 22, thence N00°27'04"W, 33.00 feet to a point on the North right-of-way line of NE 38th Avenue, said point being the Point of Beginning; thence N89°35'06"W, 56.92 feet along said North right-of-way line to a point; thence N00°24'35"E, 1309.70 feet to a point on the North line of the S 1/2 of the SE 1/4 of said Section 22; thence N89°41'50"E, 981.47 feet along said North line to a point on the West right-of-way line of NE 55th Way; thence southerly along a curve to the right having a radius of 1112.90 feet, a chord bearing of S06°29'01"E, an arc length of 262.57 feet along said West right-of-way line to a point; thence S04°55'27"E, 152.10 feet along said West right-of-way line to a point; thence S25°00'57"E, 169.80 feet along said West right-of-way line to a point; thence S64°28'27"E, 234.40 feet along said West right-of-way line to a point on the West right-of-way line of NE 56th Street; thence S00°16'33"W, 251.14 feet along said West right-of-way line to a point; thence S07°52'14"W, 75.66 feet along said West right-of-way line to a point; thence S00°16'33"W, 228.80 feet along said West right-of-way line to a point; thence

( continued )

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62B

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S44°25'25"W, 93.13 feet along said West right-of-way line to a point on the North right-of-way line of NE 38th Ave; thence S88°40'58"W, 1182.33 feet along said North right-of-way line to the Point of Beginning and containing 35.038 acres, more or less, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

from the "A-1" Agricultural District classification to the "PUD" Planned Unit Development District classification; and,

WHEREAS, the Plan and Zoning Commission has recommended that the proposed rezoning and "PUD" conceptual plan be approved, subject to the conditions identified in the attached letter from the Planning Administrator; and,

WHEREAS, in accordance with said notice those interested in said proposed rezoning, 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 said proposed rezoning and "PUD" Conceptual Plan are hereby overruled and the hearing is closed.
2. The proposed rezoning and "PUD" Conceptual Plan are hereby found to be in conformance with the Des Moines 2020 Community Character Land Use Plan, subject to the conditions identified below.
3. The "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 following conditions, and subject to the Community Development Director finding that such conditions have been satisfied by the amendments to the plan:
  - A. Addition of a note to the plan prohibiting the following "C-1" District uses from Parcel D.
    - 1) Gas stations/ convenience stores.
    - 2) Financial institutions whereby a majority of loans are made based on collateral of future payroll or vehicle titles.
    - 3) Package goods stores for the sale of alcoholic beverages.
    - 4) Pawn shops.

( continued )

★ Roll Call Number

08-1245

Agenda Item Number

62B

Date July 14, 2008

-3-

- B. Replacement of notes pertaining to the "Low/Medium Density Residential" and "Medium Density Residential" bulk standards and permitted uses with a note that states, "Density ranges are provided but the design, building placement and overall density will be determined by future Concept Plan amendments."
- C. Provision of a temporary turnaround for emergency apparatus on the north end of the north/south streets.
- D. Provision of a trip generation analysis by the developer prior to any preliminary subdivision plat approval. Contribution to necessary improvements of NE 38th Avenue as determined necessary by the analysis, with such contribution to be determined at the final subdivision plat approval stage.
- E. Addition of a note requiring submission of a tree preservation and mitigation plan locating all trees greater than 6 inches in diameter on the site for review and approval by City staff at the time of platting and prior to the commencement of any tree removal, grading or construction activity.
- F. Provision of a minimum of 2 overstory trees, 2 evergreen trees, 6 understory trees and 8 shrubs for every 100 lineal foot of frontage in the NE 38th Avenue landscape buffer.
- G. Addition of notes discussing the feasibility of providing sanitary and storm water facilities in the development to the satisfaction of the City Engineer.
- H. Identification of approximate location of storm water management facilities to the satisfaction of the City Engineer.
- I. Identification of approximate locations of any existing easements and all proposed easements to the satisfaction of the City Engineer.
- J. Building materials and roof design for outbuildings and dumpster enclosures shall match principle building materials and include architectural detailing on all sides viewable from public streets.
- K. Outbuildings associated with multiple-family residential developments and dumpster enclosures are prohibited from fronting NE 38th Avenue or NE 56th Street.
- L. Parcel D shall be shifted to a location approximately 250' north of the NE 38th Avenue and NE 56th Street intersection;
- M. Transition of density from existing and proposed low density residential along the west and south boundaries.

( continued)

★ Roll Call Number

08-1245

Agenda Item Number

62B

Date July 14, 2008

-4-

MOVED by Mahaffey to adopt and conditionally approve the rezoning and Conceptual Plan, subject to final passage of the rezoning ordinance.

FORM APPROVED:

Roger K Brown

Roger K. Brown

Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
HENSLEY	✓			
KIERNAN	✓			
MAHAFFEY	✓			
MEYER	✓			
VLASSIS				✓
TOTAL	6			1

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

T. M. Franklin

Mayor

Diane Rauh City Clerk