

★ **Roll Call Number**

✓  
**Agenda Item Number**

**48B**

.....  
December 21, 2009

**Date**.....

WHEREAS, on December 7, 2009, by Roll Call No. 09-2184, it was duly resolved by the City Council that the application of Thomas Wilson (purchaser) to rezone certain property located in the vicinity of the 4000 block of Dubuque Avenue, more fully described below, be set down for hearing on December 21, 2009, 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 December 10, 2009, as provided by law, setting forth the time and place for hearing on said proposed amendment to the Zoning Ordinance; 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; and,

WHEREAS, the Legal Department has prepared an amendment to the Zoning Ordinance of the City of Des Moines to rezone the following described property:

Outlots X & Y, Eastern Mounds Plat 1, an Official Plat, and Parcel A Book 12014 Page 130 East ½ Lot 63, Broadacre, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk and Warren County, Iowa

from the R1-60 One-Family Low-Density Residential District and R-2 Two-Family Residential District to Limited R-3 Multiple-Family Residential classification, subject to the following conditions which are agreed to and accepted by execution of an Acceptance of Rezoning Ordinance in writing by all owners of said property and is binding upon the owners and their successors, heirs and assigns as follows:

- (1) Any use of the property shall be restricted to elderly living or persons with disability living arrangements.
- (2) Development of the site shall not exceed 25 bi-attached residential buildings (50 total units).
- (3) Development of the site shall include structures along the north side of Dubuque Avenue being oriented toward Dubuque Avenue rather than backing to Dubuque Avenue.
- (4) The developer shall be required to improve Dubuque Avenue to urban standards including sidewalks on both sides of the street.

(Continued on Page 2)

December 21, 2009  
Date

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- (5) Any development of the site is subject to provision of storm water management in accordance with State Wide Urban Design and Specifications (SUDAS) standards for a two-year frequency storm event developed release rate.
- (6) Design and materials for any structure built on the subject property shall be demonstrate compatibility with the adjoining residential properties as part of review of a Site Plan Under the Design Guidelines for Multiple-Family Residential uses by the Plan and Zoning Commission.
- (7) Any trash enclosures shall be constructed with masonry materials and steel gates to match the multiple-family residential structures.
- (8) Any chain link fencing on the site shall be clad with black vinyl.
- (9) Any structure constructed on the site shall have architectural shingles.
- (10) Any bi-attached dwelling unit shall have at least 1,040 square feet of floor space excluding basements and at least a one-car attached garage.
- (11) The exterior of each bi-attached dwelling unit must be constructed of masonry (brick or stone) and/or vinyl, cedar, or Hardi-Plank siding. If vinyl siding is selected, it must be greater than 42 mills thick.
- (12) The front elevation of each bi-attached dwelling unit must contain either 1/3 to 1/2 stone or brick masonry or a front porch of not less than 60 square feet.
- (13) The front elevation of each bi-attached dwelling unit constructed must include either shutters on each side of each window or window trim not less than 4 inches in width.
- (14) Any tree removals on the site will be subject to the provisions of the tree mitigation ordinance that was adopted by the City Council on September 28, 2009.
- (15) The property owner will agree not to object to a future special assessment for paving/widening of E. 41<sup>st</sup> Street.

(Continued on Page 3)

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December 21, 2009

Date.....


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 of the Property to Limited R-3 Multiple-Family Residential classification are hereby overruled, and the hearing is closed.

2. The proposed rezoning is hereby found to be in conformance with the Des Moines 2020 Community Character Land Use Plan.

MOVED by \_\_\_\_\_ to adopt and approve the rezoning, subject to final passage of the rezoning ordinance.

FORM APPROVED:

  
 \_\_\_\_\_  
 Michael F. Kelley  
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VCLASSIS				
TOTAL				

MOTION CARRIED

APPROVED

.....  
 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.

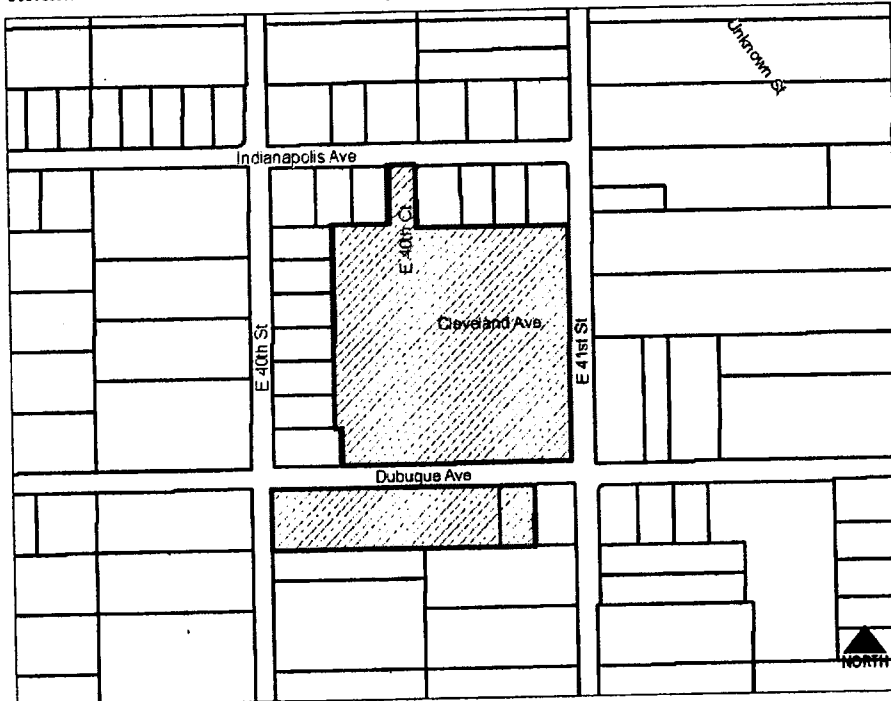
\_\_\_\_\_  
 City Clerk

201  
48B

Request from Thomas Wilson (purchaser) to rezone property located in the 4000 Block of Dubuque Avenue. The subject property is owned by 1 <sup>st</sup> Choice Real Estate Group, LLC and Celebration Homes, LLC.		File # ZON2009-00205	
<b>Description of Action</b>	Rezone property from "R1-60" One-Family Low-Density Residential District and "R-2" Two-Family Residential District to "R-3" Multiple-Family Residential District, to allow development of up to 25 bi-attached (duplex) residential structures with up to 50 residential units for senior living.		
<b>2020 Community Character Plan</b>	Low-Density Residential		
<b>Horizon 2025 Transportation Plan</b>	No Planned Improvements		
<b>Current Zoning District</b>	"R1-60" One-Family Low Density Residential District and "R-2" Two Family Residential District		
<b>Proposed Zoning District</b>	"R-3" Multiple Family Residential District		
<b>Consent Card Responses</b>	In Favor	Not In Favor	Undetermined
Inside Area		3	
Outside Area			
<b>Plan and Zoning Commission Action</b>	Approval	10-0	<b>Required 6/7 Vote of the City Council</b>
	Denial		
			X

Thomas Wilson - 4015 & 4040 Dubuque Avenue

ZON2009-00205



22-1  
48B

December 4, 2009

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 December 3, 2009, the following action was taken:

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 10-0 as follows:



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

Commission Action:	Yes	Nays	Pass	Absent
Leisha Barcus	X			
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley	X			
Dann Flaherty	X			
Ted Irvine	X			
Jeffrey Johannsen	X			
Greg Jones	X			
Jim Martin	X			
Brian Millard				X
William Page	X			
Mike Simonson				X
Kent Sovern				X

**APPROVAL** of a request from Thomas Wilson (purchaser) for property located in the 4000 Block of Dubuque Avenue to find the requested rezoning in conformance with the Des Moines' 2020 Community Character Plan the proposed rezoning be found not in conformance with the Des Moines' 2020 Community Character Plan's Low-Density Residential designation; to approve an amendment to the Des Moines' 2020 Community Character Plan future to revise the future land use designation from Low-Density Residential to Low/Medium-Density Residential; and to approve the request to rezone the property to "R-3" Multiple-Family Residential District subject to the applicant agreeing to the following conditions: ZON2009-00205 & 21-2009-4.09

1. Any use of the property shall be restricted to elderly living or persons with disability living arrangements.
2. Development of the site shall not exceed 25 bi-attached residential buildings (50 total units).
3. Development of the site shall include structures along the north side of Dubuque Avenue being oriented toward Dubuque Avenue rather than backing to Dubuque Avenue.
4. The developer shall be required to improve Dubuque Avenue to urban standards including sidewalks on both sides of the street.

5. Any development of the site is subject to provision of storm water management in accordance with State Wide Urban Design and Specifications (SUDAS) standards for a two-year frequency storm event developed release rate.
6. Design and materials for any structure built on the subject property shall be demonstrate compatibility with the adjoining residential properties as part of review of a Site Plan Under the Design Guidelines for Multiple-Family Residential uses by the Plan and Zoning Commission.
7. Any trash enclosures shall be constructed with masonry materials and steel gates to match the multiple-family residential structures.
8. Any chain link fencing on the site shall be clad with black vinyl.
9. Any structure constructed on the site shall have architectural shingles.
10. Any bi-attached dwelling unit shall have at least 1,040 square feet of floor space excluding basements and at least a one-car attached garage.
11. The exterior of each bi-attached dwelling unit must be constructed of masonry (brick or stone) and/or vinyl, cedar, or Hardi-Plank siding. If vinyl siding is selected, it must be greater than 42 mills thick.
12. The front elevation of each bi-attached dwelling unit must contain either 1/3 to 1/2 stone or brick masonry or a front porch of not less than 60 square feet.
13. The front elevation of each bi-attached dwelling unit constructed must include either shutters on each side of each window or window trim not less than 4 inches in width.
14. Any tree removals on the site will be subject to the provisions of the tree mitigation ordinance that was adopted by the City Council on September 28, 2009.
15. The property owner will agree not to object to a special assessment.

Written Responses

0 In Favor  
3 In Opposition

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

Part A) Staff recommends that the proposed rezoning be found not in conformance with the Des Moines' 2020 Community Character Plan's Low-Density Residential designation.

Part B) Staff recommends approval of an amendment to the Des Moines' 2020 Community Character Plan future to revise the future land use designation from Low-Density Residential to Low/Medium-Density Residential.

Part C) Staff recommends approval of the request to rezone the property to "R-3" Multiple-Family Residential District subject to the applicant agreeing to the following conditions:

1. Any use of the property shall be restricted to elderly living or persons with disability living arrangements.
2. Development of the site shall not exceed 25 bi-attached residential buildings (50 total units).

3. Development of the site shall include structures along the north side of Dubuque Avenue being oriented toward Dubuque Avenue rather than backing to Dubuque Avenue.
4. The developer shall be required to improve Dubuque Avenue to urban standards including sidewalks on both sides of the street.
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12. The front elevation of each bi-attached dwelling unit must contain either 1/3 to 1/2 stone or brick masonry or a front porch of not less than 60 square feet.
13. The front elevation of each bi-attached dwelling unit constructed must include either shutters on each side of each window or window trim not less than 4 inches in width.
14. Any tree removals on the site will be subject to the provisions of the tree mitigation ordinance that was adopted by the City Council on September 28, 2009.

## **STAFF REPORT**

### **I. GENERAL INFORMATION**

1. **Purpose of Request:** The applicant is proposing to develop up to 25 bi-attached (duplex) residential structures with up to 50 residential units for senior living. The proposal was previously for up to 105 units for senior living, including 87 units within multiple-family residential buildings.

The development will require review and approval by the Plan & Zoning Commission of a Site Plan under the Design Guidelines for Multiple-Family Residential uses since there would be 3 or more dwelling units on the parcels.

2. **Size of Site:** The parcel north of Dubuque Avenue contains 239,216 square feet (5.49 acres) and the two parcels south of Dubuque Avenue contain 65,122 square feet (1.50 acres) for a combined 304,338 square feet (6.99 acres).

3. **Existing Zoning (site):** "R1-60" One-Family Low-Density Residential District and "R-2" Two-Family Residential District.
4. **Existing Land Use (site):** Undeveloped wooded land.
5. **Adjacent Land Use and Zoning:**

*North* – "U-1" & "R1-60", Use is single-family residential.

*South* - "R1-60", Uses are single-family residential and undeveloped land.

*East* - "U-1", "R1-60" & "R-2", Uses are single-family residential and undeveloped land.

*West* – "R-2" & "R1-60", Use is duplex residential.
6. **General Neighborhood/Area Land Uses:** The surrounding area primarily consists of a mix of single-family and duplex residential uses. The subject site is near the Four Mile Creek.
7. **Applicable Recognized Neighborhood(s):** Gray's Woods Neighborhood.
8. **Relevant Zoning History:** On December 7, 2006, the Plan and Zoning Commission approved a preliminary plat to allow creation of 33 single-family residential lots. Only 4 lots fronting Indianapolis Avenue along the north edge of the plat were created and developed with single-family dwellings. This request represents an increase of 17 units.
9. **2020 Community Character Land Use Plan Designation:** Low-Density Residential.
10. **Applicable Regulations:** The Commission reviews all proposals to amend zoning regulations or zoning district boundaries 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 recommend that certain conditions be applied to the subject property if the property owner agrees in writing, in addition to the existing regulations. The recommendation of the Commission will be forwarded to the City Council.

## **II. ADDITIONAL APPLICABLE INFORMATION**

1. **Natural Site Features:** The subject site has a dense tree canopy that is generally associated with the wooded land along the Four Mile Creek. The site is divided into north and south sections by Dubuque Avenue. The north section slopes downward from the southwest to the northeast, generally dropping 50 feet in grade over a distance of 560 feet. The south section generally slopes downward from the southwest to the northeast.

The submitted site sketch demonstrates that significant areas of existing trees would remain along the west edge of the north section. Any tree removals on the site will be subject to the provisions of the tree mitigation ordinance that was adopted by the City Council on September 28, 2009.
2. **Drainage/Grading:** All grading and storm water management on this site is subject to the review and approval of a Storm Water Pollution Protection Plan (SWPPP) approved by the Iowa DNR. The Commission will review this at the Site Plan stage. The conceptual site sketch demonstrates a stormwater detention area will be located at the northeast corner of the site.
3. **Landscaping & Buffering:** Development of the subject property with multiple-family residential uses will require compliance with the Des Moines Landscape Standards. Conformance with these standards will be reviewed by the Commission at the Site Plan stage.



4. **Traffic/Street System:** The submitted development concept for the rezoning indicates that all units in the section north of Dubuque Avenue would be oriented toward an internal circular private driveway accessed from existing segments of Indianapolis Avenue and East 41<sup>st</sup> Street. In order to better integrate the development with the surrounding neighborhood, staff recommends that the southernmost structures be oriented to Dubuque Avenue rather than backing up to Dubuque. The developer is required to upgrade Dubuque Avenue to urban standards, including providing sidewalks on both sides of the street.
5. **2020 Community Character Plan:** The proposed concept for the rezoning indicates up to 25 bi-attached residential structures (50 units) at a density of 7.16 units per acre. The proposed land use amendment to revise the subject property to a Medium Density Residential designation would allow up to 17 dwelling units per acre. Therefore, staff believes that the designation should be instead amended to Low/Medium-Density Residential (up to 12 units per acre) and that the site should be limited to a maximum of 50 dwelling units, representing an overall density of 7.16 dwelling units per acre per the submitted development concept.
6. **Urban Design:** The conceptual building elevations that were submitted with the rezoning application indicate that the proposed bi-attached units will be ranch style with 77-square foot front porches. Building materials will include horizontal lap siding with shake or vertical siding accents and gable roofs. Each unit will have a 1-car attached garage. Final design and materials for any structure built on the subject property must demonstrate compatibility with the adjoining residential properties as part of the Site Plan review by the Plan and Zoning Commission. Staff recommends that any buildings constructed substantially conform to the submitted concept elevations.
7. **Site Plan Review:** The development will require review and approval by the Plan & Zoning Commission of a Site Plan under the Design Guidelines for Multiple-Family Residential uses since the site would contain 3 or more dwelling units on a single parcel.

## SUMMARY OF DISCUSSION

Mike Ludwig presented staff report and recommendation. He noted that at the November 19, 2009 Plan and Zoning Commission meeting there was a citizen who voiced concern regarding the condition of the roadways in the area and whether or not it could support the development. There are now fewer units in the revised proposal than in the previous proposal. The recognized neighborhood association in this area has disbanded. At the time they were recognized they elected to apply the city funds that were a part of their program to overlaying existing streets.

Greg Jones asked if there is a way to make it a requirement as part of this rezoning that if the neighbors asked that 41<sup>st</sup> be paved the property owner agrees not to object to a special assessment.

Mike Ludwig stated this is all going to be kept under a single ownership, and will be maintained by a common group. It would be possible for the Commission to suggest that the property owner agrees not to object to a special assessment if the property owner agrees to any conditions in writing prior to the City Council hearing.

Dann Flaherty asked why staff recommends to rezone this project to "R-3" but limit to "R-2" type of uses.

Mike Ludwig stated this lot area does not meet "R-2" district requirement of 10,000 square foot parcel per duplex.

Dann Flaherty asked if a sunset provision been discussed.

Mike Ludwig stated typically rezoning cannot have a sunset clause but the Council at anytime can initiate the rezoning of a property if they have a concern. Zoning runs with the land.

Larry Hulse stated that since this is multiple family it will have to come back to the Commission for the details of the development.

Mike Ludwig stated yes if it is all one parcel, unless they decide to plat these as individual lots.

Tom Wilson 1144 36<sup>th</sup> Street showed the Commission a drawing of their proposal reiterating their request to be allowed to develop up to 25 bi-attached (duplex) residential structures with up to 50 residential units for senior living.

Greg Jones asked if the applicant agrees with staff recommendation and if the applicant would agree not to oppose a special assessment in the future.

Tom Wilson stated they are in agreement with staff recommendation and there would be no problem in agreeing to a special assessment in the future.

Dann Flaherty asked the applicant who will be managing the rental units.

Tom Wilson stated they do not have anyone at this time but will have a professional management company with at least two year experience.

#### **CHAIRPERSON OPENED THE PUBLIC HEARING**

*There was no one in the audience to speak in opposition*

Larry Hulse reminded Commission of the gentleman that was at the November 19, 2009 meeting with concern about the roadways.

#### **CHAIRPERSON CLOSED THE PUBLIC HEARING**

Greg Jones offered a friendly amendment to include the property owner will agree not to object to a future special assessment for paving/widening of E. 41<sup>st</sup> Street.

Jacqueline Easley accepted the friendly amendment.

#### **COMMISSION ACTION**

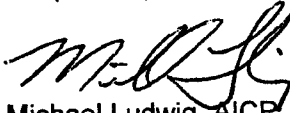
Jacqueline Easley moved that the proposed rezoning be found not in conformance with the Des Moines' 2020 Community Character Plan's Low-Density Residential designation; to approve an amendment to the Des Moines' 2020 Community Character Plan future to revise the future land use designation from Low-Density Residential to Low/Medium-Density Residential; and to approve the request to rezone the property to "R-3" Multiple-Family Residential District subject to the applicant agreeing to the following conditions:

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15. The property owner will agree not to object to a future special assessment for paving/widening of E. 41<sup>st</sup> Street.

Motion passed 10-0.

Respectfully submitted,



Michael Ludwig, AICP  
Planning Administrator

MGL:clw

Attachment

483  
27-27

Item ZAD 2009-00205 AR Date NOV 27 2009  
I (am)  (am not) in favor of the request.

(Circle One) **RECEIVED**

Print Name Paul Kirkelby

NOV 30 2009

Signature [Signature]

COMMUNITY DEVELOPMENT DEPARTMENT Address 1517 E 40TH ST DSM

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

Streets are very narrow for an abundance of traffic. Very hilly ~~road~~ area. Streets not maintained well in the winter. The hilly areas just not very safe for several elderly to be driving around lots of noise & traffic

Item ZAD 2009-00205 AR Date 11-27-09

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

(Circle One)

**RECEIVED**

Print Name Merle Kay Miner

NOV 30 2009

Signature [Signature]

COMMUNITY DEVELOPMENT DEPARTMENT Address 1320 E. 40TH ST.

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

Item ZAD 2009-00205 AR Date 11-27-09

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

(Circle One) **RECEIVED**

Print Name MELVIN PURCELL

NOV 30 2009

Signature [Signature]

COMMUNITY DEVELOPMENT DEPARTMENT Address 4038 INDIANAPOLIS AVE.

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_