



Date November 4, 2013

RESOLUTION CLOSING HEARING AND CONDITIONALLY APPROVING REQUEST FROM OFIR CARMİ (PURCHASER) TO REZONE PROPERTY LOCATED AT 6220 GRAND AVENUE FROM THE "FW" FLOODWAY DISTRICT TO THE "U-1" FLOODPLAIN DISTRICT TO ALLOW FOR CONSIDERATION OF A CONDITIONAL USE FOR AN AMUSEMENT ENTERPRISE BUSINESS

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on September 19, 2013, its members voted 12-2 in support of a motion to recommend DENIAL of a request from Ofir Carmi (purchaser) to rezone property located at 6220 Grand Avenue more specifically described as follows:

Lot 4, Morrowdale Plat 3, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa (hereinafter referred to as the "Property").

from the "FW" Floodway District to a "U-1" Floodplain District to allow for consideration of a Conditional Use approval for an amusement enterprise business to allow reuse of the existing vacant go-kart track and miniature golf amusement complex; and APPROVAL of rezoning the portion of the site that is located outside of the federally designated floodway to "U-1" District as demonstrated by a Land Surveyor licensed with the State of Iowa; and,

WHEREAS, the applicant has provided a survey which identifies the portion of the Property that lies outside the federally designated floodway; and.

WHEREAS, on October 21, 2013 by Roll Call No. 1628, the City Council set a public hearing on the proposed rezoning for November 4, 2013 at 5:00 p.m. in the Council Chambers; and,

WHEREAS, notice of the public hearing was published in the Des Moines Register according to law on October 24, 2013, setting forth the time and place for hearing on the proposed rezoning; and

WHEREAS, in accordance with the notice those interested in the proposed rezoning, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to 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 of the Property to a Limited DD2 District are hereby overruled, and the hearing is closed.



Date November 4, 2013

2. The proposed rezoning is hereby found to be in conformance with the Des Moines 2020 Community Character Land Use Plan, if limited to the portion of the Property that lies outside the federally designated floodway.

3. The rezoning of that portion of the Property that lies outside the federally designated floodway from the "FW" Floodway District to a "U-1" Floodplain District, is hereby approved.

MOVED by _____ to adopt.

FORM APPROVED:

Roger K Brown

Roger K. Brown

Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
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.

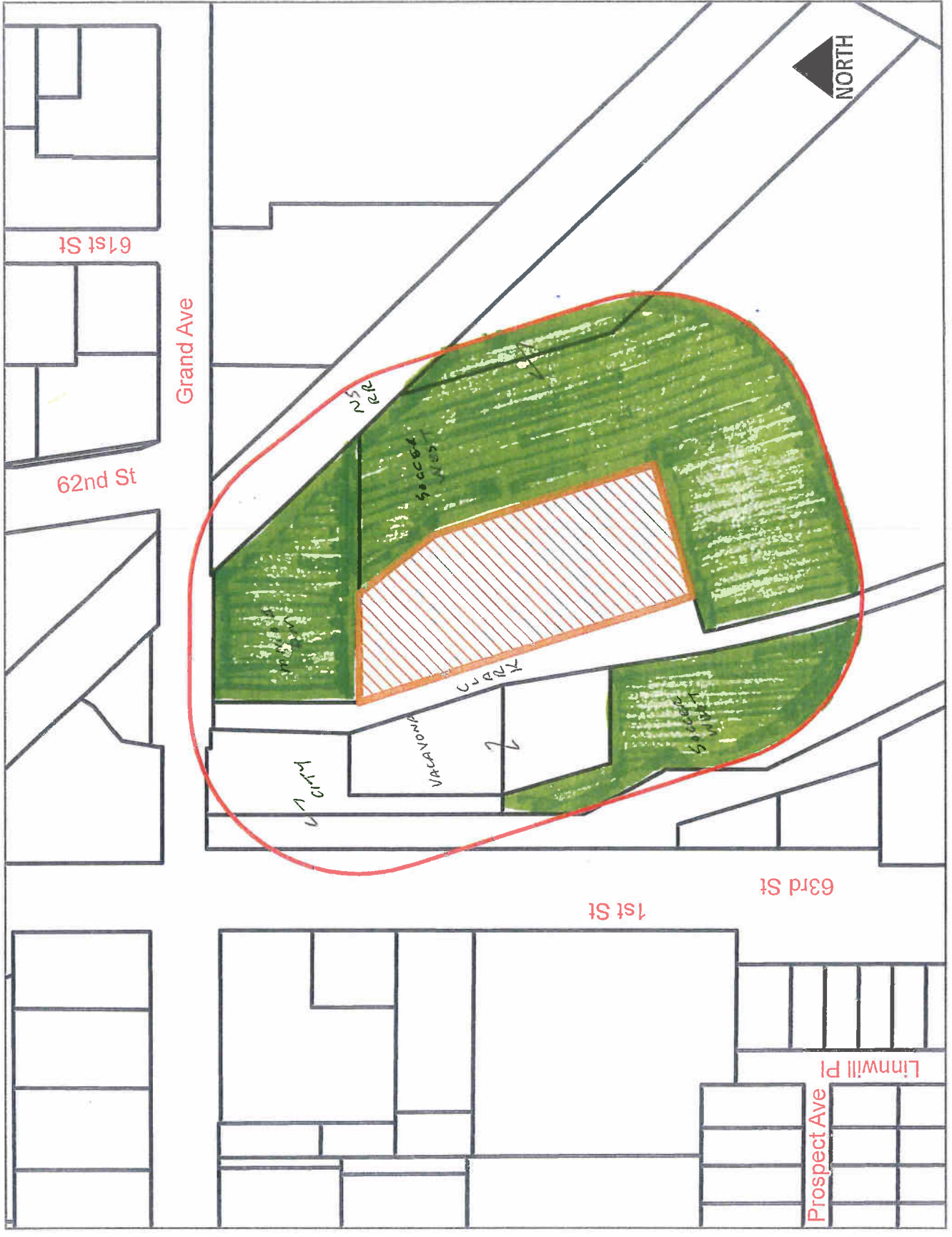
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

Mayor

City Clerk

ZON2013-00140

Oreo Junction LLC - 6220 Grand Avenue



Date November 4, 2013

October 11, 2013

Agenda Item 45

Roll Call # _____

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 October 3, 2013, the following action was taken regarding a request from Ofir Carmi (purchaser) for rezoning of property located at 6220 Grand Avenue.

COMMISSION RECOMMENDATION:

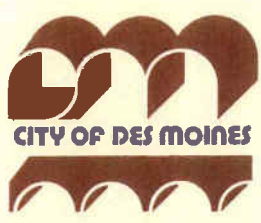
After public hearing, the members voted 12-2 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Dory Briles				X
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley	X			
Tim Fitzgerald	X			
Dann Flaherty	X			
Jann Freed	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) the proposed rezoning is in conformance with the existing Des Moines' 2020 Community Character Plan; denial of Part B) the proposed rezoning; and approval of rezoning the portion of the site that is located outside of the Federally designated floodway to "U-1" District as demonstrated by a Land Surveyor licensed with the State of Iowa. This would require the applicant to have a legal description and exhibit prepared and submitted by the applicant's engineer or surveyor prior to the City Council's hearing on the matter. (ZON2013-00140)

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the proposed rezoning be found in conformance with the Des Moines' 2020 Community Character Plan.



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

Part B) Staff recommends denial of the request as initially proposed. Staff recommends approval of rezoning the portion of the site that is located outside of the Federally designated floodway to "U-1" District as demonstrated by a Land Surveyor licensed with the State of Iowa. This would require the applicant to have a legal description and exhibit prepared and submitted by the applicant's engineer or surveyor prior to the City Council's hearing on the matter.

Written Responses

- 3 In Favor
- 0 In Opposition

STAFF REPORT

I. GENERAL INFORMATION

1. **Purpose of Request:** The subject property is zoned "FW" Floodway District. It has historically been used for amusement enterprise use (e.g. put-put golf, go-cart track and batting cages). The site has been vacant for an extended period of time and has lost its legal non-conforming rights to amusement enterprise use as it is not an allowed use in the "FW" District. The applicant wishes to rezone the property to "U-1" District to allow them to seek a Conditional Use Permit from the Zoning Board of Adjustment to reestablish an amusement enterprise use.
2. **Size of Site:** 94,756 square feet or 2.175 acres.
3. **Existing Zoning (site):** "FW" Floodway District.
4. **Existing Land Use (site):** Abandoned putt-putt golf, go-cart track and batting cage facility.
5. **Adjacent Land Use and Zoning:**
 - North* - "Limited C-2" & "FW", Uses are retail and railroad tracks.
 - South* - "FW", Uses are soccer fields, softball diamonds and sand volleyball courts and off-street parking.
 - East* - "FW", Uses are soccer field and railroad tracks.
 - West* - "FW", Uses are tavern, open space and Walnut Creek.
6. **General Neighborhood/Area Land Uses:** The subject property is located along the Grand Avenue corridor near the Walnut Creek bridge and 63rd Street intersection.
7. **Applicable Recognized Neighborhood(s):** The subject property is located in the Westwood Neighborhood. This neighborhood association was notified of the public hearing by mailing of the Preliminary Agenda on August 30, 2013 and a Final Agenda on September 13, 2013. Additionally, separate notifications of the hearing for this specific item were mailed on August 30, 2013 (20 days prior to the hearing) and September 9, 2013 (10 days prior to the hearing) to the Drake Neighborhood

Association and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division. The Westwood Neighborhood Association notices were mailed to Mike Keller, 113 51st Street, Des Moines, IA 50312.

8. Relevant Zoning History: None.

9. 2020 Community Character Land Use Plan Designation: Park/Open Space.

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, prior to the City Council Hearing. The recommendation of the Commission will be forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

1. Floodplain: The following is the description of the “FW” and “U-1” Districts from the Zoning Ordinance.

DIVISION 28. FW FLOODWAY

Sec. 134-1221. Statement of intent.

The FW floodway district is intended to apply special regulations to the use of land in areas of the city that are subject to a predictable flow of floodwaters. The regulations are designed so that floodway efficiency will not be adversely affected or floodway capacity unduly restricted. Such land use controls are necessary to maintain eligibility for flood insurance for private and public property under the National Flood Insurance Program. Furthermore, the regulations, while permitting reasonable economic and social use of such properties, will help protect the public health, safety and welfare and help reduce loss of life and property, hazardous conditions and financial burdens imposed on the city by frequent and periodic floods.

DIVISION 27. U-1 FLOODPLAIN

Sec. 134-1191. Statement of intent.

The U-1 floodplain district is intended to encompass certain areas of the city which are subject to flood hazard. This district is created in order to protect the public health and welfare, to lessen the burdens imposed upon the community by rescue and relief efforts occasioned by the occupancy of areas subject to flooding, and to minimize the danger to life and property which results from development undertaken without full realization of such danger. It is further the intention of this chapter that no reclassification of any lands zoned U-1 be undertaken, unless and until suitable measures have been taken to ensure that the flood hazard no longer exists, and that these measures have the approval of the city, state or federal agencies, where required by existing legislation.

These zoning districts are intended to work with the Federal floodplain regulations. The southwest half of the property is located in the Federally designated floodway and the northeast half is located in the Federally designated floodplain. Staff believes that it is reasonable to rezone the portion of the site that is not within the regulatory floodway to “U-1” District. The remaining portion of the site should be left as “FW” since it is a

Federally designated floodway. The applicant could use this portion of the site for parking associated with the "U-1" portion of the site so long as a Conditional Use Permit is obtained from the Zoning Board of Adjustment. The applicant could also seek a Use Variance from the Zoning Board of Adjustment to allow reuse of any building or structure in this portion of the property.

2. **Access:** The subject property is accessed via a drive from Grand Avenue that is shared with the adjoining properties. No changes to access are proposed at this time.
3. **Site Plan:** Any reuse of the property will require a site plan in accordance with current standards including landscaping.

SUMMARY OF DISCUSSION

Jason Van Essen presented the staff report and recommendation.

JoAnne Corigliano joined the meeting.

Greg Jones reiterated that a survey would need to be done prior to the City Council meeting to identify the floodway from the floodplain and that the Commission should not recommend a specific zoning line.

Jason Van Essen stated that a legal description needs to be provided before the City Council can hear the rezoning request.

Greg Jones stated that if the applicant would find later that the entire site is in the floodplain he could come back and rezone the difference.

Jason Van Essen stated that is correct. The floodway is always evolving.

CJ Stephens asked what is the distance between this site and the flood gate.

Greg Jones stated approximately 500 feet.

CJ Stephens noted that there is also a trail that goes underneath the bridge which is probably closer yet and that trail is flooded quite frequently and closed. She is in agreement with the staff recommendation.

Tim Fitzgerald asked if Pal Joey's had done a survey.

Jason Van Essen stated that Pal Joey's has continued to operate and has not lost its grandfather rights. The applicant's site has been vacant long enough to have lost its legal non-conforming rights.

Ted Irvine asked if the bike trail will go under the bridge when construction is completed. The trail is right by the creek that floods about 10 or 12 feet below everything else. When it has closed in the past it was because Walnut Creek comes up a little bit and goes over the trail just like it does down in Water Works. The old putt putt course does occasionally flood. None of the other things since he has been around have flooded. He is trying to understand what the problem is.

CJ Stephens noted the City has paid to move two house in that area that were constantly flooded.

Jason Van Essen stated the proposed use requires a Conditional Use Permit even if it is zoned "U-1". If part or all of the property is not rezoned to "U-1" by the City Council the applicant can seek a Use Variance from the Zoning Board of Adjustment. So no matter the outcome of the rezoning process the applicant will be required to go before the Board before they can open their business.

Tim Fitzgerald asked if the applicant is planning to build anything on this property.

Jason Van Essen stated that he was not aware of any plans to build new structures.

Greg Wattier asked if the Raccoon River League Baseball Park is in a floodplain.

Jason Van Essen stated he believes it is.

Greg Wattier stated that these are great uses in these types of areas. It makes a ton of sense to him and having raised children in Des Moines these types of venues are a good idea. The fact that it has been here even though it lost its grandfather rights, he would be in support of the project.

Greg Jones explained that the graphic showing the blue line going through the middle with the right side being floodplain, which allows the applicant to have a building and left side floodway does not allow it. Potentially half the building can be used and half cannot. He is uncomfortable based on what he knows and having dealt with the Army Corps of Engineers for the Commission to decide that is not where the blue line goes. He believes that the Commission needs proof and that is what a survey will provide.

Greg Wattier stated that the applicant's proposal is a great reuse of this property.

Dann Flaherty asked staff if this floodplain/floodway information came from a recent Army Corps of Engineer's study.

Jason Van Essen stated yes this is the most recent information, but it is not a site specific engineered land survey which is what is being suggested by staff as part of the applicant's rezoning. Noted that a survey would be required for the applicant to use the property in order to comply with the City's Floodplain Development Ordinance even if the property was rezoned to "U-1".

Ofir Carmi 932 59th Street questioned why rezoning was an issue as he would be taking all of the risk. If a flood is going to happen he would get a warning and would take his equipment out and when it is no longer flooded he would come back, clean it up and run his business.

Ted Irvine asked if the applicant has worked with staff.

Ofir Carmi stated yes he has.

Ted Irvine stated that maybe the applicant needs to spend more time with staff to ensure he fully understands all of the requirements. He gets the sense that everybody would like to see the applicant do what he has proposed but there is going to be some requirements beyond what is the Commission's role.

Greg Jones reiterated that he does not believe the Commission can say yes because they do not have the power to move the line between floodway and floodplain. The only way that the line gets moved is by the applicant getting more technical data than the Army Corps of Engineers uses. The Army Corps of Engineers uses cross sections as they come down the center line of whatever stream there is. So the line we have currently between the floodplain and the floodway is not truly accurate. That does not mean that the Commission has the ability to allow the applicant to violate that line by zoning. The Commission cannot allow anything in the floodway.

Ofir Carmi stated that he is not doing any construction. His request is for the same thing that this site was being used for before.

Greg Jones explained that the applicant does not have rights to use the facilities that are already there. The best that can be hoped for is to allow the applicant to prove that the line between the floodway and floodplain is in a different place than the Army Corps of Engineers thinks it is. That is done by a survey which is more accurate data.

Shirley Daniels commented that everyone would like to have the proposal there. It gets into a procedural thing that the Commission has no right to make that decision. She asked staff if the Commission denies the request can the applicant go before the Board of Adjustment.

Jason Van Essen stated there are a couple of things that are regulating the use of this land. Zoning has been adopted locally based off of the floodway and floodplain information provided by the Federal government. In addition, there are Federal regulations in place that limit the use of this site regardless of local zoning. Noted that even if this site was rezoned to "C-2" that the applicant would have to go through the process described by Mr. Jones. Noted that the decisions that the City makes also impact the community's participation in the Federal flood insurance program.

Vicki Stogdill asked if the applicant did go to the Board of Adjustment could he get the Conditional Use Permit without the survey.

Jason Van Essen stated that if the City Council rezones the entire property to "U-1" the applicant could proceed to the Board for a Conditional Use Permit and theoretically be issued a Conditional Use Permit without a survey. However, he could not get a Certificate of Occupancy, building permit or site plan approval from the City's Permit & Development Center without a survey showing how the site would comply with the City's Floodplain Development Ordinance.

CHAIRPERSON OPENED THE PUBLIC HEARING

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

Ofir Carmi reiterated that he is trying to do something nice for the community.

Dann Flaherty suggested that the applicant talk to staff and get information on potential surveyors.

Greg Jones stated that even if the applicant gets a surveyor there is no guarantee that they will move that line or move it in the applicant's favor.

COMMISSION ACTION:

CJ Stephens moved staff recommendation to find the requested rezoning is in conformance with the Des Moines' 2020 Community Character Plan; denial of the request as initially proposed and approval of rezoning the portion of the site that is located outside of the Federally designated floodway to "U-1" District as demonstrated by a Land Surveyor licensed with the State of Iowa. This would require the applicant to have a legal description and exhibit prepared and submitted by the applicant's engineer or surveyor prior to the City Council's hearing on the matter.

Motion passed 12-2 (Ted Irvine and Vicki Stogdill voted in opposition)

Respectfully submitted,



Jason Van Essen, AICP
Senior City Planner

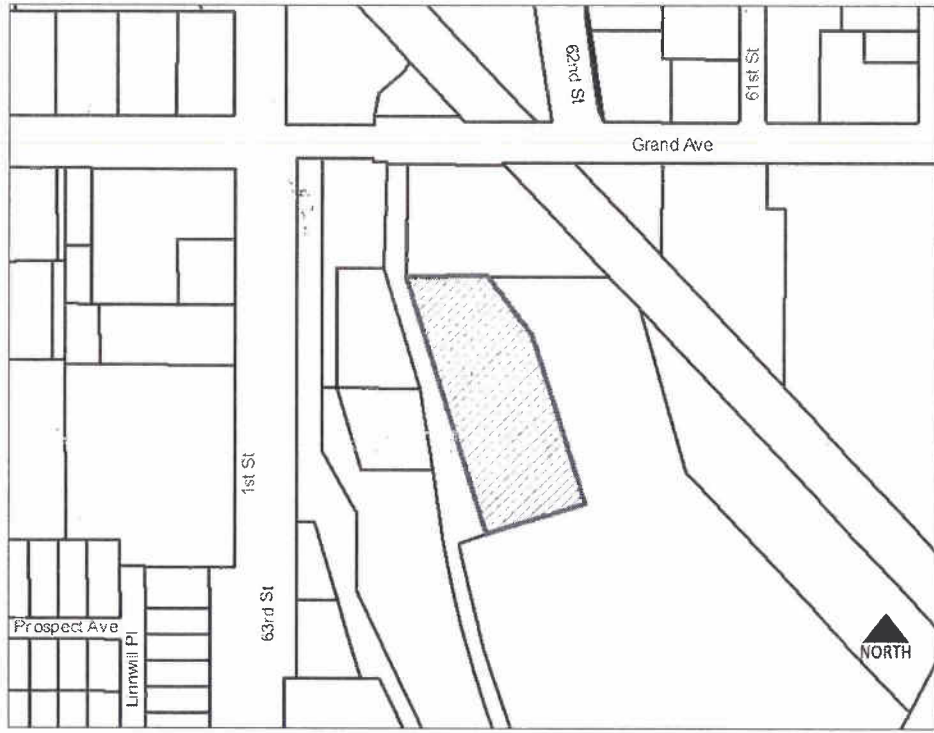
JMV:clw

Attachment

Request from Ofir Carmi (purchaser) for rezoning of property located at 6220 Grand Avenue.				File # ZON2013-00140	
Description of Action	Denial to rezone from "FW" Floodway to "U-1" Floodplain to allow for consideration of a Conditional Use for an amusement enterprise business to allow reuse of the existing vacant go-kart track and miniature golf amusement complex.				
2020 Community Character Plan	Park/Open Space (current & no change proposed)				
Horizon 2035 Transportation Plan	No Planned Improvements				
Current Zoning District	"FW" Floodway District				
Proposed Zoning District	"U-1" Floodplain District				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	3	0			
Outside Area					
Plan and Zoning Commission Action	Approval		Required 6/7 Vote of the City Council	Yes	
	Denial	12-2		No	X

Oreo Junction LLC - 6220 Grand Avenue

ZON2013-00140



Item ZON2013-00040
140

Date Sept 13, 2013

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

(am)
 (am not)
RECEIVED
COMMUNITY DEVELOPMENT

Print Name Michael Kellar

SEP 17 2013

Signature [Handwritten Signature]

DEPARTMENT

Address 113 51st St.

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

I like the idea of additional entertainment
options in our neighborhood. Only concern
is that property may be rezoned for this use,
this business fails, and property then gets
used for something detrimental to neighborhood.

Item ZON2013-00040
140 Date 9-18-13

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

(Circle One)
RECEIVED
COMMUNITY DEVELOPMENT

Print Name MIKE SPRECHER / SANDS

Signature M. Sprecher

SEP 20 2013

Address 627 W. HANCOCK

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

Item ZON2013-00040
140 Date 9/16/13

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

(Circle One)
(Advanced Auto Parts
MMA-A DSM LLC)

Print Name Michael Eckstrom

Signature Michael Eckstrom

Address 72099 Wineglass Rd

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

Albert Lee
MNS 500.17

We have no objections to the request.

RECEIVED
COMMUNITY DEVELOPMENT

SEP 20 2013

DEPARTMENT