



Roll Call Number

13-1431

Agenda Item Number

44

Date September 9, 2013

WHEREAS, on August 26, 2013, by Roll Call No. 13-1323, the City Council duly resolved to consider a request by Kum & Go, LC (developer) represented by Nick Halfhill (officer) to rezone certain property located in the vicinity of 4965 Hubbell Avenue from the A-1 Agricultural District classification to a 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 September 9, 2013, at 5:00 P.M., in the Council Chambers at City Hall; and,

WHEREAS, due notice of the hearing was published in the Des Moines Register on August 29, 2013, as provided by law, setting forth the time and place for hearing on the proposed amendment to the Zoning Ordinance; 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 4965 Hubbell Avenue, more fully described as follows (the "Property"):

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 79 NORTH, RANGE 23 WEST OF THE 5TH P.M., CITY OF DES MOINES, POLK COUNTY IOWA AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 15, THENCE NORTH 89°40'29" WEST ALONG THE SOUTH LINE OF SECTION 15, A DISTANCE OF 319.05 FEET, THENCE NORTH 0°19'31"EAST A DISTANCE OF 134.01 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF NORTHEAST 46TH AVENUE, AND THE POINT OF BEGINNING, THENCE SOUTH 89°57'21" WEST , 151.53 FEET ALONG SAID RIGHT-OF-WAY LINE; THENCE SOUTH 0°11'16" WEST, 25.00 FEET; THENCE NORTH 86°17'49" WEST, 255.27 FEET; THENCE NORTH 85°51'19" WEST, 150.38 FEET; THENCE NORTH 10°51'34" WEST, 2.07 FEET; THENCE NORTH 0°04'04" WEST, 123.62 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF NORTHEAST HUBBELL AVENUE (US HIGHWAY 6); THENCE ALONG A CURVE CONCAVE NORTHWESTERLY WHOSE RADIUS IS 5800.00 FEET, WHOSE ARC LENGTH IS 194.22 FEET, WHOSE CHORD BEARS NORTH 51°02'49" EAST, 194.21 FEET; THENCE NORTH 71°06'11" EAST CONTINUING ALONG SAID RIGHT OF WAY, 78.76 FEET; THENCE ALONG A CURVE CONCAVE NORTHWESTERLY WHOSE RADIUS IS 5834.60 FEET, WHOSE ARC LENGTH IS 140.85 FEET, WHOSE CHORD BEARS NORTH 49°43'42"EAST, 140.85 FEET; THENCE SOUTH 41°05'23" EAST, 23.69 FEET; THENCE NORTH 77°46'47" EAST , 214.46 FEET; THENCE SOUTH 0°11'31" WEST A DISTANCE OF



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394.09 FEET TO THE POINT OF BEGINNING. SAID DESCRIBED PARCEL CONTAINING 170,407 SQUARE FEET (3.91 ACRES), MORE OR LESS

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

WHEREAS, on August 15, 2013, the Plan and Zoning Commission recommended by a vote of 10-1 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 the notice those interested in the 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 the 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 plan being first amended to satisfy the conditions identified below:

- 1) Revision to relocate refuse collection enclosures to the eastern portion of the site.
- 2) Revision to indicate that columns on all canopies will be clad entirely in masonry material to match the primary convenience store building.
- 3) Revision to show minimum numbers of conceptual tree plantings to comply with perimeter lot and open space landscaping that would be required for C-2 Districts.
- 4) Provision of the following notes on the Conceptual Plan:
 - a. Landscaping minimums shall be in accordance with standards as applied to C-2 Districts.
 - b. Any sale of 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.
 - c. Any sale of liquor, wine, and/or beer is subject to provisions in Section 134-954(c)(1-4) of the Zoning Ordinance.



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d. 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.

3. The rezoning to the PUD Planned Unit Development District classification and the PUD Conceptual Plan for the Property described above, which is on file in the Community Development Department, are hereby approved, subject to the plan being first amended to satisfy the conditions set forth above, and subject to the Community Development Director finding that such conditions have been satisfied by the amendments to the plan.

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

FORM APPROVED:

Michael F. Kelley, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GRIESS	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MEYER	✓			
MOORE	✓			
TOTAL	7			

T. M. Franklin Council Mayor

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.

Diane Rauh City Clerk