



**Roll Call Number**

**Agenda Item Number**

SOC

Date June 10, 2013

An Ordinance entitled, "AN ORDINANCE to amend the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, by rezoning and changing the district classification of certain property located in the vicinity of 3500 Kingman Boulevard from the R1-60 One-Family Low-Density Residential District, to a Limited NPC Neighborhood Pedestrian Commercial District classification",

presented.

Moved by \_\_\_\_\_ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)

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

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

**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

\_\_\_\_\_  
Mayor

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

RECEIVED

JUN 4 2013

LEGAL DEPARTMENT

SOC

Scott Hartsook  
Dennis Groenenboom  
1134 38<sup>th</sup> Street  
Des Moines, IA 50311  
May 10, 2013

Michael F. Kelley  
City Legal Department  
400 Robert D. Ray Drive  
Des Moines, IA 50309

Dear Mr. Kelley:

Enclosed is the Acceptance of Rezoning Ordinance related to the rezoning of the Thoreau Center at 3500 Kingman Boulevard. We have crossed out the thirteenth condition, and it is our understanding that Council Member Hensley will propose that the thirteenth condition be deleted. We hope that the City Council will approve the rezoning without the thirteenth condition at its meeting on June 10, 2013.

As we discussed on the telephone, the thirteenth condition requires a buffer on the west side of the property that is deemed suitable by the applicant, neighbor and staff. As currently written, the neighbor could never agree as to what a suitable buffer would be and could prevent the restriction from being met. We are concerned that if no agreement is reached between the staff, the neighbor and us, the rezoning would never actually go into effect.

We do not think more of a buffer is needed since there is already a privacy fence separating the rear yards and many trees and bushes along the rest of the property line. Assuming a buffer condition is needed, we think it would be more practical, and would avoid a possible stalemate, if either the staff, or the Plan and Zoning Commission, had the authority to decide what a suitable buffer is.

We think a more workable condition, if it is needed, might read:

13. A buffer be provided that is deemed suitable by staff (or the Plan and Zoning Commission), after receiving input from the applicant and the neighbor.

Sincerely,



Scott Hartsook  
Dennis Groenenboom  
515-274-4689  
hartboom@hotmail.com

SOC

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Prepared by:	Michael F. Kelley, Assistant City Attorney, 400 Robert Ray Dr., Des Moines, IA 50309	515/283-4124
Return Address:	City Clerk - City Hall, 400 Robert Ray Dr., Des Moines, IA 50309	
Taxpayer:	No change	
Title of Document:	Acceptance of Rezoning Ordinance	
Grantor's Name:	Thoreau Center, LLC	
Grantee's Name:	City of Des Moines, Iowa	
Legal Description:	Lots 1 and 2, Knox Place Plat 2, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.	

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## ACCEPTANCE OF REZONING ORDINANCE

The undersigned hereby states, warrants and agrees as follows:

1. That Thoreau Center, LLC, an Iowa limited liability company, is the sole owner of the Property in the vicinity of 3500 Kingman Boulevard, Des Moines, Iowa, more specifically described above.

2. That in the event the City of Des Moines, Iowa, acts to rezone the Property from the R1-60 One-Family Low-Density Residential District to a Limited NPC Neighborhood Pedestrian Commercial District classification, we agree and accept on behalf of the owners to the imposition of the following conditions to run with the land and be binding upon all successors, heirs and assigns as part of the ordinance so rezoning the Property:

- (1) The use of the property shall be limited to the following:
  - (a) Any use as allowed and limited in the R1-60 District.
  - (b) Office space.
  - (c) Events center for meeting, reception, or assembly space.
- (2) Any use of the site and any future site modifications shall be in accordance with a Site Plan under the Design Guidelines for the NPC District as approved by the Plan & Zoning Commission.
- (3) Any use of the building must be in compliance with all City Building and Fire Codes, including those related to occupancy loads, emergency exits, and restroom facilities.

- (4) In order to comply with minimum parking requirements, any use of the premises for an office and/or events center use shall occupy no more than 1,200 square feet of area for office space and no more than 1,950 square feet of assembly space.
- (5) The existing structure shall not be expanded and shall not be modified to alter the existing residential character.
- (6) The property shall not be a permanent licensed establishment for selling alcoholic liquor, wine, and/or beer. However, caterers, residents, renters, and guests may serve and consume alcoholic liquor, wine, and/or beer in accordance with all City and State requirements.
- (7) Hours of operation shall be limited to between 7:00 AM to 12:00 AM, with all events ending by 11:00 PM.
- (8) A 6-foot tall solid wood fence shall be provided along the west property line within the rear yard area, located on either the subject property or the adjoining property.
- (9) Signage on the premises shall be limited to one monument sign not to exceed 24 square feet.
- (10) The Site shall operate in compliance with article IV of chapter 42 of the Municipal Code (Noise Control Ordinance).
- (11) Any residential dwelling unit within the structure shall be in accordance with any necessary Rental Certificate as issued by the City's Neighborhood Inspections Division.
- (12) Any trash enclosure on site shall conform to the standards of the Zoning Ordinance and be comprised of durable materials that compliment the principal building with steel gates.
- ~~(13) A buffer on the west property line shall be provided that is deemed suitable by the applicant, neighbor and staff.~~ *See 22  
6-3-13*

3. A certified copy of the rezoning ordinance shall be attached hereto, and a certified copy of this document and the rezoning ordinance shall be recorded by the City in the land records of the County Recorder to memorialize the rezoning of the Property as identified above.

4. That in the event any portion of the Property is hereafter rezoned to a district classification different from Limited NPC Neighborhood Pedestrian Commercial District, then this Acceptance shall be immediately terminated as applied to the real estate so rezoned on the effective date of such rezoning, and the conditions agreed to herein shall be rendered null and void, provided, if there be any such rezoning to a more restricted zoning classification, any then

legal actual use of such real estate shall become a legal non-conforming use.

The words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

**Thoreau Center, LLC,**  
an Iowa limited liability company

By: *Scott Hartsook*  
Scott Hartsook, Member

By: *Dennis Groenenboom*  
Dennis Groenenboom, Member

State of Iowa            )  
                                  ) ss:  
County of Polk         )

This instrument was acknowledged before me on June 3, 2013, 2013, by Scott Hartsook and Dennis Groenenboom as Members of Thoreau Center, LLC, an Iowa limited liability company, on behalf of whom the instrument was executed.

*Arls R. Kness*  
Notary Public in the State of Iowa

