

.....
July 10, 2006

Date

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on June 15, 2006, its members voted 15-0 in support of a motion to recommend APPROVAL of a request from:

- Hubbell Properties I, L.C. (owner) represented by Steve Niebuhr (officer) to rezone property located at 4216-4312 NE 50th Street;
- Hubbell Properties II, L.C. (owner) also represented by Steve Niebuhr (officer) to rezone property located at 4344-4410 NE 50th Street, and
- GTO Investments, L.L.C. (owner) represented by Greg Ortmann (officer), to rezone property located at 4325 NE 50th Street

from the "A-1" Agricultural District classification it will automatically receive upon annexation into the City of Des Moines, to the "M-1" Light Industrial District classification subject to the applicants agreeing to the following conditions:

1. Prohibition of the following uses:
 - a. Residential dwellings, duplexes, town homes, apartments, group homes, institutional residential facilities, mobile homes, or any other residential facility of any kind, except that hotels and motels who rent to transient guests are permitted;
 - b. Farms, except growing crops on any land that has not been improved;
 - c. Asphalt or concrete mixing or production facilities;
 - d. Refining, smelting or mining operations, including, but not limited to gravel extraction, or drilling for or extraction of subsurface substances;
 - e. Electrical, or gas generating facilities, except for use primarily on the premises where the same is generated;
 - f. Cemeteries;
 - g. Adult entertainment businesses;
 - h. Arcades or game rooms as a substantial portion of a business;
 - i. Taverns and nightclubs;
 - j. Animal rendering or slaughter facility;
 - k. Off-premises advertising signage;
 - l. Sanitary sewer treatment facility (other than for waste material generated on the premises) or solid waste disposal facility;
 - m. Jail, prison, or any other correctional facility of any kind;
 - n. Any public or private nuisance or illegal activity;
 - o. Any use that presents an undue hazard of pollution, fire or explosion, including, but not limited to, the manufacture, storage, display or sale of explosives or fireworks; or

(continued)

69A

.....
July 10, 2006

Date

-2-

- p. Any use that creates hazardous or otherwise unreasonable levels of smoke, noise, vibrations, dust, pollutants, refuse, water borne waste, fumes, odors or other emissions; provided, that what level is "unreasonable" shall be determined with consideration given to the fact that the Property is dedicated for use as a retail commercial and light industrial area.

- 2. Sidewalks shall be installed on along the public street on each lot prior to the later of: i) three (3) months after the property is annexed into the City of Des Moines; or, ii) the issuance of a Certificate of Occupancy for a building hereafter constructed on an undeveloped lot.

- 3. Prohibition of any pole buildings, unless determined by the Community Development Director to be adequately screened and designed in such a manner that the overall development and design of Broadway Business Park is not compromised.

- 4. All facades on the exterior wall of any principal or accessory building facing a public street must be comprised of no less than 20% in windows, doors, or masonry materials such as brick, cut stone, or decorative pre-cast concrete units, unless unique in architectural design and such design is approved by the Community Development Director to be consistent with the overall development and design of Broadway Business Park.

- 5. All overhead doors and loading docks on any principal or accessory building shall not face NE 50th Street or NE Broadway Avenue (NE 46th Avenue), unless determined by the Community Development Director to be adequately screened and designed in such a manner that the overall development and design of Broadway Business Park is not compromised.

- 6. Prohibition of temporary structures other than for construction purposes, unless determined by the Community Development Director to be adequately screened and designed in such a manner that the overall development and design of Broadway Business Park is not compromised.

- 7. Any determination by the Community Development Director in the application of the above conditions and requirements can be appealed to the Zoning Board of Adjustment.

(continued)

★ **Roll Call Number**

Agenda Item Number

69A

Date July 10, 2006

WHEREAS, the subject property is located along NE 50th Street south of NE 46th Avenue (also known as Broadway Avenue), and is more specifically described as follows:

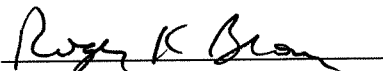
Lots 1, 6 through 16, and 22, in Broadway Business Park Plat 2, an Official Plat, in Polk County, Iowa.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. That the meeting of the City Council at which the proposed rezoning is to be considered shall be held in the Council Chambers, City Hall, Des Moines, Iowa, at 5:00 p.m. on July 24, 2006, at which time the City Council will hear both those who oppose and those who favor the proposal.
2. That the City Clerk is hereby authorized and directed to cause notice of said proposal in the accompanying form to be given by publication once, not less than seven (7) days and not more than twenty (20) days before the date of hearing, all as specified in Section 362.3 and Section 414.4 of the Iowa Code.

MOVED by _____ to adopt.

FORM APPROVED:


 Roger K. Brown
 Assistant City Attorney

(ZON2006-00065)
 (ZON2006-00066)
 (ZON2006-00067)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BROOKS				
COLEMAN				
KIERNAN				
HENSLEY				
MAHAFFEY				
VLASSIS				
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

Date _____

Agenda Item 69A

Roll Call # _____

July 10, 2006

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 June 15, 2006, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 15-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
David Cupp	X			
Shirley Daniels	X			
Dann Flaherty	X			
Bruce Heilman	X			
Jeffrey Johannsen	X			
Greg Jones	X			
Frances Koontz	X			
Kaye Lozier	X			
Brian Meyer	X			
Brian Millard	X			
Brook Rosenberg	X			
Mike Simonson	X			
Kent Sovern	X			
Tim Urban	X			
Marc Wallace	X			

APPROVAL of a request to amend the Des Moines' 2020 Community Character Plan future land use designation from Low Density Residential to Planned Business Park for portions of the existing Broadway Business Park at NE 50th Street and NE Broadway Avenue in unincorporated Polk County. (21-2006-4.10)

By same motion and vote, members moved for **APPROVAL** of a request from:

- Hubbell Properties I, L.C. (owner) represented by Steve Niebuhr (officer) to rezone property located at 4216-4312 NE 50th Street;
 - Hubbell Properties II, L.C. (owner) also represented by Steve Niebuhr (officer) to rezone property located at 4344-4410 NE 50th Street, and
 - GTO Investments, L.L.C. (owner) represented by Greg Ortmann (officer), to rezone property located at 4325 NE 50th Street
- from the "A-1" Agricultural District classification it will automatically receive upon annexation into the City of Des Moines, to the "M-1" Light Industrial District classification, subject to the applicants agreeing to the following conditions:



CITY PLAN AND ZONING COMMISSION
ARMORY BUILDING
602 ROBERT D. RAY DRIVE
DES MOINES, IOWA 50309 -1881
(515) 283-4182

ALL-AMERICA CITY
1949, 1976, 1981
2003

1. Prohibition of the following uses:
 - a. Residential dwellings, duplexes, town homes, apartments, group homes, institutional residential facilities, mobile homes, or any other residential facility of any kind, except that hotels and motels who rent to transient guests are permitted;
 - b. Farms, except growing crops on any land that has not been improved;
 - c. Asphalt or concrete mixing or production facilities;
 - d. Refining, smelting or mining operations, including, but not limited to gravel extraction, or drilling for or extraction of subsurface substances;
 - e. Electrical, or gas generating facilities, except for use primarily on the premises where the same is generated;
 - f. Cemeteries;
 - g. Adult entertainment businesses;
 - h. Arcades or game rooms as a substantial portion of a business;
 - i. Taverns and nightclubs;
 - j. Animal rendering or slaughter facility;
 - k. Off-premises advertising signage;
 - l. Sanitary sewer treatment facility (other than for waste material generated on the premises) or solid waste disposal facility;
 - m. Jail, prison, or any other correctional facility of any kind;
 - n. Any public or private nuisance or illegal activity;
 - o. Any use that presents an undue hazard of pollution, fire or explosion, including, but not limited to, the manufacture, storage, display or sale of explosives or fireworks; or
 - p. Any use that creates hazardous or otherwise unreasonable levels of smoke, noise, vibrations, dust, pollutants, refuse, water borne waste, fumes, odors or other emissions; provided, that what level is "unreasonable" shall be determined with consideration given to the fact that the Property is dedicated for use as a retail commercial and light industrial area.
2. Sidewalks shall be installed on along the public street on each lot prior to the later of: i) three (3) months after the property is annexed into the City of Des Moines; or, ii) the issuance of a Certificate of Occupancy for a building hereafter constructed on an undeveloped lot.
3. Prohibition of any pole buildings, unless determined by the Community Development Director to be adequately screened and designed in such a manner that the overall development and design of Broadway Business Park is not compromised.
4. All facades on the exterior wall of any principal or accessory building facing a public street must be comprised of no less than 20% in windows, doors, or masonry materials such as brick, cut stone, or decorative pre-cast concrete units, unless unique in architectural design and such design is approved by the Community Development Director to be consistent with the overall development and design of Broadway Business Park.
5. All overhead doors and loading docks on any principal or accessory building shall not face NE 50th Street or NE Broadway Avenue (NE 46th Avenue), unless determined by the Community Development Director to be adequately screened and designed in such a manner that the overall development and design of Broadway Business Park is not compromised.
6. Prohibition of temporary structures other than for construction purposes, unless determined by the Community Development Director to be adequately screened and designed in such a manner that the overall development and design of Broadway Business Park is not compromised.

7. Any determination by the Community Development Director in the application of the above conditions and requirements can be appealed to the Zoning Board of Adjustment.
(ZON2006-00065, ZON2006-00066 & ZON2006-00067)

Written Responses

1 In Favor

0 In Opposition

This item would not require a 6/7 vote by City Council.

STAFF RECOMMENDATION AND BASIS FOR APPROVAL

Part A) Staff recommends approval of the requested amendment to the Des Moines' 2020 Community Character Plan future land use designation from Low Density Residential to Planned Business Park.

Part B) Staff recommends that the Commission find the requested rezoning in conformance with the Des Moines' 2020 Community Character Plan.

Parts C, D, & E) Staff recommends approval of the requested rezoning to "M-1" subject to the applicants agreeing to the following conditions:

1. Prohibition of the following uses:

- (a) Residential dwellings, duplexes, town homes, apartments, group homes, institutional residential facilities, mobile homes, or any other residential facility of any kind, except that hotels and motels who rent to transient guests are permitted;
- (b) Farms, except that either Declarant may grow crops on any land that it owns and has not improved;
- (c) Asphalt or concrete mixing or production facilities;
- (d) Refining, smelting or mining operations, including, but not limited to gravel extraction, or drilling for or extraction of subsurface substances;
- (e) Electrical, or gas generating facilities, except for use primarily on the premises where the same is generated;
- (f) Cemeteries;
- (g) Adult book stores, adult mini-motion picture theaters, adult motion picture theaters, escort services, massage parlors, strip clubs, any business offering services or products intended to give sexual gratification or any business involving the sale of pornographic materials (as such terms are defined in the Polk County Zoning Ordinance);
- (h) Arcades or game rooms as a substantial portion of a business;
- (i) Establishments primarily engaged in the sale of alcoholic beverages, such as beer, ale, wine and liquor, for consumption on premises, including, but not limited to bars, beer gardens, cocktail lounges, saloons, taverns; and cabarets, discotheques, night clubs or dance halls, whether or not such business involves the sale of alcoholic beverages;
- (j) Animal rendering or slaughter facility;
- (k) Off-premises advertising signage;

- (l) Sanitary sewer treatment facility (other than for waste material generated on the premises) or solid waste disposal facility;
 - (m) Jail, prison, or any other correctional facility of any kind;
 - (n) Any public or private nuisance or illegal activity;
 - (o) Any use that presents an undue hazard of pollution, fire or explosion, including, but not limited to, the manufacture, storage, display or sale of explosives or fireworks; or
 - (p) Any use that creates hazardous or otherwise unreasonable levels of smoke, noise, vibrations, dust, pollutants, refuse, water borne waste, fumes, odors or other emissions; provided, that what level is "unreasonable" shall be determined with consideration given to the fact that the Property is dedicated for use as a retail commercial and light industrial area and is currently zoned as a Light Business District.
2. Provision of a 6' wide sidewalk along NE 50th street, for any developed property, within three (3) months of the effective date of annexation.
 3. Prohibition of any pole buildings.
 4. All facades on the exterior wall of any principal or accessory building facing a public street must be comprised of no less than 20% in windows, doors, or masonry materials such as brick, cut stone, or decorative pre-cast concrete units.
 5. All overhead doors and loading docks on any principal or accessory building shall not face NE 50th Street or NE Broadway Avenue (NE 46th Avenue).
 6. Prohibition of temporary structures other than for construction purposes.

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The applicants are proposing to voluntarily annex into the City to continue the proposed development of the Broadway Business Park.
2. **Size of Site:**
 - Part C) 22.184 acres
 - Part D) 9.373 acres
 - Part E) 3.503 acres
 - Total 35.06 acres
3. **Existing Zoning (site):** "LB" Light Business (Polk County)
4. **Existing Land Use (site):** Vacant land that has been rough graded and developed with street and sewer infrastructure.
5. **Adjacent Land Use and Zoning:**
 - North** - "LB" (Light Business, Polk County), Uses are Schwan's Foods warehouse and Broadway Storage miniwarehousing.
 - South** - "A-1", Use is undeveloped agricultural land recently annexed into the City of Des Moines.
 - East** - "LB" (Light Business, Polk County), Uses are agricultural land and single-family farmstead.

West – “PUD”, Vacant land under construction for the Summerfield single-family subdivision.

6. **General Neighborhood/Area Land Uses:** The subject properties are within an area of northeast Des Moines previously used for primarily agricultural purposes. However, as a result of having good access to the interchange of the NE Broadway Avenue commercial corridor and Iowa 65, the area has now been prepared for light industrial and business park development. There are unincorporated residential neighborhoods to the southwest.
7. **Applicable Recognized Neighborhood(s):** N/A.
8. **Relevant Zoning History:** N/A.
9. **2020 Community Character Land Use Plan Designation:** Low Density Residential
10. **Applicable Regulations:** 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. **Natural Site Features:** The subject properties are within a speculative business park that has been prepared for development. The vacant parcels have a stable ground cover to prevent erosion. There are groups of voluntary trees along the western boundary shared with the Summerfield PUD property.
2. **Drainage/Grading:** The subject properties generally drain southeast to the northwest. There is a detention basin on the north side of the subject properties west of NE 50th Street
3. **Utilities:** The subject properties are served by all necessary public utilities including natural gas and electricity. Sanitary sewer is being extended by Hubbell Companies from the Summerfield single-family development to the west. The subject properties were developed with a “dry” sanitary sewer to be connected the regional waste water recovery system when the properties are annexed into the City.
4. **Landscaping & Buffering:** The recorded covenants for the business park require compliance with all local site plan and zoning requirements in effect. Outdoor storage is prohibited on the front-half of lots abutting a public street. In addition, those covenants also require screening of all outdoor storage areas consistent with the “R” District protection standards for City. In addition the site plan requirements would also require plantings for the open space, landscape strips and bufferyards. The Summerfield single-family residential PUD to the west has a 40’ wide conservation easement along its eastern border shared with the Broadway Business Park.
5. **Traffic/Street System:** NE 50th Street is constructed with a 31’ urban cross section. It bisects the subject properties from north to south with access onto NE Broadway Avenue to the north beyond the subject properties. There is a temporary fire turnaround with easement at the dead end on the southern boundary of the subject properties. The property was platted in anticipation of the street extending further south into undeveloped property already annexed into Des Moines.

The business park development was not required or permitted to have public sidewalks when the subdivision plat was approved by Polk County. However, the recorded declaration of

covenants requires that all owners install a 6' wide sidewalk in accordance with the City of Des Moines standards (in this case the City has adopted SUDAS) within three (3) months after being annexed into the City of Des Moines.

- 6. Proposed Land Uses:** The restrictive covenants already placed on the properties with the Subdivision approval in Polk County prohibit a number of uses as follows:
- (a) Residential dwellings, duplexes, town homes, apartments, group homes, institutional residential facilities, mobile homes, or any other residential facility of any kind, except that hotels and motels who rent to transient guests are permitted;
 - (b) Farms, except that either Declarant may grow crops on any land that it owns and has not improved;
 - (c) Asphalt or concrete mixing or production facilities;
 - (d) Refining, smelting or mining operations, including, but not limited to gravel extraction, or drilling for or extraction of subsurface substances;
 - (e) Electrical, or gas generating facilities, except for use primarily on the premises where the same is generated;
 - (f) Cemeteries;
 - (g) Adult book stores, adult mini-motion picture theaters, adult motion picture theaters, escort services, massage parlors, strip clubs, any business offering services or products intended to give sexual gratification or any business involving the sale of pornographic materials (as such terms are defined in the Polk County Zoning Ordinance);
 - (h) Arcades or game rooms as a substantial portion of a business;
 - (i) Establishments primarily engaged in the sale of alcoholic beverages, such as beer, ale, wine and liquor, for consumption on premises, including, but not limited to bars, beer gardens, cocktail lounges, saloons, taverns; and cabarets, discotheques, night clubs or dance halls, whether or not such business involves the sale of alcoholic beverages;
 - (j) Animal rendering or slaughter facility;
 - (k) Off-premises advertising signage;
 - (l) Sanitary sewer treatment facility (other than for waste material generated on the premises) or solid waste disposal facility;
 - (m) Jail, prison, or any other correctional facility of any kind;
 - (n) Any public or private nuisance or illegal activity;
 - (o) Any use that presents an undue hazard of pollution, fire or explosion, including, but not limited to, the manufacture, storage, display or sale of explosives or fireworks; or
 - (p) Any use that creates hazardous or otherwise unreasonable levels of smoke, noise, vibrations, dust, pollutants, refuse, water borne waste, fumes, odors or other emissions; provided, that what level is "unreasonable" shall be determined with consideration given to the fact that the Property is dedicated for use as a retail

commercial and light industrial area and is currently zoned as a Light Business District.

Staff believes that these use restrictions keep the subject properties within the spirit and intent of a Planned Business Park as defined by the Des Moines' 2020 Community Character Plan. Staff recommends that the applicants agree to these use restrictions in writing as conditions to the zoning so that they are also enforceable by the City.

7. **Urban Design:** The restrictive covenants for the properties require compliance with all applicable local building codes. Pole structures are prohibited and all facades on the exterior wall of a building facing a public street must be comprised of 20% windows and doors or masonry materials such as brick, cut stone, or decorative pre-cast concrete units. Overhead doors and loading docks on any building shall not face NE 50th Street or NE Broadway Avenue (NE 46th Avenue). Temporary structures other than for construction purposes are not permitted.
8. **2020 Community Character Plan:** The subject properties are within an area designated as Low Density Residential in the Des Moines' 2020 Community Character Plan. The remainder of the business park to the north is generally within an area designated as Planned Business Park. The applicant's have requested to amend the future land use to Planned Business Park to be consistent with the designation along NE Broadway Avenue.

Although typically a General Industrial designation is appropriate to allow a rezoning to "M-1", staff believes the development for the subject properties approved by Polk County coupled with the restrictive covenants on the business park in terms of permitted uses and physical design standards are within the spirit and intent of what is considered a Planned Business Park under the Plan. Therefore the proposed rezoning would be in conformance with the proposed amendment to the Des Moines' 2020 Community Character Plan.

SUMMARY OF DISCUSSION

Mike Ludwig presented the proposed revisions to the staff recommendation as follows:

Under Section II, Additional Applicable Information, please note that the Declaration of Covenants actually requires that the sidewalks be installed on the later of three (3) months after being annexed into the City of Des Moines, for a developed lot or prior to the issuance of the first Certificate of Occupancy for a building hereafter constructed on an undeveloped lot.

Staff Recommendation #1(i): The language from the First Modification to the Declaration of Covenants actually provides "Establishments whose sale of alcoholic beverages, such as beer, ale, wine and liquor, consists of more than 50% of the gross sale from their business, for consumption on premises, including but not limited to bars, beer gardens, cocktail lounges, saloons, taverns, and cabarets, discotheques, night clubs or dance halls, whether or not such businesses involve the sale of alcoholic beverages; except that grocery stores and convenience stores shall be permitted so long as not more than thirty percent (30%) of the gross sales from their business consists of the sale of alcoholic beverages."

Staff Recommendation #2: This language needs to provide that: "the sidewalks need to be installed on the later of three (3) months after being annexed into the City of Des Moines, for a developed lot or prior to the issuance of the first Certificate of Occupancy for a building hereafter constructed on an undeveloped lot, as provided in the Declaration of Covenants" (Section 3.07).

Staff Recommendation #3: Please add "...buildings, unless adequately screened and designed in such a manner that the overall development and design of Broadway Business Park is not compromised."

Staff Recommendation #4: Please add "...concrete units, unless unique in architectural design and such design is approved by both Declarant and the Planning and Development Director."

Staff Recommendation #5: Please add "... (NE 46th Avenue), unless variance is approved by the Declarant and the Planning and Development Director."

Staff Recommendation #6: Please add "...purposes, unless variance is approved by the Declarant and the Planning and Development Director."

Please add Staff Recommendation #7 which would state that: "The denial of any request for variance from the standards of the development can be appealed to the Zoning Board of Adjustment. "

There was no further discussion on this item.

Kent Sovern moved for approval of the amended staff recommendation.

Motion passed 15-0.

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:dfa

Attachment

69

Request from Hubbell Properties I, L.C. (owner) and Hubbell Properties II, L.C. (owner) represented by Steve Niebuhr (officer) to rezone property located at 4216-4312 and 4344-4410 NE 50 th Street and from GTO Investments, L.L.C. (owner) represented by Greg Ortmann (officer) to rezone property located at 4325 NE 50 th Street.			File #	
			ZON2006-00065	
			ZON2006-00066	
			ZON2006-00067	
Description of Action	Rezone property from "A-1" Agricultural District to Limited "M-1" Light Industrial District.			
2020 Community Character Plan	Low-Density Residential.			
Horizon 2025 Transportation Plan	No Planned Improvements.			
Current Zoning District	"A-1" Agricultural District.			
Proposed Zoning District	Limited "M-1" Light Industrial District.			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Inside Area				
Outside Area	1	0	0	<20%
Plan and Zoning Commission Action	Approval	15-0	Required 6/7 Vote of the City Council	Yes
	Denial			No

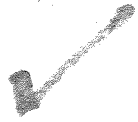
Broadway Business Park Rezoning



- Hubbell Properties I, LC
- Hubbell Properties II, LC
- GTO Investments LLC

Item ZON2006-0006 Date 6-6-06

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



Print Name Broadway, Storage LC
Eric VanderLinder

Signature [Handwritten Signature]

Address 4933 NE 46th Ave

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

RECEIVED
JUN 12 2006
COMMUNITY DEVELOPMENT
DEPARTMENT