



Roll Call Number

Agenda Item Number

41B-1

Date September 9, 2013

WHEREAS, on August 26, 2013, by Roll Call No. 13-1321, the City Council duly resolved to consider a request from Kum & Go, LC (developer) represented by Nick Halfhill (officer) to rezone certain property located in the vicinity of 1300, 1310 and 1330 Keosauqua Way from the C-2 General Retail and Highway Oriented Commercial District to PUD Planned Unit Development District classification, and to approve the proposed PUD Conceptual Plan for such property, and that such proposal be set down for hearing on September 9, at 5:00 P.M., in the Council Chambers at City Hall; and,

WHEREAS, due notice of the hearing was published in the Des Moines Register on August 29, 2013, as provided by law, setting forth the time and place for hearing on the proposed amendment to the Zoning Ordinance; and,

WHEREAS, the Legal Department has prepared an amendment to the Zoning Ordinance of the City of Des Moines to rezone the property located in the vicinity of 1300, 1310 and 1330 Keosauqua Way, more fully described as follows (the "Property"):

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:*



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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 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



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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.

from the C-2 General Retail and Highway Oriented Commercial District to PUD Planned Unit Development District classification; and,

WHEREAS, on August 15, 2013, the Plan and Zoning Commission recommended by a vote of 10-0 that the proposed rezoning and PUD conceptual plan be approved, subject to the conditions identified in the attached letter from the Planning Administrator; and

WHEREAS, in accordance with the notice those interested in the proposed rezoning, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council.

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

1. Upon due consideration of the facts, statements of interested persons and arguments of counsel, the objections to the proposed rezoning and PUD Conceptual Plan are hereby overruled and the hearing is closed.

2. The proposed rezoning and PUD Conceptual Plan are hereby found to be in conformance with the Des Moines 2020 Community Character Land Use Plan, subject to the conditions identified below:

- 1) The applicant shall participate in his 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 note on the Conceptual Plan:
  - a. Increase minimum building setback to 25 feet.



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3. The rezoning to the PUD Planned Unit Development District classification and the PUD Conceptual Plan for the Property described above, which is on file in the Community Development Department, are hereby approved, subject to the plan being first amended to satisfy the conditions set forth in the attached letter from the Planning Administrator, and subject to the Community Development Director finding that such conditions have been satisfied by the amendments to the plan.

MOVED by \_\_\_\_\_ to adopt and approve the rezoning to the PUD District classification and Conceptual Plan, subject to final passage of the rezoning ordinance.

FORM APPROVED:

Michael F. Kelley, Assistant City Attorney

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

MOTION CARRIED

APPROVED

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_  
Mayor

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

**AFFIDAVIT OF PUBLICATION**

COPY OF ADVERTISEMENT  
Exhibit "A"

STATE OF IOWA  
SS  
COUNTY OF POLK

**NOTICE OF HEARING**  
Notice is hereby given that on September 9, 2013, at 5:00 P.M., in the Council Chambers at City Hall at 400 Robert D. Ray Drive, Des Moines, Iowa, a hearing will be held by the City Council concerning a request from Kum & Go, LC (developer) represented by Nick Halfhill (officer) to rezone property located at 1300, 1310, and 1330 Keosauqua Way property from C-2 General Retail and Highway Oriented Commercial District to PUD Planned Unit Development subject to conditions. The subject property is owned by Noel Chlascak and David Hoff. A map and legal description of the subject property is on file and available for public inspection in the office of the City Clerk. At the above designated time and place, opportunity to be heard will be given to proponents and opponents of the proposed rezoning.  
CITY OF DES MOINES, IOWA  
By: T.M. Franklin Cownie, Mayor  
ATTEST: Diane Rauh, City Clerk  
Published in the Des Moines Register on August 29, 2013.

The undersigned, being first duly sworn on oath, states that The Des Moines Register and Tribune Company, a corporation duly organized and existing under the laws of the State of Iowa, with its principal place of business in Des Moines, Iowa, the publisher of

THE DES MOINES REGISTER

newspapers of general circulation printed and published in the City of Des Moines, Polk County, Iowa, and that an advertisement, a printed copy of which is attached as Exhibit "A" and made a part of this affidavit, was printed and published in The Des Moines Register on the following dates

8/29/13

*R. C. Hoff*  
Legals Clerk

Subscribed and sworn to before me by said affiant this 3<sup>rd</sup> day of September 2013.

*Susan Hazelton*  
Notary Public in and for Polk County, Iowa

SUSAN HAZELTON  
Notarial Seal - Iowa  
Commission # 223923  
My Commission Expires *8/2014*

P08563

41B

RECEIVED  
COMMUNITY DEVELOPMENT

SEP 05 2013

DEPARTMENT



~~RECEIVED  
COMMUNITY DEVELOPMENT  
SEP 05 2013  
DEPARTMENT~~

September 4, 2013

Honorable T.M. Franklin Cownie and Des Moines Council  
C/O Mike Ludwig  
City of Des Moines  
400 Robert D. Ray Drive  
Des Moines, Iowa 50309

Hon. Mayor and Members of the Council:

The purpose of this letter is to clarify the position of Kum & Go, LC on the conditions attached to the PUD Zoning petition for 1300, 1310 and 1330 Keosauqua Way in Des Moines.

At their July 18, 2013 meeting, the Plan & Zoning Commission recommended approval of the PUD zoning and subsequently recommended approval of certain conditions which specifically removed the ability to sell beer and/or wine. Kum & Go is not agreeable to this condition.

More specifically, Kum & Go is favorable to the recommendations from City Staff, listed below, save one item. These acceptable conditions are as follows, in bold. Additionally, the condition we wish to have removed, 5)c.(3)(a), is lined and highlighted.

- 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 foot candle 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.

We feel that the item 5)c.(3)(a), which has been stricken, is not appropriate for our proposed store. Kum & go maintains a system of internal and external security cameras which help us identify any potential concerns which arise at our sites. Additionally, although we do not feel the security will be an issue at this site, Kum & Go has a record of providing professional security staff in our stores when warranted.

With consideration to the above conditions, we respectfully ask for your approval of the Ordinance pending for this PUD zoning request.

Very truly yours,

A handwritten signature in black ink, appearing to read "Nick Halfhill".

Nick Halfhill  
Site Development Manager  
Kum & Go, L.C.

August 22, 2013

41B

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



<u>Commission Action:</u>	<u>Yes</u>	<u>Nays</u>	<u>Pass</u>	<u>Absent</u>
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:

<u>Commission Action:</u>	<u>Yes</u>	<u>Nays</u>	<u>Pass</u>	<u>Absent</u>
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:

<u>Commission Action:</u>	<u>Yes</u>	<u>Nays</u>	<u>Pass</u>	<u>Absent</u>
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.

