



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 10-1 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 4965 Hubbell Avenue from A-1 Agricultural District to PUD Planned Unit Development District and approve the proposed Conceptual Plan, subject to the following modifications: The subject property is owned by Kenneth and Denise Nesheim.

- 1) Revision to relocate refuse collection enclosures to the eastern portion of the site.
- 2) Revision to indicate that columns on all canopies will be clad entirely in masonry material to match the primary convenience store building.
- 3) Revision to show minimum numbers of conceptual tree plantings to comply with perimeter lot and open space landscaping that would be required for C-2 Districts.
- 4) Provision of the following notes on the Conceptual Plan:
  - a. Landscaping minimums shall be in accordance with standards as applied to C-2 Districts.
  - b. Any sale of liquor, wine and/or beer shall be in accordance with the proper license obtained through the Office of the City Clerk as approved by the City Council.
  - c. Any sale of liquor, wine, and/or beer is subject to provisions in Section 134-954(c)(1-4) of the Zoning Ordinance.
  - d. The PUD Conceptual Plan shall be subject to a legislative amendment to preclude the sale of alcoholic liquor if the Zoning Enforcement Officer determines that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions of approval.

The subject property is more specifically described as follows:

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



Date August 26, 2013

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 15, THENCE NORTH 89°40'29" WEST ALONG THE SOUTH LINE OF SECTION 15, A DISTANCE OF 319.05 FEET, THENCE NORTH 0°19'31"EAST A DISTANCE OF 134.01 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF NORTHEAST 46TH AVENUE, AND THE POINT OF BEGINNING, THENCE SOUTH 89°57'21" WEST , 151.53 FEET ALONG SAID RIGHT-OF-WAY LINE; THENCE SOUTH 0°11'16" WEST, 25.00 FEET; THENCE NORTH 86°17'49" WEST, 255.27 FEET; THENCE NORTH 85°51'19" WEST, 150.38 FEET; THENCE NORTH 10°51'34" WEST, 2.07 FEET; THENCE NORTH 0°04'04" WEST, 123.62 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF NORTHEAST HUBBELL AVENUE (US HIGHWAY 6); THENCE ALONG A CURVE CONCAVE NORTHWESTERLY WHOSE RADIUS IS 5800.00 FEET, WHOSE ARC LENGTH IS 194.22 FEET, WHOSE CHORD BEARS NORTH 51°02'49" EAST, 194.21 FEET; THENCE NORTH 71°06'11" EAST CONTINUING ALONG SAID RIGHT OF WAY, 78.76 FEET; THENCE ALONG A CURVE CONCAVE NORTHWESTERLY WHOSE RADIUS IS 5834.60 FEET, WHOSE ARC LENGTH IS 140.85 FEET, WHOSE CHORD BEARS NORTH 49°43'42"EAST, 140.85 FEET; THENCE SOUTH 41°05'23" EAST, 23.69 FEET; THENCE NORTH 77°46'47" EAST , 214.46 FEET; THENCE SOUTH 0°11'31" WEST A DISTANCE OF 394.09 FEET TO THE POINT OF BEGINNING. SAID DESCRIBED PARCEL CONTAINING 170,407 SQUARE FEET (3.91 ACRES), MORE OR LESS.

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

17

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

(ZON2013-00091)

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

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 property located at 4965 Hubbell Avenue.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 10-1 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 A) to find the proposed rezoning is in conformance with the existing Des Moines' 2020 Community Character Plan; Part B) to approve the proposed rezoning from "A-1" Agricultural District to "PUD" Planned Unit Development District and Part C) to approve the proposed Conceptual Plan, subject to the following modifications: (ZON2013-00091)

- 1) Revision to relocate refuse collection enclosures to the eastern portion of the site.
- 2) Revision to indicate that columns on all canopies will be clad entirely in masonry material to match the primary convenience store building.
- 3) Revision to show minimum numbers of conceptual tree plantings to comply with perimeter lot and open space landscaping that would be required for "C-2" Districts.



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

- 4) Provision of the following notes on the Conceptual Plan:
  - a. Landscaping minimums shall be in accordance with standards as applied to "C-2" Districts.
  - b. Any sale of wine and/or beer shall be in accordance with the proper license obtained through the Office of the City Clerk as approved by the City Council.
  - c. Any sale of liquor, wine, and/or beer is subject to provisions in Section 134-954(c)(1-4) of the Zoning Ordinance.
  - d. The PUD Conceptual Plan shall be subject to a legislative amendment to preclude the sale of alcoholic liquor if the Zoning Enforcement Officer determines that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions of approval.

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

Part A) Staff recommends the Plan and Zoning Commission find the requested rezoning in conformance with the existing Des Moines' 2020 Community Character Plan.

Part B) Staff recommends approval of the proposed rezoning to "PUD" Planned Unit Development District.

Part C) Staff recommends approval of the proposed Conceptual Plan, subject to the following modifications:

- 1) Revision to relocate refuse collection enclosures to the eastern portion of the site.
- 2) Revision to indicate that columns on all canopies will be clad entirely in masonry material to match the primary convenience store building.
- 3) Revision to show minimum numbers of conceptual tree plantings to comply with perimeter lot and open space landscaping that would be required for "C-2" Districts.
- 4) Provision of the following notes on the Conceptual Plan:
  - a. Landscaping minimums shall be in accordance with standards as applied to "C-2" Districts.
  - b. Any sale of wine and/or beer shall be in accordance with the proper license obtained through the Office of the City Clerk as approved by the City Council.
  - c. Any sale of liquor, wine, and/or beer is subject to provisions in Section 134-954(c)(1-4) of the Zoning Ordinance.
  - d. The PUD Conceptual Plan shall be subject to a legislative amendment to preclude the sale of alcoholic liquor if the Zoning Enforcement Officer determines that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions of approval.

#### Written Responses

5 In Favor

0 In Opposition

## STAFF REPORT

### I. GENERAL INFORMATION

1. **Purpose of Request:** The proposed PUD would allow development of a convenience store with 13 fuel pumps (26 fueling locations). The submitted Conceptual Plan proposes two access driveways from Broadway Avenue and cross-access through the property to the north onto Hubbell Avenue. 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:** 3.91 acres.
3. **Existing Zoning (site):** "A-1" Agricultural District.
4. **Existing Land Use (site):** The property contains an existing motel with 30 guest rooms and manager apartment.
5. **Adjacent Land Use and Zoning:**
  - North* – "A-1"; Uses are agricultural land, vault and monument warehouse and distributor, and International Union of Operating Engineers union hall.
  - South* – "M-1"; Uses are mini-warehousing and vacant industrial park parcels.
  - East* – "M-1"; Uses are RV sales lot and ThermoKing transportation climate control system sales.
  - West* – "A-1"; Uses are a motel, agricultural land and vacant undeveloped land.
6. **General Neighborhood/Area Land Uses:** The proposed development is located at a major traffic intersection of Broadway Avenue and Hubbell Avenue within a mixed use node of highway commercial uses, industrial uses, and agricultural use.
7. **Applicable Recognized Neighborhood(s):** The subject property is not within a recognized neighborhood. All recognized neighborhood associations were notified of the meeting by mailing of the Preliminary Agenda on July 26, 2013. Additionally, separate notifications of the hearing for this specific item were mailed on June 28, 2012 (20 days prior) and July 8, 2013 (10 days prior to the originally scheduled hearing) to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site. 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 was conducted on June 7, 2013. The applicant will provide a summary of the meeting at the public hearing.
8. **Relevant Zoning History:** The area was annexed in by the City on June 26, 2009 with the zoning established as "A-1" Agricultural District by the provisions of the Zoning Ordinance.

9. **2020 Community Character Land Use Plan Designation:** Commercial: Auto-Oriented Small-Scale Strip Development.

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 mature overstory trees and evergreen trees as part of the existing motel site that will likely be removed for the proposed development. There are several trees on the northeast portion of the property that should be preserved if possible. The Conceptual Plan indicates that they would remain. Any PUD Development Plan will require a tree protection and mitigation plan in accordance with City Code.
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. The site is large enough to also require water quality detention for more frequent rain events of one-and-a-half inches or less. The submitted Conceptual Plan identifies stormwater detention basins on the western and northern portion of the site that would connect to public storm sewers in Hubbell Avenue.
3. **Utilities:** The subject property has access to necessary utilities except public sanitary sewer. The proposed Conceptual Plan indicates extending the public sanitary sewer from East 50<sup>th</sup> Street to the south at a distance of approximately 600 feet. This would require boring under Broadway Avenue but would also allow future connections of properties to the east. There is a secondary option of extending from sanitary sewer in East 46<sup>th</sup> Street north of Broadway Avenue at a distance of approximately 1,750 feet. This would require boring beneath two streets East 46<sup>th</sup> Street and Hubbell Avenue as well as cooperation of three or four other landowners in the cost sharing. At this time either option is acceptable within the existing system based on review by the Public Works Sanitary Sewer staff.
4. **Traffic/Parking:** The Traffic and Transportation Engineering staff did not require an in depth traffic study for this location. The proposed locations for access are acceptable

within the surrounding street network. Traffic and Transportation staff did not recommend requiring development of public sidewalk adjoining the site.

The City's standard off-street parking requirement for retail uses with fuel sales is 1 parking space per 300 square feet. This would require a minimum of 17 spaces for a 4,992-square foot building. The submitted Concept Plan includes 37 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 3.91 acres and would contain 26 fueling locations. A minimum of 34,064 square feet of open space (20% of site) is required to meet this guideline. The submitted Conceptual Plan shows that the site would have at least 76,133 square feet (44.7% of site) 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.

*The proposed building and canopies are setback a minimum of 25 feet from the public street system. Due to the high traffic volumes of Hubbell Avenue and Broadway Avenue in proximity to US 65/69 a highway oriented pattern is necessary. The Conceptual Plan identifies a cross access easement through property to the northeast.*



*There is an existing frontage road system parallel to Broadway Avenue which serves properties to the east which are industrially zoned. There are entrances oriented toward Hubbell Avenue and Broadway Avenue.*

- 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 a refuse collection enclosure at the northwest corner of the building with gates oriented toward Hubbell Avenue. Because the subject property is of an unusual shape it has public street exposure on three sides. The placement of the enclosure could be detached from the principal building and placed along the eastern edge of the site to better comply with this design guideline. There is not an existing adjoining public sidewalk network in the surrounding street system. All 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 prominent covered entrances on three of the four sides. The primary façade is oriented toward Broadway Avenue with the Secondary entrance feature oriented towards Hubbell Avenue. Staff believes that the proposed design meets these guidelines. It should be noted that in order to be eligible for tax abatement, the façade oriented toward Hubbell Avenue would require additional window 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 in masonry that matches the building for this guideline to be met.*

- (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 would have a total height of 20'-10" due to the integrated signs that would project 2'-4" above the top edge for a width of 9'-3" on each fascia. There is also a proposed canopy for the diesel pump area for larger trucks that would have a canopy height of 21'-4". Taking into account the grade differential the Conceptual Plan indicates that no portion of any canopy would extend above 22'-11" maximum. Staff believes that the proposed height is appropriate given the unique circumstances of the site.*

- 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 includes a note that addresses this guideline and identifies locations for these areas on the site layout. Staff believes that the proposed areas are appropriate.*

## 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 with retention of existing trees. The conceptual landscaping plantings should be shown at minimums that would be necessary for "C-2" Districts. There are six overstory trees shown along the north, east and south perimeter lots where approximately 15 overstory trees would be required. Staff recommends that note be added into the PUD Standards that all landscaping will comply with minimums that would be required in a "C-2" District.*

*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 two monument style signs with a masonry base along Hubbell Avenue and East Broadway Avenue having a total height of 10 feet. The signs 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. There is also a 40-foot tall pole sign with a 7.5-foot by 15-foot (112.5 square feet) component and a 3.33-foot by 12.63-foot (42.08 square feet) component with electronic display for pricing. Staff believes due to proximity of the Interstate 80 and Highway 65/69 interchange it is reasonable to advertise with an additional sign that will indicate pricing to the motoring public from those routes. The height of this sign is too tall for a pylon type sign which would appear overly massive. The proposed black painted pole would minimize the sign's appearance.*

*All additional signage would be mounted to the building and canopies. The proposed freestanding signs would comply if it were in a "C-2" District, given that there are three frontages earned. The pole sign would not comply with requirements for commercial tax abatement.*

## 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 under these standards. In this instance lighting would not exceed 2.0 footcandles at any point along the property boundary based on the surrounding zoning.*

- 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 Commercial Corridor.

Because the property is zoned PUD, it is not required to comply with City Code Section 134-954. However, as a baseline for review of a PUD Conceptual Plan, the Commission should consider applying the standards necessary for, a Conditional Use Permit for a gas station/convenience store in a "C-2" District. This 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 liquor, wine, beer or tobacco products.

*There are not any churches, schools, public parks or licensed child care centers within 150 feet of the subject property.*

In accordance with City Code Section 134-954(b), any use of a premise for the sale of alcoholic liquor, wine and beer should be granted only where the business, when operated in conformance with such reasonable conditions, satisfies the following criteria:

- 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 liquor, wine, and beer at this location would 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 major traffic thoroughfares. The entire site is separated from the closest residential use by 900 feet.*

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

*The subject property fronts the major corridors of Broadway Avenue and Hubbell Avenue. 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 liquor, wine, and beer at this location as an accessory use to a convenience store with fuel sales will not constitute a nuisance.*

In accordance with City Code Section 134-954(c), any use of a premise for the sale of alcoholic liquor, wine and beer shall be subject to the following general conditions:

- 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:
  - Every limited food sales establishment, limited retail sales establishment and gas station/convenience store shall display alcoholic liquor only in a locked case or behind a counter accessible only to employees. Any other business selling alcoholic liquor for off premises consumption shall either: i) display alcoholic liquor only in a locked case or behind a counter accessible only to

- employees; ii) employ an electronic security cap or tag system on all containers of alcoholic liquor on display; or iii) 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.
- 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 liquor, wine, and beer.*

- 7. Liquor Licensing:** Any sale of alcoholic liquor, wine, and/or beer must be in accordance with the proper license 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 has this request been reviewed by the traffic and transportation Division.

Erik Lundy stated yes Traffic and Transportation has reviewed this proposal and they provided some preliminary trip distribution and trip generation analysis. Traffic did not suggest any specific improvements to what is already there.

Mike Ludwig stated recent request to the Board of Adjustment for pole signs adjoining the interstate have generally been approved and supported by the Board of Adjustment.

Erik Lundy added that if the property was zoned "C-2", the pole sign would not have required any type of Board of Adjustment action.

Nick Halfhill 6400 Westown Parkway, West Des Moines gave a brief overview of the applicant's proposal. There will be more traffic with this proposal than what the current business is generating. The existing sanitary sewer is to the south in the Broadway Business Park. They are working with Hubbell Development and they are going to allow the applicant to connect to a public sewer system to the south. He showed the elevations of their newer stores. They are asking for a 40 foot tall pole sign adjacent to HWY 65 sign to get some traffic from the north but not trying to be obtuse about it.

Greg Wattier asked if this will be a LEED project.

Nick Halfhill stated that all of their stores start out LEED certified. The building pre-certified. The LEED site is submitted and can be audited at anytime to confirm that they have conformed to their standard. No matter where they put their building it is already LEED certified. They just were notified in the past week they had achieved LEED silver and gold at two sites.

Dann Flaherty asked if there had been any discussion with Traffic and Transportation about reducing the posted speeds along Hubbell and Broadway.

Nick Halfhill stated that he has not.

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

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

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

Dann Flaherty stated that he does not think this is a bad plan but he cannot vote in favor of the applicant's request. His concern is what will happen in that area. A gas station was put in over on Frederick Hubbell and Douglas and we have killed a couple of people there and his concern is the speed limit is 45 to 50 mph and people are going to be turning right and turning left into a gas station. He believes that Traffic and Transportation should look into possibly reducing the speed limit to possibly 35 mph. He know this may not make people happy but it may save lives.

*Christine Pardee temporarily left the meeting*

Ted Irvine stated that he took exception to Mr. Flaherty's statement that "we have killed a couple people at the other location". He doesn't appreciate that language relative to this project. Traffic and Transportation makes decisions regarding appropriate speeds, the Commission does not and don't believe the statement is appropriate.

Dann Flaherty stated that the Commission made the decision with respect to the zoning.

Ted Irvine stated that he is registering an objection to Mr. Flaherty's characterization.

### **COMMISSION ACTION:**

Greg Wattier moved staff recommendation Part A) to find the requested rezoning in conformance with the existing Des Moines' 2020 Community Character Plan; Part B) to approve the proposed rezoning to "PUD" Planned Unit Development District and Part C) to approve the proposed Conceptual Plan, subject to the following modifications:

- 1) Revision to relocate refuse collection enclosures to the eastern portion of the site.
- 2) Revision to indicate that columns on all canopies will be clad entirely in masonry material to match the primary convenience store building.

- 3) Revision to show minimum numbers of conceptual tree plantings to comply with perimeter lot and open space landscaping that would be required for "C-2" Districts.
- 4) Provision of the following notes on the Conceptual Plan:
  - a. Landscaping minimums shall be in accordance with standards as applied to "C-2" Districts.
  - b. Any sale of wine and/or beer shall be in accordance with the proper license obtained through the Office of the City Clerk as approved by the City Council.
  - c. Any sale of liquor, wine, and/or beer is subject to provisions in Section 134-954(c)(1-4) of the Zoning Ordinance.
  - d. The PUD Conceptual Plan shall be subject to a legislative amendment to preclude the sale of alcoholic liquor if the Zoning Enforcement Officer determines that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions of approval.

Motion passed 10-1 (Dann Flaherty voted in opposition).

Respectfully submitted,



Michael Ludwig, AICP  
Planning Administrator

MGL:clw

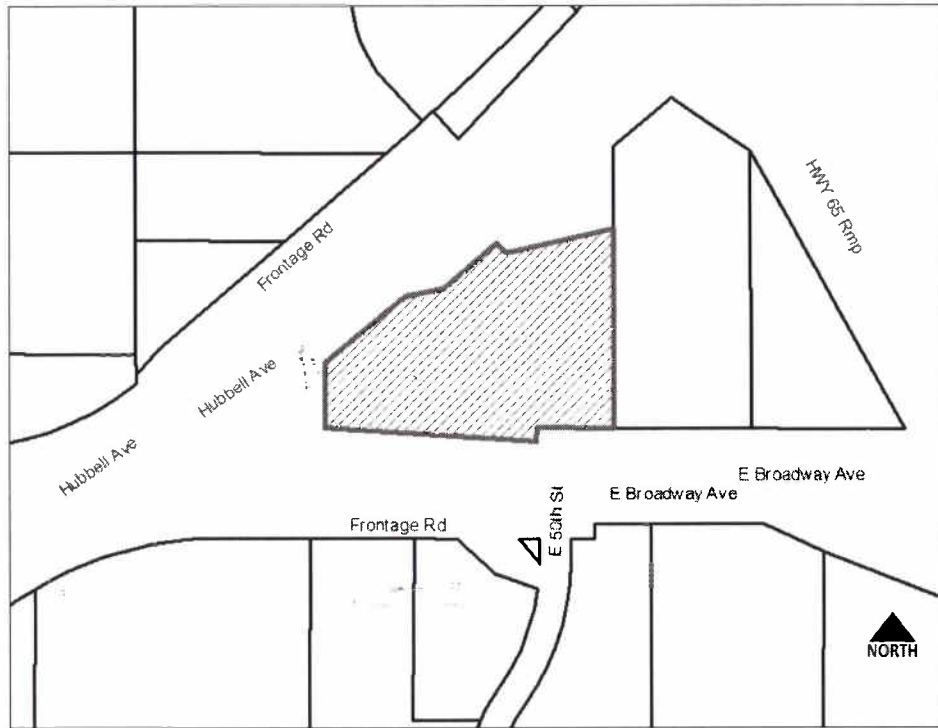
Attachment



Request from Kum & Go, LC (developer) represented by Nick Halfhill (officer) for rezoning of property located at 4965 Hubbell Avenue. The subject property is owned by Kenneth and Denise Nesheim.				<b>File #</b>	
				ZON2013-00091	
<b>Description of Action</b>	Approval to rezone property from "A-1" Agricultural District to "PUD" Planned Unit Development District. and Approval of a PUD Conceptual Plan "Kum & Go Store #535" for development of a 4,992-square foot gas station/convenience store with 20 fueling locations subject to conditions.				
<b>2020 Community Character Plan</b>	Commercial: Auto-Oriented Small-Scale Strip Development (current & no change proposed)				
<b>Horizon 2035 Transportation Plan</b>	No Planned Improvements				
<b>Current Zoning District</b>	"A-1" Agricultural District				
<b>Proposed Zoning District</b>	"PUD" Planned Unit Development District.				
<b>Consent Card Responses</b>	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	5				
Outside Area					
<b>Plan and Zoning Commission Action</b>	Approval	10-1	<b>Required 6/7 Vote of the City Council</b>	Yes	
	Denial			No	X

Kum & Go LC - 4965 Hubbell Avenue

ZON2013-00091



Item ZON2013-00091 Date 7/13/13

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

**RECEIVED**  
(Circle One)

COMMUNITY DEVELOPMENT Print Name Broadway Storage, LLC

JUL 23 2013

Signature [Signature]

DEPARTMENT

Address 1400 North 14th Street

Indianola, IA 50125

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

Item ZON2013-00091

Date 7-10-13

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

**RECEIVED**  
**COMMUNITY DEVELOPMENT**

JUL 15 2013

DEPARTMENT

Print Name Dave Merschman - President  
Homemakers Furniture

Signature Dave Merschman - President

Address 5035 Hubbell Ave

Reason for opposing or approving this request may be listed below: Des Moines, IA  
50317

Please approve it.

Should be a nice improvement for the  
intersection.

Thanks,

Dave Merschman

Item ZON2013-00091

Date 7/11/2013

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

**RECEIVED**  
**COMMUNITY DEVELOPMENT**

JUL 15 2013

DEPARTMENT

Print Name Brooklyn Business Park  
Hubbell Properties I, LLC  
By Joe DiTruszyński, VP

Signature [Signature]

Address 6900 Westown Pkwy, Wsola, IA

Reason for opposing or approving this request may be listed below: 50021

This is a good use of this land and  
will provide commercial tax base. It  
will generate activity and help promote  
the business park to the south & provide  
services to adjacent residential areas.

Item ZON2013-00091

Date 7-10-2013

17

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

**RECEIVED**  
(Circle One)  
COMMUNITY DEVELOPMENT

Print Name Kenneth Nesheim

JUL 15 2013

Signature Kenneth Nesheim

DEPARTMENT

Address 4965 Hubbell Avenue

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
SUBJECT PROPERTY

Item ZON2013-00091

Date 7-15-13

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

**RECEIVED**  
(Circle One)  
COMMUNITY DEVELOPMENT

Print Name MIKE CONRAD  
Thermo King Sales & Service Inc.

JUL 17 2013

Signature Mike Conrad

DEPARTMENT

Address 4975 HUBBELL AVE DES MOINES,  
IA. 50317

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

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

Kum & Go LC - 4965 Hubbell Avenue

ZON2013-00091

