



Date August 26, 2013

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on August 15, 2013, its members voted **10-0** in support of a motion to recommend **APPROVAL** of a request from Kum & Go, LC (developer) represented by Nick Halfhill (officer) to rezone property located at 1300, 1310, and 1330 Keosauqua Way from "C-2" General Retail and Highway Oriented Commercial District to "PUD" Planned Unit Development District; and

WHEREAS, a motion was made to recommend **APPROVAL** of the proposed Kum & Go #536 PUD Conceptual Plan, subject to the following conditions:

- 1) The applicant shall participate in their fair share of a traffic signal if warranted.
- 2) Revision to the canopy design so that columns on all canopies will be clad in masonry material to match the primary convenience store. The expansive length of the proposed canopy shall be broken up into multiple structures or articulated using a variation in height for multiple segments.
- 3) Revision to indicate locations for outdoor and seasonal display.
- 4) Revision to indicate extension of the perimeter landscaping theme to areas adjoining the existing print shop site in Area "B" along with an enhanced low level landscaping feature designed for the northeast corner of the site.
- 5) Provision of the following notes on the Conceptual Plan:
  - a. Increase minimum building setback to 25 feet.
  - b. Any sale of 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 wine, and/or beer is subject to
    - (1) Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one footcandle of light on the parking surface at all times. The entire site shall be landscaped and illuminated so as to minimize hiding places for possible criminal activity.
    - (2) The business shall comply with article IV of chapter 42 of the City Code pertaining to noise control. The business shall have no outside speakers or amplified sound except when used in compliance with a type E sound permit.
    - (3) Any such business must comply with the following requirements:
      - (a) Have more than one employee on duty at all times the business is open to the public.



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(b) Conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrances.

(c) Institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.

(d) Not dispense alcoholic beverages from a drive-through or exterior window.

(4) Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.

d. The PUD Conceptual Plan shall be subject to a legislative amendment to preclude the sale of wine and beer 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; and

WHEREAS, said motion **FAILED** by a **5-5** vote; and

WHEREAS, City Plan and Zoning Commission subsequently voted **6-3-1** to recommend **APPROVAL** of the proposed Kum & Go #536 PUD Conceptual Plan, subject to the following conditions:

- 1) The applicant shall participate in their fair share of a traffic signal if warranted.
- 2) No beer and wine sales shall be permitted on the premises.
- 3) Revision to the canopy design so that columns on all canopies will be clad in masonry material to match the primary convenience store. The expansive length of the proposed canopy shall be broken up into multiple structures or articulated using a variation in height for multiple segments.
- 4) Revision to indicate locations for outdoor and seasonal display.
- 5) Revision to indicate extension of the perimeter landscaping theme to areas adjoining the existing print shop site in Area "B" along with an enhanced low level landscaping feature designed for the northeast corner of the site.
- 6) Provision of the following notes on the Conceptual Plan:
  - a. Increase minimum building setback to 25 feet.; and



Date August 26, 2013

WHEREAS, the subject property is owned by Noel Chladek and David Hott and the City of Des Moines and is more specifically described as follows:

PLANNED UNIT DEVELOPMENT (PUD) PROPERTY DESCRIPTION:

*PARCEL A:*

PARCEL "A", BEING ALL OF LOT 10, ALL OF LOT 14, AND THAT PART OF 13, LYING SOUTH AND EAST OF A LINE DESCRIBED AS BEGINNING AT A POINT THAT IS 80.76 FEET NORTHWESTERLY OF THE SOUTHWEST CORNER OF SAID LOT 13; THENCE N49°28'E, 94.72 FEET TO THE SOUTHWEST CORNER OF SAID LOT 10, ALL IN OAKRIDGE PLAT 1, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA.

**AND**

*PARCEL B:*

PARCEL "B", BEING ALL OF LOTS 15, 16, 17, 18, AND 19, ALL IN OAKRIDGE PLAT 1, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA.

**AND**

*THE LAND REFERRED TO IS SITUATED IN THE STATE OF IOWA, COUNTY OF POLK AND IS DESCRIBED AS FOLLOWS:*

ALL OF LOTS 11 AND 12 AND THAT PART OF LOTS 9 AND 13 IN OAKRIDGE PLAT NO. 1, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, IOWA, HAVING A BOUNDARY DESCRIBED AS: BEGINNING AT A POINT ON THE SOUTH LINE OF KEOSAUQUA WAY, WHICH IS THE NE CORNER OF SAID LOT 9, THENCE SOUTHERLY ALONG THE EAST LINE OF SAID LOT 9, WHICH HAS A BEARING OF S00°54'E, A DISTANCE OF 41.50 FEET TO THE SE CORNER OF SAID LOT 9; THENCE ALONG A STRAIGHT LINE HAVING A BEARING OF S48°56'W, A DISTANCE OF 92.61 R (94.72 M) FEET TO THE NE LINE OF SAID LOT 12; THENCE SOUTHEASTERLY ALONG SAID NE LINE OF SAID LOT 12, WHICH HAS A BEARING OF S46°34'E, A DISTANCE OF 80.76 FEET TO THE EASTERLY CORNER OF SAID LOT 12; THENCE SOUTHWESTERLY ALONG THE SE LINE OF SAID LOT 12, WHICH HAS A BEARING OF S43°26'W, A DISTANCE OF 96.67 FEET TO THE SOUTHERLY CORNER OF SAID LOT 12; THENCE NORTHWESTERLY ALONG



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THE SW LINE OF SAID LOT 12 AND SAID LOT 11, WHICH HAS A BEARING OF N46°34'W, A DISTANCE OF 202.58 FEET TO THE WESTERLY CORNER OF SAID LOT 11; THENCE NORTHEASTERLY ALONG THE NW LINE OF SAID LOT 11 AND SAID NW LINE PROJECTED NORTHEASTERLY, WHICH HAS BEARING OF N43°26'E, A DISTANCE OF 228.33 FEET TO THE NE LINE OF SAID LOT 9, THENCE SOUTHEASTERLY ALONG SAID NE LINE OF SAID LOT 9, WHICH HAS A BEARING OF S41°04'E, A DISTANCE OF 102.12 FEET TO THE POINT OF BEGINNING.

**AND**

*A PART OF LOTS A AND B, OAKRIDGE PLAT NO. 1, AN OFFICIAL PLAT, ALL NOW INCLUDED IN, FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:*

BEGINNING AT THE EAST CORNER OF LOT 19, SAID OAKRIDGE PLAT NO. 1, SAID POINT BEING ON THE WESTERLY LINE OF SAID LOT A; THENCE NORTH 41° (DEGREES) 11' (MINUTES) 55" (SECONDS) WEST ALONG SAID WESTERLY LINE OF LOT A, A DISTANCE OF 473.00 FEET; THENCE NORTH 43°29'14" EAST, 1.82 FEET; THENCE SOUTH 41°06'47" EAST, 477.47 FEET; THENCE SOUTH 46°39'16" WEST, 2.79 FEET; THENCE SOUTH 39°28'52" EAST, 6.92 FEET; THENCE SOUTHWESTERLY ALONG A CURVE CONCAVE NORTHWESTERLY WHOSE RADIUS IS 26.31 FEET, WHOSE ARC LENGTH IS 19.08 FEET AND WHOSE CHORD BEARS SOUTH 08°27'04" WEST, 18.67 FEET; THENCE NORTH 89°24'08" WEST, 36.83 FEET TO THE SOUTHERLY CORNER OF SAID LOT 19; THENCE NORTH 50°18'28" EAST ALONG THE SOUTHERLY LINE OF SAID LOT 19, A DISTANCE OF 43.60 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.03 ACRE (1301 SQUARE FEET).

PROPERTY IS SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

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 September 9, 2013, at which time the City Council will hear both those who oppose and those who favor the proposal.



**Roll Call Number**

**Agenda Item Number**

15

Date August 26, 2013

- 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:

Michael F. Kelley  
Assistant City Attorney

(ZON2013-00110)

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

August 22, 2013

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 August 15, 2013, the following action was taken regarding a request from Kum & Go, LC (developer) represented by Nick Halfhill (officer) for rezoning of properties located at 1300, 1310, and 1330 Keosauqua Way.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 7-3 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Dory Briles				X
JoAnne Corigliano		X		
Shirley Daniels	X			
Jacqueline Easley		X		
Tim Fitzgerald	X			
Dann Flaherty	X			
John "Jack" Hilmes	X			
Ted Irvine	X			
Greg Jones	X			
William Page		X		
Christine Pardee				X
CJ Stephens				X
Vicki Stogdill				X
Greg Wattier	X			

**APPROVAL** of Part A) to approve the requested vacation of segments of the Keosauqua Way right-of-way as long as Kum and Go would allow that space to be used for any future streetscape by the City of Des Moines.

(11-2013-1.11)

By separate motion Commissioners recommended 10-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Dory Briles				X
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley	X			
Tim Fitzgerald	X			
Dann Flaherty	X			
John "Jack" Hilmes	X			
Ted Irvine	X			



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
Greg Jones	X			
William Page	X			
Christine Pardee				X
CJ Stephens				X
Vicki Stogdill				X
Greg Wattier	X			

**APPROVAL** of Part B) to find the requested rezoning is in conformance with the existing Des Moines' 2020 Community Character Plan.

By separate motion Commissioners recommended 10-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Dory Briles				X
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley	X			
Tim Fitzgerald	X			
Dann Flaherty	X			
John "Jack" Hilmes	X			
Ted Irvine	X			
Greg Jones	X			
William Page	X			
Christine Pardee				X
CJ Stephens				X
Vicki Stogdill				X
Greg Wattier	X			

**APPROVAL** of Part C) to rezone from "C-2" General Retail and Highway Oriented Commercial District to "PUD" Planned Unit Development subject to recommended revisions to the Conceptual Plan. (ZON2013-00110)

By separate motion Commissioners recommended 5-5 where said motion failed as follows:

Commission Action:	Yes	Nays	Pass	Absent
Dory Briles				X
JoAnne Corigliano		X		
Shirley Daniels		X		
Jacqueline Easley		X		
Tim Fitzgerald	X			
Dann Flaherty		X		
John "Jack" Hilmes	X			
Ted Irvine	X			
Greg Jones	X			
William Page		X		
Christine Pardee				X
CJ Stephens				X
Vicki Stogdill				X
Greg Wattier	X			

**APPROVAL** of Part D) to approve the proposed Kum & Go #536 PUD Conceptual Plan, subject to the following modifications:

- 1) The applicant shall participate in their fair share of a traffic signal if warranted.
- 2) Revision to the canopy design so that columns on all canopies will be clad in masonry material to match the primary convenience store. The expansive length of the proposed canopy shall be broken up into multiple structures or articulated using a variation in height for multiple segments.
- 3) Revision to indicate locations for outdoor and seasonal display.
- 4) Revision to indicate extension of the perimeter landscaping theme to areas adjoining the existing print shop site in Area "B" along with an enhanced low level landscaping feature designed for the northeast corner of the site.
- 5) Provision of the following notes on the Conceptual Plan:
  - a. Increase minimum building setback to 25 feet.
  - b. Any sale of 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 wine, and/or beer is subject to
    - (1) Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one footcandle of light on the parking surface at all times. The entire site shall be landscaped and illuminated so as to minimize hiding places for possible criminal activity.
    - (2) The business shall comply with article IV of chapter 42 of the City Code pertaining to noise control. The business shall have no outside speakers or amplified sound except when used in compliance with a type E sound permit.
    - (3) Any such business must comply with the following requirements:
      - (a) Have more than one employee on duty at all times the business is open to the public.
      - (b) Conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrances.
      - (c) Institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.
      - (d) Not dispense alcoholic beverages from a drive-through or exterior window.
    - (4) Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.
  - d. The PUD Conceptual Plan shall be subject to a legislative amendment to preclude the sale of wine and beer 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.



By separate motion Commissioners recommended 6-3-1 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Dory Briles				X
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley	X			
Tim Fitzgerald			X	
Dann Flaherty	X			
John "Jack" Hilmes		X		
Ted Irvine		X		
Greg Jones	X			
William Page	X			
Christine Pardee				X
CJ Stephens				X
Vicki Stogdill				X
Greg Wattier		X		

**APPROVAL** of Part D) to approve the proposed Kum & Go #536 PUD Conceptual Plan, subject to the following modifications:

- 1) The applicant shall participate in their fair share of a traffic signal if warranted.
- 2) **No beer and wine sales shall be permitted on the premises.**
- 3) Revision to the canopy design so that columns on all canopies will be clad in masonry material to match the primary convenience store. The expansive length of the proposed canopy shall be broken up into multiple structures or articulated using a variation in height for multiple segments.
- 4) Revision to indicate locations for outdoor and seasonal display.
- 5) Revision to indicate extension of the perimeter landscaping theme to areas adjoining the existing print shop site in Area "B" along with an enhanced low level landscaping feature designed for the northeast corner of the site.
- 6) Provision of the following notes on the Conceptual Plan:
  - a. Increase minimum building setback to 25 feet.
  - b. Any sale of 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 wine, and/or beer is subject to
    - (1) Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one footcandle of light on the parking surface at all times. The entire site shall be landscaped and illuminated so as to minimize hiding places for possible criminal activity.
    - (2) The business shall comply with article IV of chapter 42 of the City Code pertaining to noise control. The business shall have no outside speakers or amplified sound except when used in compliance with a type E sound permit.
    - (3) Any such business must comply with the following requirements:
      - (a) Have more than one employee on duty at all times the business is open to the public.

- (b) Conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrances.
  - (c) Institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.
  - (d) Not dispense alcoholic beverages from a drive-through or exterior window.
- (4) Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.
- d. The PUD Conceptual Plan shall be subject to a legislative amendment to preclude the sale of wine and beer 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.

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

Part A) Staff recommends approval of the requested vacation of segments of the Keosauqua Way right-of-way.

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

Part C) Staff recommends approval of the requested rezoning to "PUD" Planned Unit Development subject to recommended revisions to the Conceptual Plan.

Part D) Staff recommends approval of the proposed Kum & Go #536 PUD Conceptual Plan, subject to the following modifications:

- 1) Revision to the canopy design so that columns on all canopies will be clad in masonry material to match the primary convenience store. The expansive length of the proposed canopy shall be broken up into multiple structures or articulated using a variation in height for multiple segments.
- 2) Revision to indicate locations for outdoor and seasonal display.
- 3) Revision to indicate extension of the perimeter landscaping theme to areas adjoining the existing print shop site in Area "B" along with an enhanced low level landscaping feature designed for the northeast corner of the site.
- 4) Provision of the following notes on the Conceptual Plan:
  - a. Increase minimum building setback to 25 feet.
  - b. Any sale of 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
    - (1) Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one footcandle of light on the parking surface at all times. The entire site shall be landscaped and illuminated so as to minimize hiding places for possible criminal activity.

- (2) The business shall comply with article IV of chapter 42 of the City Code pertaining to noise control. The business shall have no outside speakers or amplified sound except when used in compliance with a type E sound permit.
  - (3) Any such business must comply with the following requirements:
    - (a) Have more than one employee on duty at all times the business is open to the public.
    - (b) Conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrances.
    - (c) Institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.
    - (d) Not dispense alcoholic beverages from a drive-through or exterior window.
  - (4) Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.
- d. The PUD Conceptual Plan shall be subject to a legislative amendment to preclude the sale of wine and beer 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.

#### Written Responses

- 1 In Favor
- 1 In Opposition

#### **STAFF REPORT**

##### **I. GENERAL INFORMATION**

1. **Purpose of Request:** The proposed PUD would allow development of a 4,992-square foot convenience store with eight (8) fuel pumping apparatus (16 fueling locations). The proposal includes the sale of packaged wine and beer. The submitted Conceptual Plan proposes demolition of two existing commercial buildings and an off-premises sign on the southern portion of the property and retention of the existing "Hott of the Press" printing business building at the northern end of the property. The property would be reduced to having two access driveways, one each from Keosauqua Way and from Oakridge Drive (on the segment originally dedicated as Crocker Street). There would be cross-access through the property to the north to serve the retained printing operation. Future development of the site must be in accordance with a Development Plan that complies with the requirements established in the PUD Conceptual Plan and with the Design Guidelines for Gas Stations/Convenience Stores in Section 82-214.8 of the Site Plan.

2. **Size of Site:** 2.0 acres.
3. **Existing Zoning (site):** "C-2" General Retail and Highway Oriented Commercial District.
4. **Existing Land Use (site):** The property has three separate commercial buildings and five driveway accesses. The northern building is currently occupied by a printing business, the central building is a vacant retail building, and the southernmost building is a vacant laboratory formerly used for design and manufacture of prosthetics. There is also an existing off-premises advertising sign.
5. **Adjacent Land Use and Zoning:**
  - North* – "C-2" & "R-3", Uses are vacant land and multiple-family senior housing (under development).
  - South* – "C-2"; Uses are a gas station convenience store, off-street parking lot and Oakridge Neighborhood Learning Center (daycare facility).
  - East* – "M-1 & R-3"; Uses are automobile body repair shop and vacant land.
  - West* – "R-3"; Uses are multiple-family residential dwellings including scattered in-home licensed daycare businesses.
6. **General Neighborhood/Area Land Uses:** The proposed development is located on a major commercial corridor at the northwest side of the central business district at the intersection of Keosauqua Way and Oakridge Drive/Crocker Street.
7. **Applicable Recognized Neighborhood(s):** The subject property is not in or within 250 feet of a recognized neighborhood area. All recognized neighborhood associations were notified of the meeting by mailing of the Preliminary Agenda to all recognized neighborhoods on July 26, 2013. Additionally, separate notifications of the hearing for this specific item were mailed on July 26, 2012 (20 days prior) and August 5, 2013 (10 days prior to the scheduled hearing) to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site. All agendas are mailed to the primary contact person designated to the City of Des Moines Neighborhood Development Division by the recognized neighborhood association. A Final Agenda for the meeting was mailed to all the recognized neighborhood associations on August 9, 2013.

The applicant is responsible for conducting a neighborhood meeting inviting surrounding property owners within 250 feet. The meeting is scheduled for August 12, 2013. The applicant will provide a summary of the meeting at the public hearing.
8. **Relevant Zoning History:** The subject property owners had previously requested a Variance from the Zoning Board of Adjustment of the minimum 75 foot separation for a gas station/convenience store selling beer and wine from a licensed day care facility. This item was scheduled for hearing of the Zoning Board of Adjustment on July 24, 2013, but was withdrawn at the time the rezoning application for a "PUD" District was submitted.

**9. 2020 Community Character Land Use Plan Designation:** Commercial: Auto-Oriented Community Commercial.

**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.

The application, accompanying evidence and Conceptual Plan shall be considered by the Plan and Zoning commission at a public hearing. The Commission shall review the conformity of the proposed development with the standards of this division and with recognized principles of civic design, land use planning, and landscape architecture. At the conclusion of the hearing, the Commission may vote to recommend either approval or disapproval of the Conceptual Plan and request for rezoning as submitted, or to recommend that the developer amend the plan or request to preserve the intent and purpose of this chapter to promote public health, safety, morals and general welfare. The recommendations of the commission shall be referred to the City Council.

## **II. ADDITIONAL APPLICABLE INFORMATION**

- 1. Natural Features:** There are overstory trees that will likely be removed for the proposed development. They are primarily on the western portion of the site. There may be an opportunity to preserve trees in the southwestern portion of the site. Any PUD Development Plan will require a tree protection and mitigation plan in accordance with City Code. The PUD Conceptual Plan needs to be revised to indicate this provision.
- 2. Drainage/Grading:** The applicant must comply with the City's storm water management, soil erosion protection and grading requirements as approved by the City's Permit and Development Center's engineering staff during the Development Plan (site plan) review. In this instance, the policy would require drainage between the 5-year and 100-year storm event to be piped to public storm sewer directly as it will be handled by a new regional stormwater basin to the north. The site is large enough to also require water quality detention on-site for more frequent rain events of one-and-a-half inches or less. The Conceptual Plan indicates that detention would be underground at the southeast portion of the property within land proposed for right-of-way vacation. There is direct access to public storm sewer in this location as well.
- 3. Utilities:** The subject property has access to necessary utilities. There are public water mains, storm and sanitary sewer mains in Oakridge Drive. The Conceptual Plan proposes service connection to access these utility locations.
- 4. Traffic/Parking:** The applicant is requesting vacation of a narrow portion of the Keosauqua Way right-of-way and an irregular portion at the intersection of Keosauqua Way and Oakridge Drive. City Staff in various departments have reviewed this request and it has been determined that the right-of-way is not necessary for a public purpose.

The Traffic and Transportation Engineering staff did not require an in depth traffic study for this location on the proposed development. The proposed locations, using two of

the five existing access drives, are acceptable within the surrounding street network. The remaining access drives would be removed and restored. There is public sidewalk within both Keosauqua Way and Oakridge Drive.

The City's standard off-street parking requirement for retail uses with fuel sales is 1 parking space per 300 square feet. The retained printing business requires three (3) spaces plus one (1) per two employees. The PUD Conceptual Plan contemplates reserving the ability for the building to be reused for retail with a standard of one (1) space per 400 square feet. This would require a minimum of 30 spaces for a 4,992-square foot gas station building and 5,040-square foot retail building. The submitted Conceptual Plan includes 39 spaces.

- 5. Design Guidelines for Gas Stations/Convenience Stores:** The Conceptual Plan includes a note that states the proposed convenience store project will be developed in accordance with the City's Gas Station/Convenience Store Site Plan Design Guidelines. The following are the guidelines as listed in Chapter 82 of the City Code (Section 82-214.8) with staff comments as appropriate in italics.

Site Design

- A. The optimal layout of any individual site requires an in-depth understanding of local context and a thorough site analysis. The components of a gas station and convenience store to be considered in site design include, but are not limited to:
- (i) Primary structure/retail sales building/single or multiple tenant;
  - (ii) Pump island, canopy structure, and lighting;
  - (iii) Refuse, service and storage area;
  - (iv) Circulation systems and parking;
  - (v) Service bays;
  - (vi) Ancillary uses such as car washes, drive through uses, ATMs and telephones.
- B. Maximum size of site should not exceed two (2) acres without a rezoning to a PUD Planned Unit Development pursuant to Chapter 134, Division 13 of the Municipal Code of the City of Des Moines and site review under a Conceptual Plan approved by the Plan and Zoning Commission and City Council.
- C. Minimum open space should be 20% of the site or 1,000 square feet per vehicle fueling location, whichever is greater.

*The site measures 2.0 acres and would contain 16 fueling locations. A minimum of 13,740-square feet (20% of the gas station site) open space (is required to meet this guideline. The submitted Conceptual Plan shows that the site would have at least 16,048 square feet (23.4%) of open space, which exceeds this guideline.*

- D. All development proposals should show evidence of coordination with the site plan as well as arrangement of buildings and planning elements of neighboring properties by:
- (i) Responding to local development patterns and the streetscape by use of consistent building setbacks, orientation and relationship of structures to the street and linkages to pedestrian facilities;
  - (ii) Seeking shared-access with adjoining commercial uses where feasible to minimize curb cuts and enhance pedestrian and vehicular circulation;

- (iii) Minimizing cross traffic conflicts within parking areas.

*Staff recommends that the minimum setback standard from public streets be increased from 20 feet to 25 feet. While the existing printing building does not meet this from Oakridge Drive, all future structures should be kept 25 feet away from the public right-of-way.*

*The proposed building and canopies are setback a minimum of 45 feet from Keosauqua Way and over 120 feet from Oakridge Drive. Shared access to the existing business to the north is proposed to be accommodated by easement.*

E. The site plan shall mitigate the negative impacts from site activities on adjoining uses as follows:

- (i) Service areas, storage areas and refuse enclosures should be oriented away from public view and screened from adjacent sites;
- (ii) Drive-through windows, menu boards and associated stacking lanes should be oriented away from residential areas or screened from public view;
- (iii) Auto repair bay openings and car-wash openings should be oriented away from residential uses;
- (iv) Lighting should be non-invasive to adjoining residential use.

F. The site plan shall provide identifiable pedestrian access from adjoining public pedestrian routes through the site to the primary building and from accessory functions within the site. This can be accomplished by use of special paving colors or textures and appropriately scaled lighting.

*The submitted Conceptual Plan shows refuse collection enclosure at the north edge of the site next to the existing printing business with gates oriented toward Keosauqua Way. There is an existing adjoining public sidewalk on all right-of-way sides of the property. An internal sidewalk link from the north entrance to Oakridge Drive provides a safe route to the building. Staff recommends extension of the pedestrian walk on the east side of the proposed to Oakridge Drive to the south. All of the proposed parking spaces have access to pedestrian routes adjoining the primary building.*

### Architecture

- A. The following architectural guidelines encourage creative response to local and regional context and contribute to the aesthetic identity of the community.
- B. Building design should consider the unique qualities and character of the surrounding area and be consistent with the city's 2020 Character Area Plans. Where character is not defined by 2020 Community Character Plan, building design should be of a high quality with primary use of durable materials such as masonry, block, or stone.
- C. A facility occupying a pad or portion of a building within a larger commercial center should be designed to reflect the design elements of that center.
- D. Drive-through elements should be integrated into the building rather than appear to be applied or "stuck-on" to the building.
- E. All sides of a building should express consistent architectural detail and character, with a primary use of durable materials such as brick, masonry block, or in special instances a predominant material found in the surrounding commercial area. Columns should be designed to minimize visual impact.

- F. Walls, pump island canopies and other outdoor covered areas should be compatible with the building, using similar material, color and detailing.
- G. To encourage visually interesting roofs, variations in the roof line and treatments such as extended eaves and parapet walls with cornice treatments are encouraged.
- H. Perceived height and bulk should be reduced by dividing the building mass into smaller-scaled components. Examples of treatments that could be used to avoid excessive bulk and height include:
  - (i) Low-scale planters and site walls.
  - (ii) Wainscot treatment.
  - (iii) Clearly pronounced eaves or cornices.
  - (iv) Subtle changes in material color and texture.
  - (v) Variation in roof forms.
  - (vi) Covered pedestrian frontages and recessed entries.
  - (vii) Deeply set windows with mullions.

*The proposed building would be constructed of masonry with varying patterns to create visual interest. The building would have metal canopies over all entrances and a feature above the primary frontage of the building which would have architectural metal panels. The building would have 360 degree architecture with its materials, a would have entrances on the east and north sides. The primary façade is oriented toward Keosauqua Way with the secondary entrance feature oriented north. A west entrance would not be easily achieved due to grades of the site. There is not a detail on the proposed retaining walls that are necessary for the site. Any Development Plan shall include elevation detail to ensure that the design texture is compatible with the site and surrounding area. Otherwise staff believes that the proposed design meets these guidelines. It should be noted that in order to meet design guidelines for tax abatement, the façades oriented toward Oakridge Drive would need to be modified to provide 20% window and door openings.*

I. Canopies:

- (i) Integration of materials on canopies that are similar or compatible to those used on the building or site walls is desirable (e.g., wrap the canopy columns with brick that matches the building). Multiple canopies or canopies that express differing masses are encouraged.

*The proposed canopy would be sided with a metal material and supported by metal columns. Staff believes that the columns should be wrapped entirely in masonry that matches the building for this guideline to be met.*

*Because of the site constraints, the pumps have been proposed in a linear array which causes the proposed single canopy to have a long expanse. Staff believes that this expanse needs to be broken up or articulated in some fashion to avoid the long expanse that is proposed. This can be done with multiple-canopies at varying heights or stepping down or tiering of the canopy to adjust to grade. Staff would support a slight increase in the maximum height for sections of the canopy redesigned to alleviate this concern.*

- (ii) Canopy height should not be less than 13'- 9" as measured from the finished grade to the lowest point on the canopy fascia. The overall height of canopies should not exceed 18'.



*The proposed canopy for fuelling would have a total height of 20'-10" due to the sign that would project 2'-4" above the top edge. Staff believes that the proposed height is appropriate given the unique circumstances of the site. Staff is supportive of increasing the maximum height for limited segments which would vary to break up the expanse of the pump island area if necessary.*

- J. All display items for sale, excluding seasonal items (i.e., sand, salt, pop, firewood) should be located within the main building. All outdoor display of seasonal items shall be identified on the site plan and be located outside of any required setbacks. No display of seasonal items should exceed 5' in height.

*The Conceptual Plan does not address this guideline or identify locations for these areas on the site layout.*

### Landscape Design

- A. Landscaping is integral to the overall design concept and should be carefully planned to enhance the overall appearance and function of the site.
- B. Landscape buffers with screen fencing should mask the site from adjacent residential uses. Plantings that exceed the minimum Des Moines Landscaping Standards may be required.
- C. Dense landscaping or architectural treatments should be provided to screen unattractive views and features such as storage areas, trash enclosures, utility cabinets and other similar elements.
- D. A site design for projects located at a street intersection should provide special landscape treatments, including by way of example perennial plant beds, site walls, native grasses, decorative sign foundations and housing.
- E. Proper maintenance and timely replacement of plant material is required and will be enforced based on the approved site plan.
- F. Monument signs are encouraged and are required when the site adjoins a residential district.

*The Conceptual Plan shows a mix of trees, evergreens and shrubs throughout the site. The PUD Standards include a note that all landscaping will comply with minimums that would be required in a "C-2" District. The proposed landscaping plantings are shown at minimums that would be necessary for "C-2" Districts except that they do not address the existing print shop frontages. Staff recommends that the landscaping theme be extended to the perimeter of the existing print shop. Additionally staff believes a low-level, special landscape feature should be designed at the northeast corner of the PUD as a gateway from Keosauqua Way to comply with guideline D above.*

*The Conceptual Plan includes a note that states "the required landscaping shall be maintained for the life of the certificate of occupancy or certificate of zoning compliance."*

*The submitted Conceptual Plan includes one monument style sign with a masonry base along Keosauqua Way that would be a maximum of 10 feet tall. The sign would include a 10-foot by 5-foot (50 square feet) component and a 2.833-foot by 10.625-foot (30 square feet) electronic display component for pricing. All additional signage would be mounted to the building and canopies in accordance with the submitted elevations.*

## Lighting

- A. Lighting of gas stations and convenience stores should enhance safety and provide light levels appropriate to the visual task with minimal glare, light trespass and excess site brightness. Lighting should not be a nuisance or a hazard.
- B. Direct light trespass beyond property lines is prohibited. The maximum horizontal illuminance at grade and the maximum vertical illuminance at five feet above grade measured at the property line should not exceed Illuminating Engineering Society of North America (IESNA) recommended practices for light trespass. (0.5 footcandles for residential, 2.0 footcandles for commercial). The site plan must contain illuminance models showing light levels throughout the site.
- C. Light fixtures mounted under canopies should be completely recessed into the canopy with flat lenses that are translucent and completely flush with the bottom surface (ceiling) of the canopy. Generally, lights shall not be mounted on the top or sides (fascias) of the canopy and internally illuminated/entirely translucent canopies should be prohibited. However, accent lighting on the sides (fascias) of the canopy may be permitted.
- D. Parking Lot and Site Lighting:
  - (i) All luminaries should be of full cut-off design, aimed downward and away from the property line;
  - (ii) Maximum pole heights should not exceed 20'.
- F. Building-Mounted Lighting:
  - (i) All luminaries should be a full cut-off design and aimed downward.
  - (ii) All luminaries should be recessed or shielded so the light source is not directly visible from the property line.

*The Conceptual Plan includes a note that states "all site lighting will be in compliance with the lighting standards of City Code Section 82-214.8 to the satisfaction of the Community Development Director." Lighting would be reviewed in detail during the Development Plan phase. The lighting levels to the north and west boundaries would not exceed a 0.5 footcandle intensity.*

6. **2020 Community Character Plan:** Staff believes that the proposed amendment to the PUD Conceptual Plan conforms to the Des Moines' 2020 Community Character Plan Future Land Use designation of Commercial: Auto-Oriented Community Commercial.

The appellant is proposing to sell beer and wine accessory to the proposed gas station/convenience store. Because of the proposed PUD District zoning, this would not require a Conditional Use Permit or require that it meet separation requirements. However, as a baseline for consideration of a PUD Conceptual Plan proposing to allow sales of wine and beer, the Commission should consider the intent of the Zoning Ordinance in applying the standards necessary for a gas station/convenience store to sell wine and beer in a "C-2" District. That instance would require at least 150 feet of separation from any church, school, public park or licensed child care center, and allow no more than 40% of gross receipts being from the sale of wine and beer or tobacco products.

The subject property is within 66 feet of properties (926, 936, & 1326 Oakridge Drive) that contain an existing licensed child care businesses. There is also building permit approved and currently under construction for an additional child day care facility proposed within a senior housing apartment project on property located at 979 Oakridge Drive which is 76 feet to the north.

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There are 40 police calls within the last year to properties within 500 feet of the proposed site. Three of these were generated at an existing convenience store to the south. Four others were alcohol related offenses or assault. The intent of the Ordinance is to prevent further risk to these existing uses by adding alcohol sales. The proposal would not have complied with previous licensing regulations which required a minimum 75 feet of separation of separation

Other than separation requirements City Code Section 134-954(b), the Code does not have special requirements for gas station/convenience stores that sell wine and beer. However, because the propose site is not able to meet the typical separation, staff believes it should be evaluated under some of the Conditional Use criteria that would be applicable to a store that would sell alcoholic liquor.

- The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding residential area.

*The subject property is located along major traffic corridors. Staff believes that the sale of wine and beer at this location would be able to adequately safeguard the health, safety and general welfare of persons residing in the area so long as it is accessory to a gas station/convenience store and comprises no more than 40% of gross revenues.*

- The business is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses.

*Staff believes that this site is sufficiently separated from any residential uses by distance and street rights-of-way. The premises would be separated from the closest residential structure by at least 150 feet and by 100 feet to the senior living apartments under construction.*

- The business will not unduly increase congestion on the streets in the adjoining residential area.

*The subject property fronts the major corridors Keosauqua Way. The proposed business would have minimal impact on the traffic pattern and would not likely increase congestion in the area.*

- The operation of the business will not constitute a nuisance.

*Staff believes that the sale of wine and beer only at this location as an accessory use to a convenience store with fuel sales will not constitute a nuisance.*

In evaluating City Code Section 134-954(c) staff believes that some of the conditions applicable in standard districts for the sale of alcoholic liquor, wine and beer are appropriate:

- Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one footcandle of light on the parking surface at

all times. The entire site shall be landscaped and illuminated so as to minimize hiding places for possible criminal activity.

- The business shall comply with article IV of chapter 42 of this Code pertaining to noise control. The business shall have no outside speakers or amplified sound except when used in compliance with a type E sound permit.
- Any such business must comply with the following requirements:
  - Have more than one employee on duty at all times the business is open to the public.
  - Conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
  - Institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.
  - Not dispense alcoholic beverages from a drive-through window.
- Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.

In addition staff believes that the proposed sale of wine and beer should be subject to the following:

- The use is subject to amendment or revocation if the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the PUD Conceptual Plan.
- If the zoning enforcement officer determines at any time that the operation of such a business exhibits a pattern of violating the conditions set forth in the PUD Conceptual Plan, the zoning enforcement officer may apply to the Plan and Zoning Commission and City Council for legislative amendment to the PUD Conceptual Plan to revise the use allowances.

*Staff recommends reference of these standards be added to the PUD Standards of the Conceptual Plan as a condition of approval for the sale of wine and beer.*

**7. Liquor Licensing:** Any sale of wine and beer must be in accordance with the proper permit issued through the Office of the City Clerk as approved by the City Council.

## **SUMMARY OF DISCUSSION**

Erik Lundy presented the staff report and recommendation.

Dann Flaherty asked that the letter from Margaret Johnson & Friends be received and filed.

Erik Lundy pointed out that there should be a letter distributed to each Commissioner from the Oakridge Neighborhood Association. He also passed around other letters received. He noted a letter without a signature was received. Because it has no signature it will not be submitted to the Commission.

Greg Wattier noting the area in red on the consent map asked if the one in opposition of the applicant's request was the other c-store and asked if that c-store sells beer and wine.

Erik Lundy stated yes they have been selling beer and wine for a number of years.

Greg Jones asked if Traffic and Transportation had suggested or required a traffic signal at the Keo and Crocker intersection.

Erik Lundy stated Traffic and Transportation requested traffic analysis and asked for limited access points. They reduced the number of drive entrances from five to two. They did not require any special facilities to the adjoining right-of-way. That will be looked at again more closely at the development plan review stage.

Dann Flaherty stated that he knows nothing in the Iowa Code that says the Commission has to be bound by Traffic and Transportation's recommendations.

Erik Lundy stated that there are things in the Iowa Code that require warrants to be met for installation of traffic controls. They would have to demonstrate that in order to get a signal or something to that nature.

Mike Ludwig stated the median along Keo Way is under review as part of the streetscape from downtown up to 235 and even north of 235. They are still in the process coming up with a design along Keo Way.

Ted Irvine asked if there is a difference in the downtown overlay district between this site and at 16<sup>th</sup> and Grand?

Erik Lundy stated yes.

Mike Ludwig stated that Keo Way is not a designated corridor.

JoAnne Corigliano asked what is the advantage of PUD over "C-2" in this instance.

Erik Lundy stated the PUD requires it be a larger site from the beginning. It cannot be below the 2 acres.

CJ Stephens asked does PUD give developers more flexibility that they would not have under the regular standards.

Erik Lundy stated yes, but staff also expects enhancements that would go beyond what is typical of a standard zoning.

CJ Stephens stated on the other side of the Grand Avenue bridge, Casey's has done a wonderful development over there. They have public art, they have trees, they have really made it neighborhood friendly and she does not see any of that in this PUD.

Erik Lundy stated that has requested a corner feature, which is also in the c-store Design Guidelines.

Mike Ludwig pointed out under the "C-2" zoning it is difficult to require a billboard to be removed as a requirement of a conditional use permit for a liquor license. Under a zoning change request there is probably a little more latitude to request those type of things.

Dann Flaherty asked if this would be a 24 hour store.

Erik Lundy stated yes and "C-2" would normally allow a 24 hour store as well.

Dann Flaherty asked if they would be able to have beer and wine sales for 24 hours each day.

Erik Lundy stated he believes that state law and their license would prohibit sale of beer and wine 24 hours each day.

Nick Halfhill 6400 Westown Parkway, West Des Moines, stated they have worked extensively on the access points. They went from five to two. They are proposing to remove everything except the Hott Off the Press building. They are proposing to overturn the entire area and regrade and repave the parking area as part of their site and also provide the needed attention for that area. This site does not have a formal rear entrance. The operational side is towards Keo Way. One of the bigger issues appears to be the request to sell beer and wine. They are 66 feet (lot line to lot line) from a property with a day care. However the actual distance building to building exceeds 150 feet. They met with the Homes of Oakridge neighborhood board and they have a letter of support which was provided to the Commission.

Dann Flaherty asked that the letter be received and filed.

Greg Jones stated that there is a dire need for a traffic signal at the intersection of Keo Way and Crocker Street. Asked if Kum and Go had requested a signal.

Nick Halfhill stated they are not requesting a traffic signal. They are not fighting a traffic signal either. Stop lights actually help them because people stop and make a decision to turn in. However, they are here to comply with whatever staff would require them to do.

Greg Jones stated he believes a traffic signal is warranted.

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

*There was no one to speak in favor of the applicant's request.*

*The following spoke in opposition of the applicant's request:*

Lorie Coltrain 1785 Emma stated her concerns are the liquor sales near children. They have been following this request since July when the applicant went to the Board of Adjustment where she believes they were denied because it did not happen. There is an ordinance put into place keeping gas stations like that of Kum and Go from building too close to our day cares, churches, and parks. The ordinance says that liquor sales have to be 150 feet from lot line to lot line not building to building. There is a daycare 66 feet and a daycare that is going to be built which would be 70 feet, not to mention the many private daycares in the homes at Oakridge. Kum and Go did withdraw their Board of Adjustment application but she believes that they found a loop hole which is "PUD" to change this outcome. This zone change does not provide a hardship for Kum and Go as they have not bought the property yet. Kum and Go is nice and well lit and maybe overwhelming. This will open doors for other c-stores in other neighborhoods. She believes that if the sales do become a nuisance Kum and Go will abandon the building.

Susan Heyes 1305 Ascension Street stated she has been a teacher at the Appletree Children Center for 25 years and she is opposed to the sale of alcohol and tobacco so close to children.

Richard Ruhs 1800 36<sup>th</sup> Street stated he is opposed to liquor sales near children.

Kimberly Enos 1305 Ascension Street stated she is a student at AIB and is opposed to the applicant's proposal on Keo Way.

Damien Baker 4150 Maple Street #6 stated he is opposed to alcohol being sold near children.

Katelyn Daman 4246 26<sup>th</sup> Street stated she is opposed to the zone change because the Kum and Go is too close to daycare facilities.

Amanda Erickson 2508 Watrous Avenue stated she is opposed to a Kum and Go selling alcohol being built so close to the daycares.

Heather Jenkins 423 E. Watrous Avenue stated she is opposed to the Kum and Go going up so close to the daycares due to the fact of alcohol sales and the increased traffic in that area.

Deric Gourd 2422 Drake Park, President of Drake Neighborhood Association stated he is not specifically opposed to the applicant's request and believes that Kum and Go has been a great corporate citizen. After listening to everybody he urges extreme caution. There are several places selling beer and alcohol in this area. In the Drake Neighborhood experience, once you allow alcohol in and it becomes an issue it is hard to fix.

#### Rebuttal

Nick Halfhill stated it is clear the people who spoke in opposition are against the sale of alcohol and believes that the distance is secondary to the opposition of it. They are before the Commission today to ask the decision makers what the appropriate code is. He believes that it is clear to what can be done in the code today. This has been a topic of discussion for a number of years. From their operation standpoint they sell items and compete with every store in town that sells the same thing they have in their stores. It is critical they have beer and wine in their stores. They have not asked for the liquor, however the beer and wine sales are parcel to their business. He believes that if there was not a reasonable interpretation of the code that would allow him to stand before the Commission he would not and his business would not have asked him to. They have a very high standard of operations, training for all of their employees, and make sure they are selling to people of legal age. They are doing their part. The greater societal issues, he cannot really address those. However, he does believe that in the context of the zoning code they are meeting the intent. He ask that the Commission approve their request.

Dann Flaherty asked if Kum and Go did not have the vacated right-of-way would they be able to apply for a PUD zoning.

Nick Halfhill stated no they would not.

*Christine Pardee left the meeting*

Mike Ludwig clarified that under the state code, owners of properties are notified. At the Board of Adjustment meeting where this was to be heard there was no action taken because the applicant withdrew their application. Prior to this going to the Board of Adjustment, staff did receive a lot of phone calls voicing frustration that they could not contact Board of Adjustment members outside of the meeting. There was frustration about the meeting being in the middle of the day when people had to work. The benefit to the PUD is it is a legislative process. It is a hearing tonight where a recommendation is made and another hearing in front of the Council. They are able to contact members of the Plan and Zoning Commission, they are able to contact Council and share their concerns, and also participate in the public hearing process. They are not just limited to one hearing in front of the Board and only testimony at that meeting. Finally, a decision by the Board of Adjustment can only be appealed to district court.

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

*CJ Stephens left the meeting @ 8:00 p.m.*

Ted Irvine moved staff recommendation Part A) to approve the requested vacation of segments of the Keosauqua Way right-of-way.

THE VOTE: Motion Failed 4-6 (John "Jack" Hilmes, Greg Wattier, Tim Fitzgerald and Ted Irvine voted in favor. Greg Jones, JoAnne Corigliano, Jacqueline Easley, Dann Flaherty, Will Page and Shirley Daniels voted in opposition)

Mike Ludwig asked if the Commission is concerned that the Council would disagree with their recommendation do they have any recommendation on the zoning.

Greg Jones stated he believes that it is premature to give up right-of-way along Keo before the streetscape for Keo Way is completed. Also, he cannot say yes to this development without knowing that intersection would be signalized.

John "Jack" Hilmes stated if a scenario that included Whole Foods came in and picked up a couple of office buildings and ambulance garage put a store in there and sold liquor, wine and beer – they are kind of close to a daycare center. Would that be restricted?

Mike Ludwig stated that the grocery store would be exempt from the separation requirements.

John "Jack" Hilmes stated then it is the c-store entity that creates this situation.

Mike Ludwig stated yes under "C-2" zoning.

John "Jack" Hilmes asked staff to clarify the property line to property line 150 foot separation requirement. Also, how far is Git n Go from the daycare property understanding that they are grandfathered in.



Erik Lundy stated it is not within the 150 feet but it would exceed the 75 feet that was the standard at the time it was approved. So the Git n Go is less than 150 feet from the daycare centers.

Mike Ludwig stated staff has recommended against variances to the separation distance that was established by Council at the Board of Adjustment level. Staff believes that the appropriate way to consider that is through a PUD process with the people who made the rules making a decision as to whether or not to waive a requirement. In this instance, based on the size of the parcels where the residential and daycare uses are located is quite different than some of the other locations where there has been Board cases on. Size of the parcel, the actual distance between structures are unique characteristics.

John "Jack" Hilmes stated that he is trying to figure out how if we are on a literal interpretation and the courts looking at 150 feet as a 150 feet property to property, we get through the City Planning Staff with less than a 150 feet and say that is okay.

Mike Ludwig stated there are two things. First, 150 foot separation is a zoning regulation. PUD zoning allows flexibility of zoning. PUD is individual zoning for a single property. Board of Adjustment review is precluded in PUD's. The City Council decides whether PUD zoning is sufficient for a specific property.

John "Jack" Hilmes asked what is going on with Owen Crist Towing across the street.

Mike Ludwig stated that he was not aware of any proposals on this site. Since the announcement about Keo Way Streetscape and Principal's expansion there have been numerous parties coming in and inquiring about the redevelopment along the corridor.

John "Jack" Hilmes suggested that this template be moved across the street which would solve all of the 150 feet parameters but you have to get a willing seller.

JoAnne Corigliano stated she likes the proposal but like Mr. Hilmes she would like to see it across the street. Also, these folks know their neighborhood and they do not want this here. She cannot go against the neighbors in this situation because they have strong reasons for objecting.

Greg Wattier stated he is not hung up with the dimension. If you can walk across the street and get beer and wine and you want it that is what you are going to do. He asked if a restaurant can go here and sell beer, wine and liquor.

Mike Ludwig stated yes a restaurant would be allowed to go on this property and have on premise consumption.

Greg Wattier stated he voted in favor. He would have been more interested in a discussion about the maintenance and operational standards that would give the City the ability to enforce things to help the concerns that citizens may have. The idea that just because it is a c-store does not make sense to him.

Mike Ludwig stated the staff recommendation did include some provisions which allowed the City to bring the request back if there were problems in the future. That is directly reflective of some of the most recent changes that were made to the rules that apply to sale of liquor in general across the City. Mr. Gourd mentioned that 22<sup>nd</sup> and Forest had been a problem site in the past. That use was established prior to the most recent

changes. Changes were made to the code in response to situations like 22<sup>nd</sup> and Forest. Those changes require compliance with the new regulations by December 31, 2013. Even though staff is recommending a lesser separation distance they still recommended that those operational standards be applied to this site and the ability to bring it back if it did become a problem.

Will Page stated he agrees that Keo Way is wide open for development. This is a very dense and compact area and it needs a comprehensive plan to make it all work. He believes that a comprehensive approach is the way to go on this and urge the City to take that route.

Shirley Daniels stated she believes that the key that is missing is the idea of a comprehensive plan and recognizing that Kum and Go is a good corporate neighbor. Sometimes within our City there are residential areas that need something more than just following the code. While she gives Kum and Go a lot of accolades for what they are doing in our City and certainly give our staff that does all of this planning work, incredible that amount of work they put into it to make it work. She is just not comfortable in voting for support without having some type of signalized light there at the intersection. She believes that they need to look at it, try to find something comprehensive that is going to work better for the corporate people as well as the residents.

Tim Fitzgerald stated he applauds the people who came before the Commission to speak with passion about children. He will not let it skew his opinion because most of the addresses of the people who spoke were from other areas in the City and not this neighborhood. The letter that the Commission received from the Oakridge Neighborhood Association Board is in support of the applicant's request. As far as retail goes the applicant must stay competitive. This would be a great shot in the arm for this corridor. He believes that Kum and Go would be more than willing to participate in the Keo Way Streetscape and he hopes to get another motion before leaving tonight.

Ted Irvine stated the Oakridge Neighborhood Association Board is in support of the applicant's request and he believes had the staff recommendation required compliance with the future streetscape plan it might have changed a couple of votes. He would like to send it back to staff and be continued so some of that language can be put in the recommendation. He agrees there need for a signalized intersection. The sale of beer and wine is legal in Des Moines and he does understand the issue with separation. There have been several examples of PUD giving the City more long term control over what happens to a project than the standard zoning. He suggest a do over if they can get some language in the recommendation and Kum and Go agrees to comply with the future streetscape plan.

Greg Jones noted if that is true that one of those who voted in opposition can ask for a recall.

Dann Flaherty stated he believes that it is Council's responsibility to figure out what they want to do with that streetscape and get it taken care of.

Ted Irvine suggested recalling the vote on Part A and continuing the item to give staff some time to work with Kum and Go on what they would be willing to do relative to the future streetscape. There is a downtown overlay district that exists and there is a streetscape coming for Keo Way.

Dann Flaherty asked if the applicant would agree to give back the space if needed for the streetscape and agree to a continuance.

Nick Halfhill stated they prefer to continue moving forward. Asked if there was a way to make the Commission comfortable with their intentions.

Mike Ludwig suggested that on Part A it is the intent of the Commission to clarify their vote as to their concerns about the streetscape, etc. The Commission could make a motion to reconsider and a follow up motion with conditions that the Commission believes need to be addressed in order for a vacation to proceed. Another option would be to leave Part A as it is and follow up with a motion on Part B, C and D and state what they believe needs to be addressed.

Will Page commented that the real concern has been the sale and dispensing of beer and wine. His opinion is that it is too close to kids.

Jacqueline Easley stated she cannot promote something that could possibly be a nuisance.

### **COMMISSION ACTION:**

Greg Jones made a motion to reconsider his vote on Part A and have a follow up motion. Motion carried 6-4 (Will Page, Dann Flaherty, Jacqueline Easley and JoAnne Corigliano voted in opposition).

Greg Jones made a motion to approve Part A) for vacation of segments of the Keosauqua Way right-of-way as long as Kum and Go would allow that space to be used for any future streetscape by the City of Des Moines.

Dann Flaherty asked if the applicant is willing to agree to give back the space to be used for any future streetscape by the City.

Nick Halfhill stated Kum and Go will allow the right-of-way space to be used for any future streetscape use by the City.

Motion passed 7-3 (Will Page, Jacqueline Easley and JoAnne Corigliano voted in opposition)

John "Jack" Hilmes moved staff recommendation Part B) to find the requested rezoning in conformance with the Des Moines' 2020 Community Character Plan.

Motion passed 10-0

JoAnne Corigliano moved staff recommendation Part C) to approve the requested rezoning to "PUD" Planned Unit Development subject to recommended revisions to the Conceptual Plan.

Motion passed 10-0

Dann Flaherty asked the applicant if they agree to participate in their fair share of a traffic signal if warranted.

Nick Halfhill stated they are in agreement with participating in their fair share of a traffic signal if warranted.

John "Jack" Hilmes moved Part D) to approve the proposed Kum & Go #536 PUD Conceptual Plan, subject to the following modifications:

- 1) The applicant shall participate in their fair share of a traffic signal if warranted.
- 2) Revision to the canopy design so that columns on all canopies will be clad in masonry material to match the primary convenience store. The expansive length of the proposed canopy shall be broken up into multiple structures or articulated using a variation in height for multiple segments.
- 3) Revision to indicate locations for outdoor and seasonal display.
- 4) Revision to indicate extension of the perimeter landscaping theme to areas adjoining the existing print shop site in Area "B" along with an enhanced low level landscaping feature designed for the northeast corner of the site.
- 5) Provision of the following notes on the Conceptual Plan:
  - a. Increase minimum building setback to 25 feet.
  - b. Any sale of 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 wine, and/or beer is subject to
    - (1) Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one footcandle of light on the parking surface at all times. The entire site shall be landscaped and illuminated so as to minimize hiding places for possible criminal activity.
    - (2) The business shall comply with article IV of chapter 42 of the City Code pertaining to noise control. The business shall have no outside speakers or amplified sound except when used in compliance with a type E sound permit.
    - (3) Any such business must comply with the following requirements:
      - (a) Have more than one employee on duty at all times the business is open to the public.
      - (b) Conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrances.
      - (c) Institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.
      - (d) Not dispense alcoholic beverages from a drive-through or exterior window.
    - (4) Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.
  - d. The PUD Conceptual Plan shall be subject to a legislative amendment to preclude the sale of wine and beer 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.

Motion failed 5-5 ( Ted Irvine, Tim Fitzgerald, Greg Wattier, John "Jack" Hilmes, and Greg Jones voted in favor. JoAnne Corigliano, Jacqueline Easley, Dann Flaherty, Will Page and Shirley Daniels voted in opposition)

Dann Flaherty asked the applicant if the Commission were to remove beer and wine sales from the premises would they be in opposition to that.

Nick Halfhill stated yes they would be in opposition to removing beer and wine sales from the premises.

Will Page made a motion to move Part D) to approve the proposed Kum & Go #536 PUD Conceptual Plan, subject to the following modifications:

- 1) The applicant shall participate in their fair share of a traffic signal if warranted.
- 2) **No beer and wine sales shall be permitted on the premises.**
- 3) Revision to the canopy design so that columns on all canopies will be clad in masonry material to match the primary convenience store. The expansive length of the proposed canopy shall be broken up into multiple structures or articulated using a variation in height for multiple segments.
- 4) Revision to indicate locations for outdoor and seasonal display.
- 5) Revision to indicate extension of the perimeter landscaping theme to areas adjoining the existing print shop site in Area "B" along with an enhanced low level landscaping feature designed for the northeast corner of the site.
- 6) Provision of the following notes on the Conceptual Plan:
  - a. Increase minimum building setback to 25 feet.
  - b. Any sale of 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.
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      - (b) Conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrances.
      - (c) Institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.

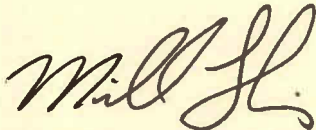
(d) Not dispense alcoholic beverages from a drive-through or exterior window.

(4) Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.

d. The PUD Conceptual Plan shall be subject to a legislative amendment to preclude the sale of wine and beer 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.

Motion passed 6-3-1 (Shirley Daniels, Will Page, Dann Flaherty, Jacqueline Easley, JoAnne Corigliano and Greg Jones voted in favor. Ted Irvine, Greg Wattier and John "Jack" Hilmes voted in opposition. Tim Fitzgerald abstained)

Respectfully submitted,



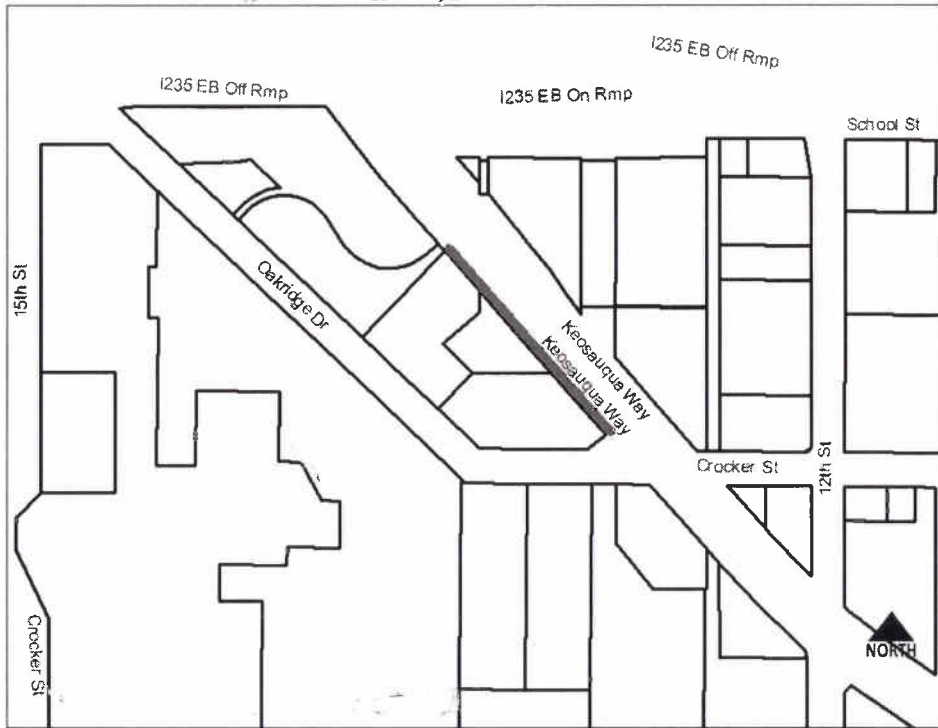
Michael Ludwig, AICP  
Planning Administrator

MGL:clw

Attachment

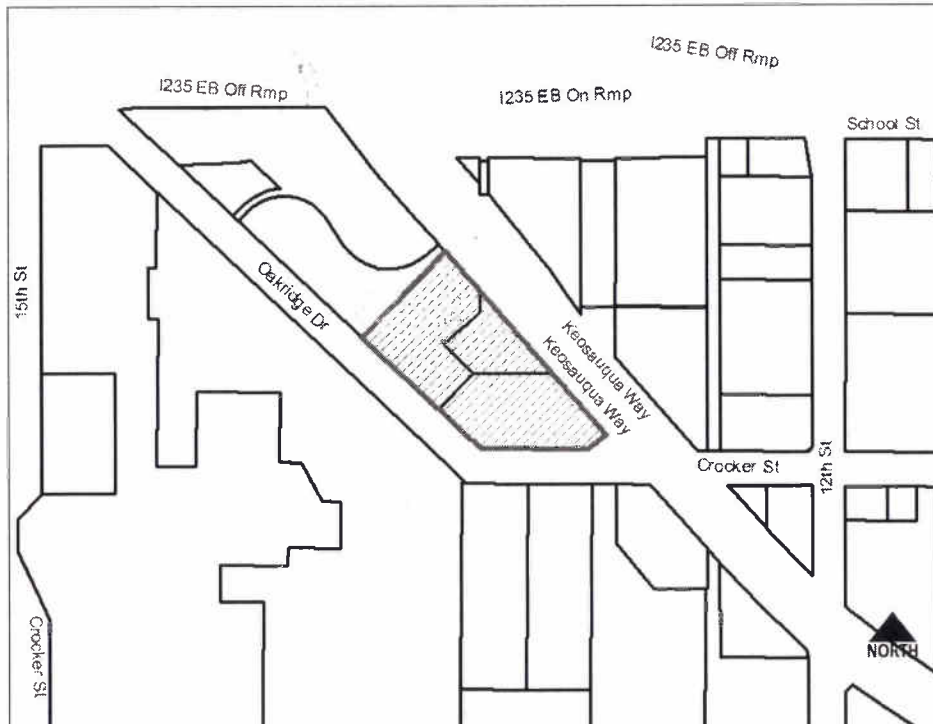
Request from Kum & Go, LC (developer) represented by Nick Halfhill (officer) to vacate an irregular segment of Keosauqua Way adjoining the northeasterly and east portions of the subject property related to rezone property at 1300, 1310, and 1330 Keosauqua Way.				<b>File #</b>	
				11-2013-1.11	
<b>Description of Action</b>	Approval to vacate an irregular segment of Keosauqua Way adjoining the northeasterly and east portions of the subject property comprising approximately 1,301 square feet (0.03 acres).				
<b>2020 Community Character Plan</b>	Downtown Support Commercial (current & no change proposed)				
<b>Horizon 2035 Transportation Plan</b>	No Planned Improvements				
<b>Current Zoning District</b>	"C-2" General Retail and Highway Oriented Commercial District				
<b>Proposed Zoning District</b>	"PUD" Planned Unit Development				
<b>Consent Card Responses</b>	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	1	1			
Outside Area					
<b>Plan and Zoning Commission Action</b>	Approval	10-0	<b>Required 6/7 Vote of the City Council</b>	Yes	
	Denial			No	X

Chladek/Osweiler-Hott (Kum & Go #536) - 1300/1310 Keosauqua Way 11-2013-1.11



Request from Kum & Go, LC (developer) represented by Nick Halfhill (officer) to rezone property at 1300, 1310, and 1330 Keosauqua Way. The convenience store proposes to sell packaged wine and beer.				<b>File #</b>	
				ZON2013-00110	
<b>Description of Action</b>	Approval to rezone property from "C-2" General Retail and Highway Oriented Commercial District to "PUD" Planned Unit Development subject to recommended revisions to the Conceptual Plan (10-0) and Approval of a PUD Conceptual Plan "Kum & Go Store #536" for development of a 4,992-square foot gas station/convenience store with 16 fueling locations subject to conditions. (6-3-1)				
<b>2020 Community Character Plan</b>	Downtown Support Commercial (current & no change proposed)				
<b>Horizon 2035 Transportation Plan</b>	No Planned Improvements				
<b>Current Zoning District</b>	"C-2" General Retail and Highway Oriented Commercial District				
<b>Proposed Zoning District</b>	"PUD" Planned Unit Development				
<b>Consent Card Responses</b>	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	1	1			
Outside Area					
<b>Plan and Zoning Commission Action</b>	Approval	10-0 and 6-3-1	<b>Required 6/7 Vote of the City Council</b>	Yes	
	Denial			No	X

Chladek/Osweiler-Hott (Kum & Go #536) - 1300/1310 Keosauqua Way ZON2013-00110





Item ZON2013-00110 Date 8-8-13

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

**RECEIVED**  
COMMUNITY DEVELOPMENT Print Name Pete Klindt For Git - N-Ga

AUG 13 2013 Signature Pete Klindt

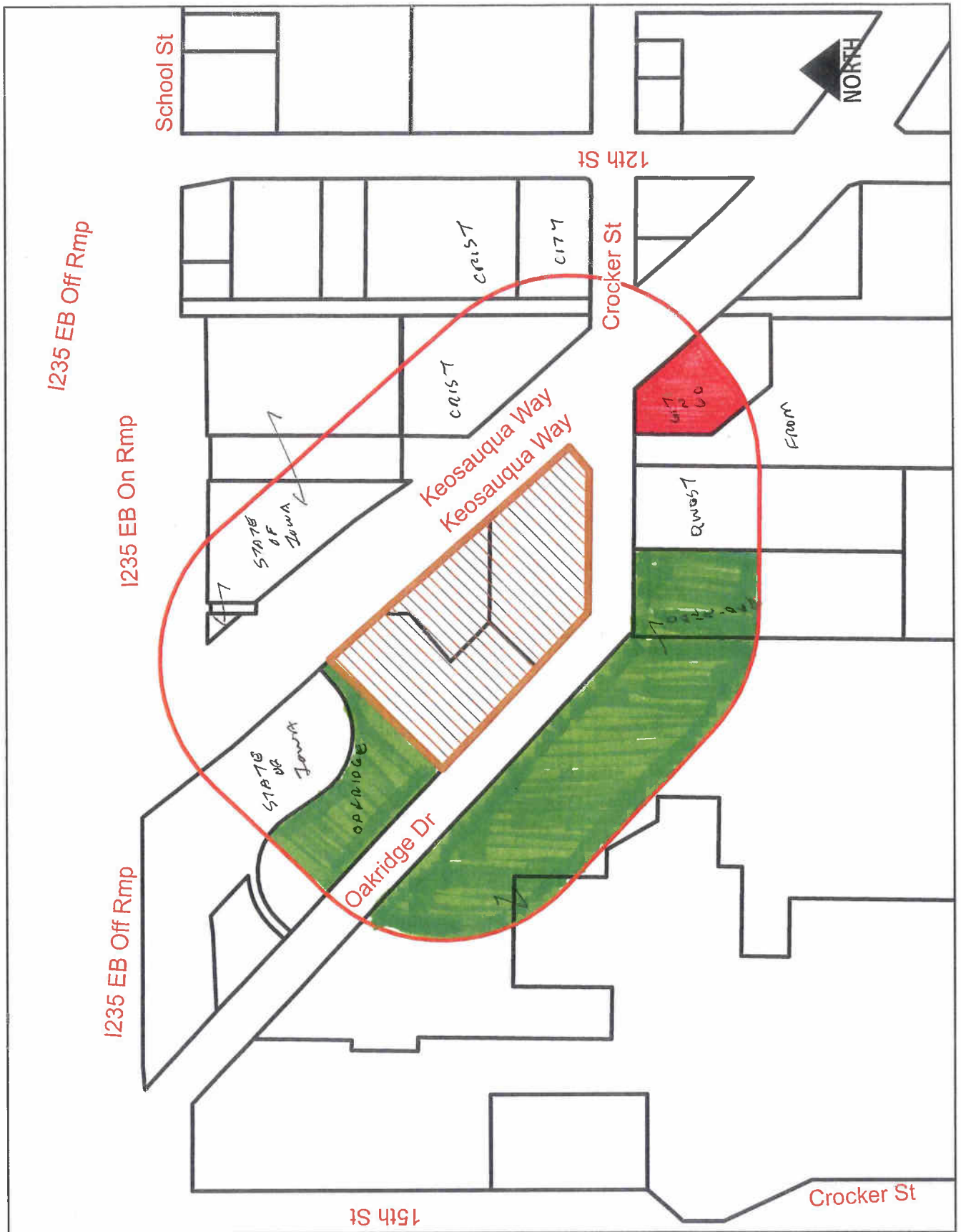
Address 2716 Indiana Ave - D.M.

**DEPARTMENT**

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

Too Close to The Daycares and  
Playgrounds!

Chladek/Osweiler-Hott (Kum & Go #536) - 1300/1310 Keosauqua Way ZON2013-00110



15



Community Development Department

AUG 15 2013

RECEIVED

August 14, 2013

City of Des Moines  
Planning and Zoning Commission  
c/o Eric Lundy, AICP  
602 Robert D. Ray Drive  
Des Moines, Iowa 50309

Dear Mr. Lundy and Members of the Planning and Zoning Commission:

The Oakridge Neighborhood would like to acknowledge our support of the proposed Kum & Go convenience store, to be located at Keosauqua Way and Oakridge Dr. We understand that Kum & Go has submitted a rezoning request that would take the current property from a designation of C-2 - General Retail and Highway Oriented Commercial District to a PUD - Planned Unit Development.

Since the spring of 2013 representatives from Kum and Go have met with our staff and Board of Directors on multiple occasions to discuss their project. During these meetings we have discussed store design and layout and how best to complement the current neighborhood and the 39 unit housing expansion that is underway. We have also discussed the notion of liquor, beer and wine sales in the store. Kum & Go has elected not to sell liquor at this location which we feel is in the best interest of our residents, and their families and is a responsible and proactive approach on behalf of the Kum and Go Corporation. To that end, we also discussed operational questions, employee training and quality control questions specific to the sale of beer, wine and tobacco products to underage consumers. And finally, we have discussed opportunities for the sale of specific products that are considered basic needs and not readily accessible in the neighborhood and ethnic products that could be incorporated into their inventory to meet the unique and specific needs of our neighborhood's diverse population. Not only have we found the Kum and Go corporation to be responsive on all fronts, they have agreed to identify ways that we can make the store and its operations and work force opportunities a win-win for the corporation and the neighborhood.

With the approval of this project the Oakridge Neighborhood continues its transformation. From the \$30 million tax credit rehab of the 300 housing units on our campus to the \$10 million 39 unit senior project currently under construction and \$10.4 million Edmunds Elementary School that recently opened its door to students from the neighborhood, the Kum and Go project will serve as another reminder of the development opportunities that exist in this community's urban core. There is no question that the nearly 1000 residents that live in the Oakridge Neighborhood would be happy to call Kum and Go their newest neighbor and look forward to the collaborative potential this project brings.

Kum & Go has proven to be a responsible retailer with a track record of being a great community member. To that end, the Oakridge organization writes in support of the rezoning request and asks for your affirmative vote for this project.

Please feel free to contact me for any questions you may have or to clarify any information contained in this letter at 515-244-7702 ext. 150 or [tcaldwell-johnson@oakridgeneighborhood.org](mailto:tcaldwell-johnson@oakridgeneighborhood.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Tere L. Caldwell-Johnson". The signature is written in a cursive style and is enclosed within a simple, hand-drawn rectangular border.

Tere L. Caldwell-Johnson, CEO

Aug. 11, 2013  
15.

Community Development Department

**FROM THE DESK OF  
LARRY OTOM**

AUG 13 2013

RECEIVED

Members of Planning + Zoning

Soon my Grandson may be going to one of the daycares in the Oakridge area.

I am opposed to the *Kur'e 670* moving in ~~so~~ close to the childcare in our neighborhood.

Nothing good can come from her being sold this close, that is why there is the City's 150 foot Setback.

Please take this into consideration when voting.

Thank You Larry Otom

August 12, 2013

Erik Lundy  
Plan and Zoning  
602 Robert D Ray Drive  
Des Moines, IA 50309

Community Development Department

AUG 13 2013

RECEIVED

**RE: Keo Way - Kum & Go Vote on Thursday, Aug. 15, 2013**

Dear Member,

I just wanted to reiterate our concern for the Kum & Go going into our neighborhood. Enclosed you will find my previous letter with our concerns.

We do not like the fact that Kum & Go is trying to be rezoned PUD to sell alcohol near our licensed childcare facilities. It doesn't change the fact of the distance being less than half (66 ft) of the 150 feet the city requires (Also, another daycare is being built only 70 feet from this property).

We respectfully request that you deny this rezoning.

Thank you.

Margaret Johnson and families of Oakridge Neighborhood

June 18, 2013

Erik Lundy  
City of Des Moines  
602 Robert D. Ray Drive  
Des Moines, IA 50309

RE: VARIANCE FOR 1300 KEOSAUQUA WAY  
DESMOINES, IA 50309

Dear Member,

I am representing several families in the Oakridge Neighborhood along with myself. I am concerned that there is the possibility of a convenience store selling liquor and tobacco so close (66 feet) to a licensed childcare facility.

Everyone tries hard to protect our young children and we feel this variance would be harmful, besides the fact that there is already a convenience store across the side street. We respectfully request that you deny this variance.

Thank you.

Margaret Johnson and families of Oakridge

Dear Dan Flaherty:

I Have Been Watching The DMTV Channel  
To Keep Updated on City Happenings.

There is one Item I'd Like To Comment on,  
The Kum & Go Wanting To Build on Keo Way. Besides  
The Fact That The Distance Between The Store  
(Which Sells Beer) And The Two Daycares. Are  
Half of What The City Ordinance Requires, It  
Seems As Though Violence (Such As The Shooting  
AT Their 22nd & University Store only 10 Blocks Away  
From This Keo Location) Happens Too Frequently AT  
Their Stores.

Thank you

Marvin Larson

930 School Street

Des Moines, Iowa 50309