

.....
Date October 18, 2021

**RESOLUTION SETTING HEARING ON REQUEST FROM SMOKERS GENIE II, LLC
TO REZONE PROPERTY LOCATED AT 3733 EASTON BOULEVARD**

WHEREAS, Smokers Genie II, LLC (owner), represented by Kuljit Chauhan (officer), requested to amend the PlanDSM: Creating Our Tomorrow future land use designation for real property locally known as 3733 Easton Boulevard (“Property”), and to rezone the Property from MX1 Mixed Use District to MX3 Mixed Use District, to allow reuse of the Property for a fuel station use and to allow conditional use consideration by the Zoning Board of Adjustment for the sale of alcoholic liquor, wine, beer and/or tobacco products; and

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on October 7, 2021 regarding said request from Smokers Genie II, LLC, the Commission members voted 9-1 in support of a motion to recommend **APPROVAL** to rezone the Property from MX1 Mixed Use District to MX2 Mixed Use District to allow reuse of the Property for a fuel station use and to allow conditional use consideration by the Zoning Board of Adjustment for the sale of wine, beer and/or tobacco sales, which MX2 district was found to be in conformance with the PlanDSM future land use designation with no amendment required thereto, and which proposed rezoning to MX2 Mixed Use District rather than MX3 Mixed Use District has been agreed to by Smokers Genie II, LLC; and

WHEREAS, the Property is legally described as follows:

Part of Lot 2 of the Official Plat of the N1/2 of the NE1/4 of the NE1/4 of Section 32, Township 79 North, Range 23 West of the 5th P.M., now included in and forming a part of the City of Des Moines, Iowa, more specifically described as follows, to-wit:

Commencing at a point 36.7 feet South of the Northeast corner of said Section 32 said point being the Northeast corner of said Lot 2; Thence South along the East line of said Section (being the East line of said Lot 2 and the West line of East 38th Street as now located) 165 feet; Thence West 120 feet; Thence North 106.45 feet to the North line of said Lot 2 (being the South line of Easton Boulevard); Thence North 63 degrees 57 minutes East 133.51 feet along the North line of said Lot 2 (being the South line of Easton Boulevard) to the point of beginning, Polk County, Iowa.

EXCEPT a tract described as follows: Part of Lot 2, of the Official Plat of the N1/2 of the NE1/4 of the NE1/4 of Section 32, Township 79 North, Range 23 West of the 5th P.M., more particularly described as follows:

Beginning at the Northeast corner of said Lot 2; Thence South 0 degrees 00 minutes 00 seconds East (assumed), along the East line of said Lot 2, 165.09 feet to a found 1/2" iron rod; Thence North 89 degrees 51 minutes 24 seconds West, 20.00 feet; Thence North 0 degrees 00 minutes 00 seconds East, 150.30 feet; Thence North 57 degrees 58 minutes 18 seconds West, 5.30 feet to the North line of said Lot 2; Thence North 64 degrees 01 minute 25 seconds East along said North line, 27.25 feet to the point of beginning, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.



Roll Call Number

Agenda Item Number

17

Date October 18, 2021

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

1. That the attached communication from the Plan and Zoning Commission is hereby received and filed.
2. That the meeting of the City Council at which the proposed rezoning is to be considered, and at which time the City Council will hear both those who oppose and those who favor the proposal, shall be held at City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa, at 5:00 p.m. on November 1, 2021.
3. 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:

/s/ Glenna K. Frank

Glenna K. Frank, Assistant City Attorney

(ZONG2021-000027)

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|------|--------|
| COWNIE | | | | |
| BOESEN | | | | |
| GATTO | | | | |
| GRAY | | | | |
| MANDELBAUM | | | | |
| VOSS | | | | |
| WESTERGAARD | | | | |
| TOTAL | | | | |

MOTION CARRIED APPROVED

Mayor

CERTIFICATE

I, P. Kay Cmelik, 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

October 12, 2021

Communication from the City Plan and Zoning Commission advising that at their October 7, 2021 meeting, the following action was taken regarding a request from Smokers Genie II, LLC (owner), represented by Kuljit Chauhan (officer) to rezone property located at 3733 Easton Boulevard from “MX1” Mixed Use District to “MX3” Mixed Use District to allow reuse of the property for a fuel station use and to allow the property to seek Conditional Use approval for alcohol sales by a fuel station use.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 9-1 as follows:

| Commission Action: | Yes | Nays | Pass | Absent |
|--------------------|-----|------|------|--------|
| Francis Boggus | X | | | |
| Dory Briles | X | | | |
| Abby Chungath | X | | | |
| Kayla Berkson | | | | X |
| Chris Draper | X | | | |
| Jann Freed | | | | X |
| Todd Garner | X | | | |
| Johnny Alcivar | X | | | |
| Lisa Howard | | | | X |
| Carolyn Jenison | X | | | |
| William Page | | X | | |
| Steve Wallace | X | | | |
| Greg Wattier | | | | X |
| Emily Webb | X | | | |

APPROVAL of Part A) The proposed rezoning be found in conformance with the existing PlanDSM future land use designation of Neighborhood Mixed Use.

Part B) Approval of rezoning the property to “MX2” Mixed Use District.

(ZONG-2021-000026)

Written Responses

1 in Favor

1 in opposition

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Part A) Staff recommends that the proposed rezoning be found in not in conformance with the existing PlanDSM future land use designation of Neighborhood Mixed Use.

Part B) Staff recommends denial of the requested amendment to the PlanDSM future land use designation from Neighborhood Mixed Use to Community Mixed Use since the Community Mixed Use designation is intended to be located along high-capacity transit corridors, such as University Avenue or Hubbell Avenue, and not along neighborhood collector streets, such as Easton Boulevard.

Part C) Staff recommends denial of rezoning the property to “MX3” Mixed Use District since the “MX3” District is not in conformance with the existing PlanDSM future land use designation of Neighborhood Mixed Use.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

- 1. Purpose of Request:** The requested rezoning to “MX3” Mixed Use District would allow the vacant fuel station convenience store use to resume use as a fuel station and convenience store as well as to be eligible to request a Conditional Use from the Board of Adjustment for a Variance of the separation distance from Four Mile Community Center and for sale of alcoholic liquor, wine, beer, and/or tobacco products. As a fuel station use, no more than 40% of gross receipts from sales could be derived from the sale of alcoholic liquor, wine, beer, and/or tobacco products.
- 2. Size of Site:** 13,086 square feet or 0.30-acre.
- 3. Existing Zoning (site):** “MX1” Mixed Use District.
- 4. Existing Land Use (site):** The property consists of a 2,646-square foot vacant convenience store building, fuel pump island, and paved surface parking.
- 5. Adjacent Land Use and Zoning:**
 - East** - “MX1” & “N3a”; Uses are retail, one-household residential, and group living.
 - West** - “P2” & “F”; Uses are Four Mile Community Center, Four Mile Park, and Development Reserve.
 - North** - “MX1”, “F”, & “N3a”; Uses are a self-service car wash, Development Reserve, and one-household residential.
 - South** - “P2” & “F”; Uses are Four Mile Community Center, Four Mile Park, and Development Reserve.

6. **General Neighborhood/Area Land Uses:** The subject property is located in a small cluster of commercial uses located at the intersection of Easton Boulevard and East 38th Street. The surrounding area consists of primarily one-household residential uses, parks and open spaces, school, and community center uses.
7. **Applicable Recognized Neighborhood(s):** The subject property is in the Grays Woods Neighborhood and within 250 feet of the Sheridan Gardens Neighborhood. The neighborhood associations were notified of the public hearing by mailing of the Preliminary Agenda on September 20, 2021 and by mailing of the Final Agenda on October 1, 2021. Additionally, separate notifications of the hearing for this specific item were mailed on September 17, 2021 (20 days prior to the public hearing) and September 27, 2021 (10 days prior to the public hearing) 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 on the date of the mailing. The Grays Woods Neighborhood Association notices were mailed to Linda Adamson, 1330 East 41st Street, Des Moines, IA 50317. The Sheridan Gardens Neighborhood Association notices were mailed to Kurt Lee, 3507 East 39th Court, Des Moines, IA 50317.

The applicant is required to conduct neighborhood outreach. They will be available to provide a summary of that outreach during the public hearing.

8. **Relevant Zoning History:** On June 22, 2011, by Docket No. ZON2011-00108, the Zoning Board of Adjustment conditionally approved reuse of the site for a convenience store with fuel sales while providing a 4.17-foot landscaped setback from the north (front) property line and 8 off-street parking spaces.

On October 26, 2011, by Docket No. ZON2011-00179, the Zoning Board of Adjustment conditionally approved use of the 42-foot by 62-foot (2,605 square feet) building for a gas station/convenience store with sales of wine and beer. The property is located adjacent to (within 0 feet of) the Four Mile Community Center, which is considered a public park.

In late 2018, the subject property was identified as vacant by the Neighborhood Services Department. In mid-2019, the property owners removed the existing pole sign following mailed notification that the site had lost its non-conforming rights for a pole sign and use as a fuel station. The property owners were additionally informed an approved site plan would be required prior to any reuse of the site.

9. **PlanDSM Land Use Plan Designation:** Neighborhood Mixed Use.

- 10. Applicable Regulations:** The Commission reviews all proposals to amend zoning boundaries or regulations 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, and taking into consideration the criteria set forth in Chapter 18B of the Iowa Code. The Commission may make recommendations to the City Council on conditions to be made in addition to the existing regulations so long as the subject property owner agrees to them in writing. The recommendation of the Commission will be forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

- 1. PlanDSM: Creating Our Tomorrow:** The applicant is proposing to rezone the subject property from “MX1” District to “MX3” District. The Zoning Ordinance states that “MX1” District is intended for the mixed-use, neighborhood-scale nodes and corridors within the city, where daily uses are accessible by walking from surrounding neighborhoods. The Zoning Ordinance also states that the “MX3” District is intended for mixed-use nodes and corridors within the city, where residents and visitors may access multiple uses by walking and automobile. This district accommodates higher intensity commercial uses at a smaller scale.

The existing Neighborhood Mixed Use designation is described as follows:

NEIGHBORHOOD MIXED USE

Small-scale mixed-use development typically located at the intersections of collector and/or arterial streets and along transportation corridors. Non-residential development is designed to serve the immediate neighborhood and include small retail, offices, restaurants, and service-oriented development. Low-medium density residential may be included in mixed use development.

In order for the proposed rezoning to “MX3” District to be in conformance with PlanDSM, the future land use designation must be revised to Community Mixed Use.

The Community Mixed Use designation is described as follows:

COMMUNITY MIXED USE

Small- to medium-scale mixed use development, located on high-capacity transit corridors or at the intersection of transportation corridors. Community mixed use areas include both a mix of medium density residential and a mix of retail and service establishments designed to attract customers from a large service area encompassing multiple neighborhoods and may include specialty retail that attracts regional customers.

Staff does not believe that the Community Mixed Use designation would be appropriate for this site. The Community Mixed Use designation is intended to be located along high-capacity transit corridors, such as University Avenue or Hubbell Avenue, and not along neighborhood collector streets, such as Easton Boulevard. Furthermore, the property is surrounded predominantly by areas designated as Low Density Residential on the Future Land Use Map.

2. Additional Information: In mid-2019, the subject property was identified as vacant for 6 months triggering loss of its non-conforming rights as a fuel station convenience store with allowed sale of alcoholic liquor, wine, beer, and/or tobacco products and the variance of the separation distance from 4 Mile Community Center. The “MX1” Mixed Use District does not permit fuel station uses. Any reuse of the site for a fuel station and/or convenience store requires rezoning to the “MX3” Mixed Use District and an approved site plan. Should the subject property be rezoned to “MX3” Mixed Use District, it would be eligible by-right to resume a fuel station use.

Should the property be rezoned to “MX3” Mixed Use District, the fuel station use would be eligible to seek a Conditional Use from the Board of Adjustment that would allow for a Variance of the separation distance from Four Mile Community Center and the sale of alcoholic liquor, wine, beer, and/or tobacco products. As a fuel station use, no more than 40% of gross receipts from sales could be derived from the sale of alcoholic liquor, wine, beer, and/or tobacco products.

SUMMARY OF DISCUSSION

Kyle Larson presented staff report and recommendation.

Andrew Hermsmeier with World Connect Energy Services, representing the applicant, presented a Power Point presentation to the commission.

Johnny Alcivar asked if they are planning to keep the existing fuel pumps.

Andrew Hermsmeier stated yes, all they will be doing is adding the canopy and updating the fuel dispensers.

Abby Chungath stated since the nature of the request is a rezoning, why this site and not a site along a more commercial corridor.

Andrew Hermsmeire stated the site is specific to the other store right down the street that would share the same brand and loyalty to customers.

Jason Van Essen stated another option for this site would be MX2 which would allow fuel sales as a conditional use but would not allow sale of liquor.

Chris Draper asked what would drive their business, alcohol, or fuel sales?

Andrew Hermsmeire stated it would be a little bit of both. They are trying to create a safe and convenient destination.

Chris Draper asked with the current zoning, can they have a convenience store that sells liquor with no fuel?

Jason Van Essen stated they could have limited retail without the sale of fuel and could seek a condition use permit from the Zoning Board of Adjustment for sale of beer and wine, but not liquor.

Khulji Chauhan representing Smokers Genie stated they are not looking for a liquor license for this location, just beer and wine.

Chris Draper asked if providing gas is a mandatory element of the business?

Khulji Chauhan stated yes as it helps attracts customers to the location.

Johnny Alcivar asked the applicant if they have any opposition to the MX2 zoning?

Khulji Chauhan asked if the MX2 zoning would allow the convenient store and fuel sales?

Jason Van Essen stated the primary difference between MX2 and MX3 is the option of asking for hard liquor sales. Fuel sales is a conditional use in the MX2 District, as is beer and wine sales. The applicant has to go before the Zoning Board of Adjustment either way.

Khulji Chauhan stated he would be ok with MX2 zoning.

Todd Garner asked if the change in zoning would require site plan approval?

Jason Van Essen stated they would need a site plan and would be required to bring the site into compliance with current standards.

Todd Garner asked if the site plan would come back in front of the Plan and Zoning Commission.

Jason Van Essen stated it would if there is a need for any Type 2 design alternatives.

CHAIRPERSON OPENED THE PUBLIC HEARING

No one was present or requested to speak.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Chris Draper asked what is the traffic here relative to what would be suitable for this type of zoning change?

Jason Van Essen stated MX3 is the most auto oriented of the 3 MX districts (MX1, MX2, MX3) and allows most intense use types and development.

Emily Webb asked if city staff would have the same concerns with MX2 zoning.

Jason Van Essen stated the value of MX2 would be the conditional use criteria and process, which would allow the conditional use to be revoke if the use becomes a nuisance.

COMMISSION ACTION:

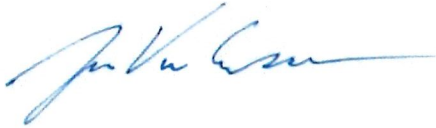
Johnny Alcivar made a motion for:

Part A) The proposed rezoning be found in conformance with the existing PlanDSM future land use designation of Neighborhood Mixed Use.

Part B) Approval of rezoning the property to "MX2" Mixed Use District.

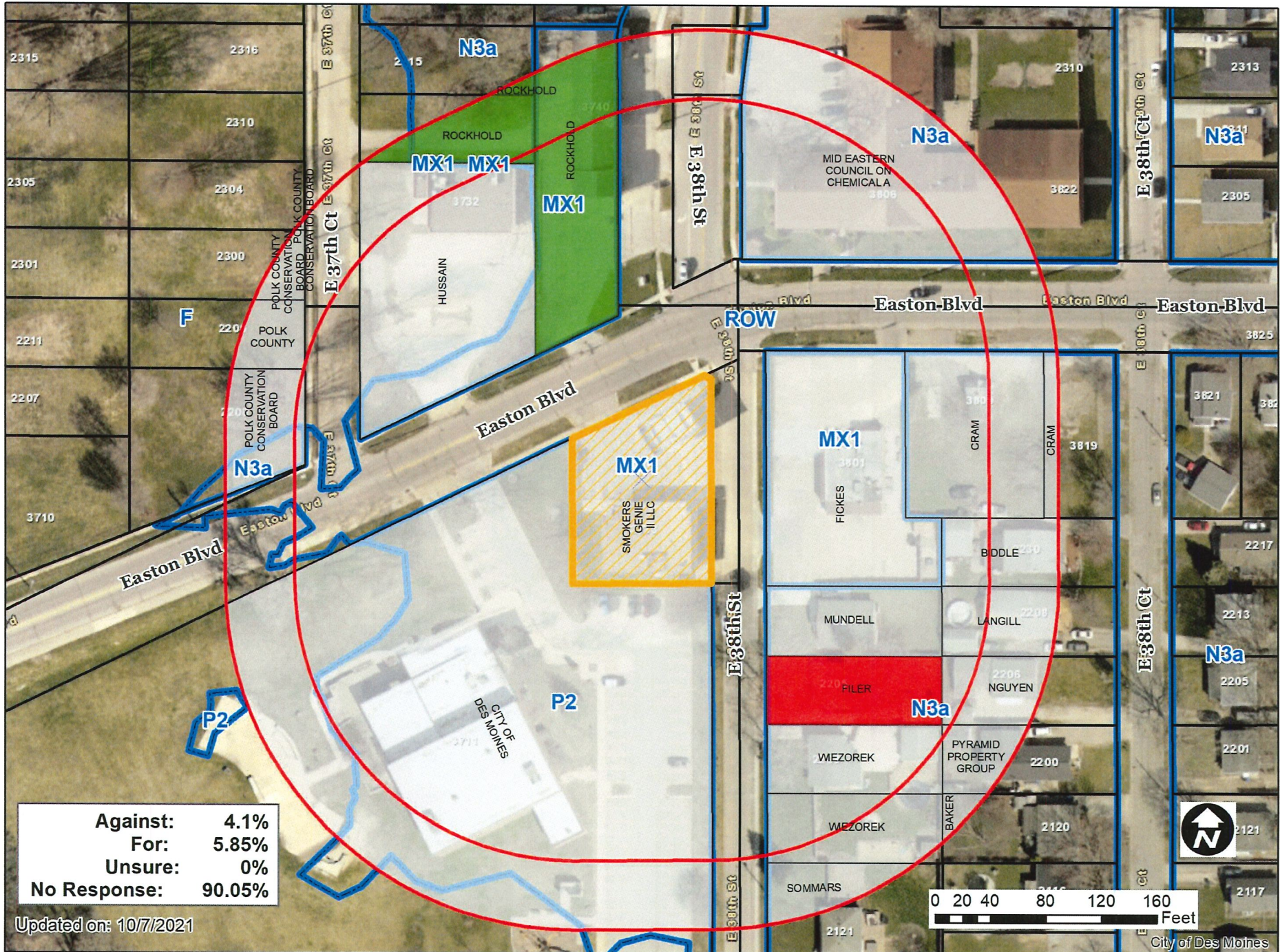
Motion passed: 9-1

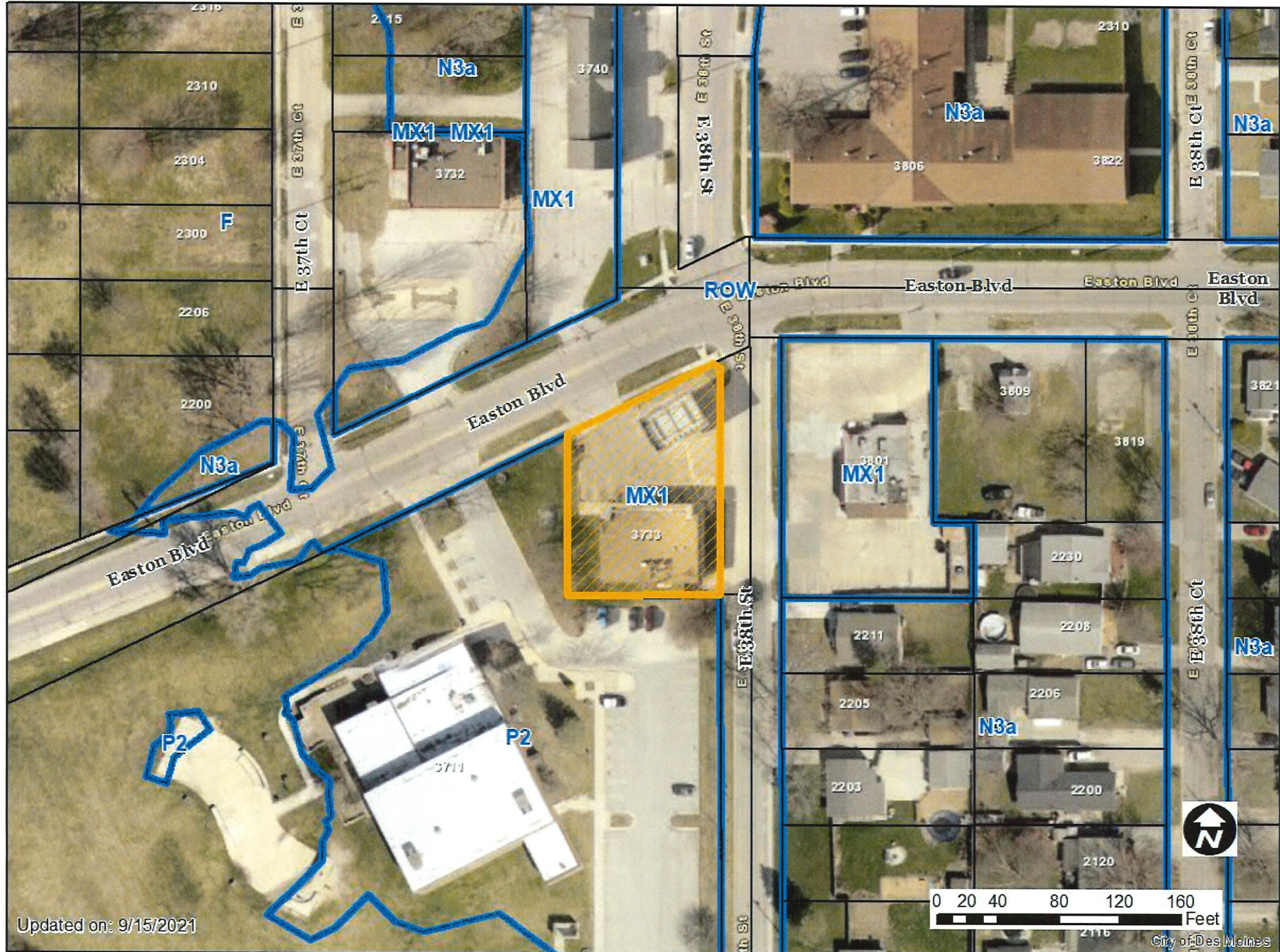
Respectfully submitted,



Jason Van Essen, AICP
Planning & Urban Design Administrator

JMV:tjh





Updated on: 9/15/2021

1 inch = 83 feet

Item: ZONG-2021-000026

Date: 4/30/2021

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Staff Use Only

RECEIVED
COMMUNITY DEVELOPMENT

OCT 06 2021

Signature: Alan Rockhold

Name: ALAN Rockhold Four Mile Lane

Address: 3740 EASTON BLVD WASH

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

Item: ZONG-2021-000026

Date: 09/30/21

Please mark one of the following

I am in favor of the request

I am not in favor of the request

Staff Use Only

RECEIVED
COMMUNITY DEVELOPMENT

OCT 04 2021

Signature: Stephanie Filer

Name: STEPHANIE FILER

Address: 2205 E 38TH ST, DSM

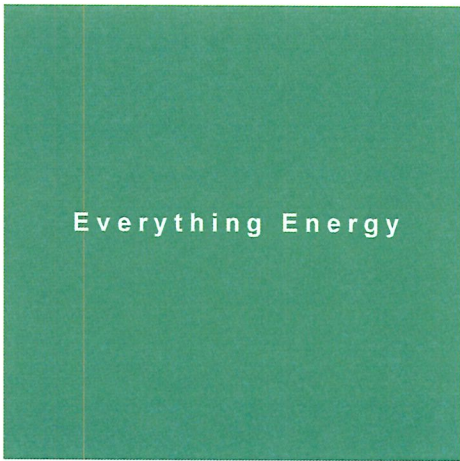
Reason for opposing or approving this request may be listed below:

THE ZONING CHANGE WOULD INCREASE STREET
TRAFFIC & CAUSE MORE NOISE POLLUTION, &
INCREASED LIGHTING TO A NEIGHBORHOOD
THAT ALREADY HAS HAD MULTIPLE ISSUES AT
NEARBY BUSINESSES WITH NOISE & SAFETY.



Introduction

October 7, 2021



Prepared for:



The Benefits of Working with World Kinect Energy Services



- **Market Knowledge from a Local Sales Team** – we're locally available to be of service to you.
- **Grow Your Fuel Volume and Top Line** – Joining the **Commercial Fueling Network (CFN)** creates local access to 300,000 US fleet transportation companies that carry the CFN card.
- **National Account Pricing on EMV Compliance** – Leverage our scale by accessing special negotiated pricing on dispensers through our strong relationships with Gilbarco and Wayne.
- **Grow Your Footprint** – We deliver fuel to 2,650+ sites across the U.S., and have access to a network of owners that are interested in selling/buying stations.
- **Marketing Support** – Access to a top-notch marketing organization.
- **Reliable Fuel Supply** – Guaranteed supply backed by a strong, financially stable company delivered by a modern and well-maintained fleet.

We solve energy challenges

From liquid fuel products to electricity, natural gas, and clean energy, our team of certified energy professionals ensure the energy challenges of our customers are solved safely and reliably.

World Kinect Energy Services Focuses On:

Delivering the energy you need.

Protecting your budget.

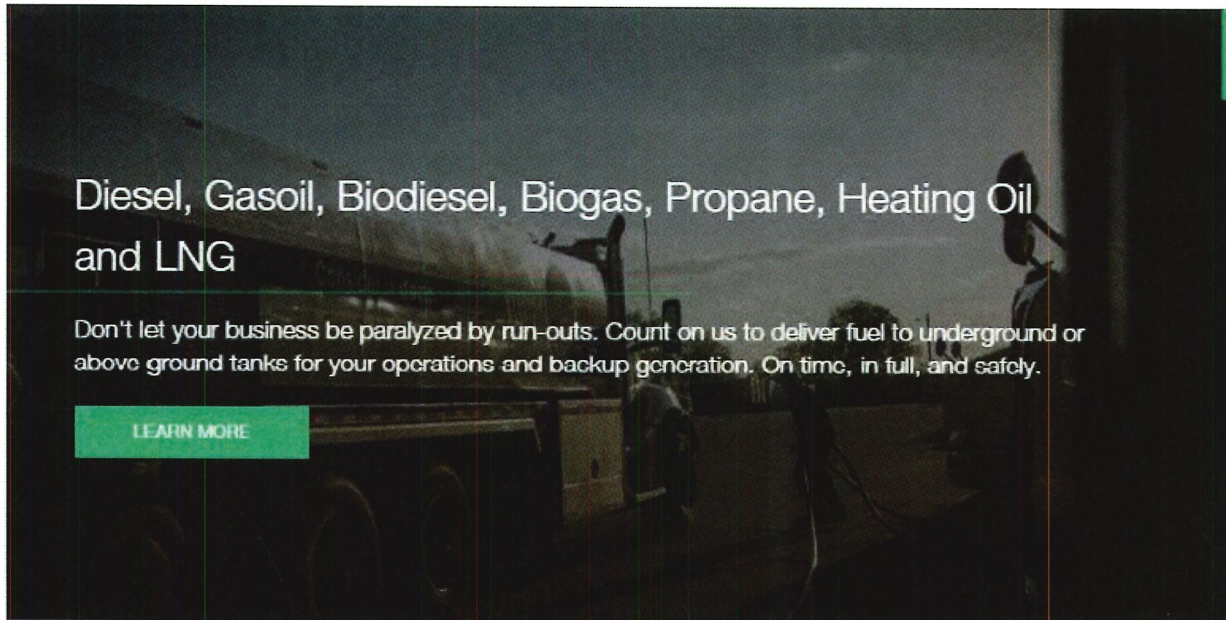
Reducing your carbon footprint.



A World of Solutions For Gas Fuel Retailers

World Kinect Energy Services is a trusted partner for thousands of independent gas station and truck stop owners, delivering quality fuel, branded programs and advisory services aimed at your growth and customer satisfaction.

As the competition is getting tougher, and consumers are getting more demanding, we help you succeed with our re-imaging programs including a wide range of major oil company and our own proprietary brands (Amstar®, Terrana, XTR). For single and multi-store operators, we safely and reliably deliver on-spec supplies of branded and unbranded fuels. From the first step to the last, our team provides you industry specific expertise and strategic guidance to help you grow.



Bulk Fuel Delivery

Tank Solutions

Commercial Fueling Network

Fuel Retailers Branded Programs

Electricity and Natural Gas Procurement

Kinect Online & Customer Portals

EMV Dispenser Technology

World Kinect Offers a World of Solutions for Gas Fuel Retailers

01

STABILITY

Access to cash and financing solutions from a stable, publicly-traded company.

02

BE THE BRAND YOU WANT.

Suite of national brands larger than most competitors, including our own Amstar brand.

03

SCALE

Scale to negotiate the best pricing & ensure product availability with suppliers nationwide.

04

EXPERIENCE

Large footprint & offer benefiting thousands of customers.

05

YOUR BOTTOM LINE

Strategic guidance to help you grow by a company with 35-years in the business.



Physical Supply

Don't fear a runout. Guaranteed supply backed by a strong, financially stable company and delivered by a modern and well-maintained fleet.

Energy Procurement

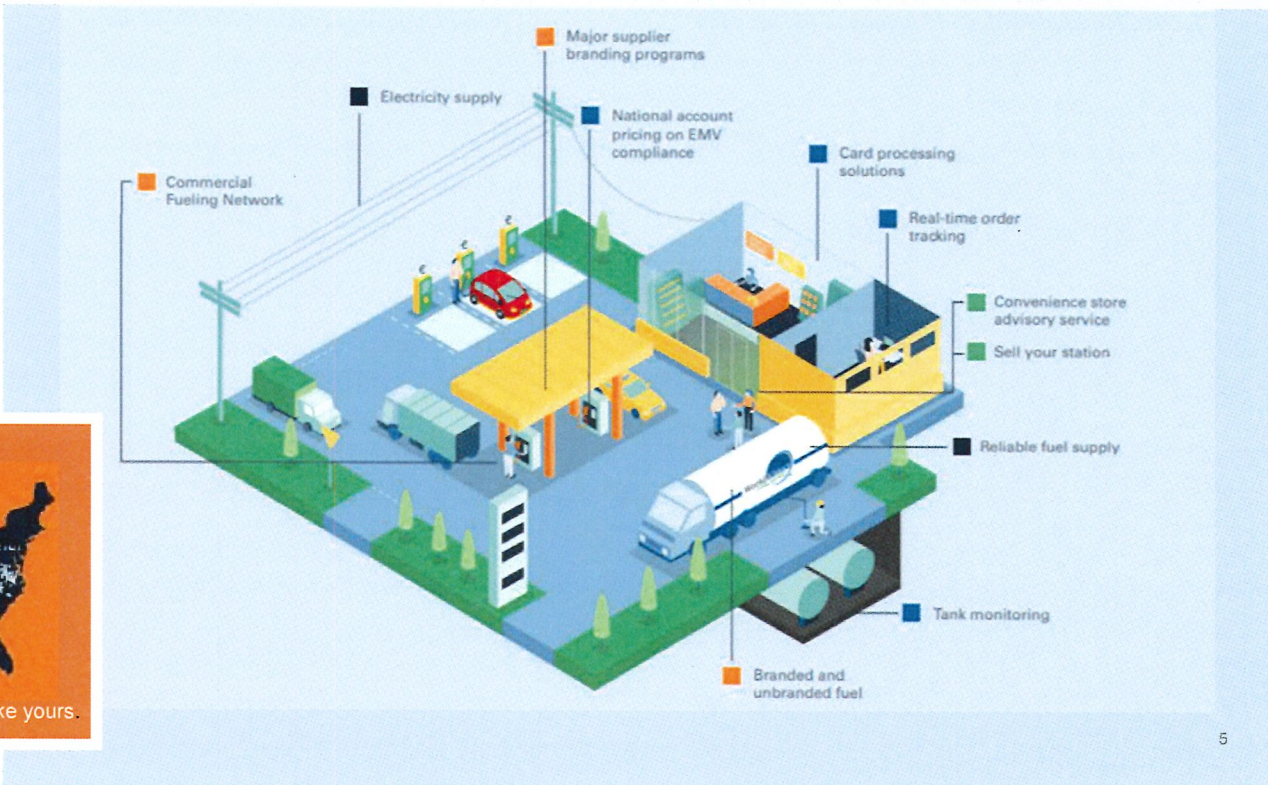
Positioned to support the fuel needs of major brands and independent operators. We're your single point of contact for identifying and securing the best suppliers for you across the commodity markets.

Data Management

Our customer portals offer a secure and efficient way to view and manage orders, invoices and data – without waiting on return calls or emails. Receive real-time transit updates with 24/7 order tracking and delivery information. Benefit from National Account pricing for EMV compliant dispensers through our strong relationships with Gilbarco and Wayne.

Convenience Store Advisory Service

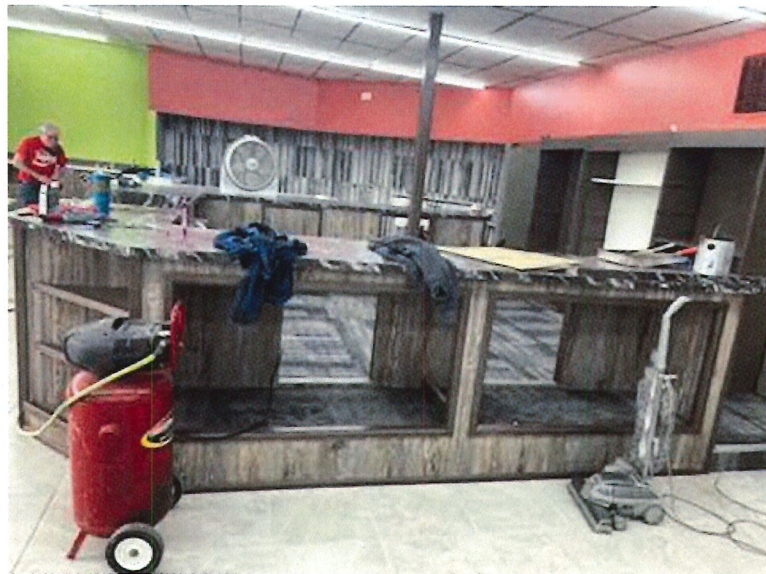
Develop convenience store excellence by tapping the experience, skills and techniques of our local energy experts.



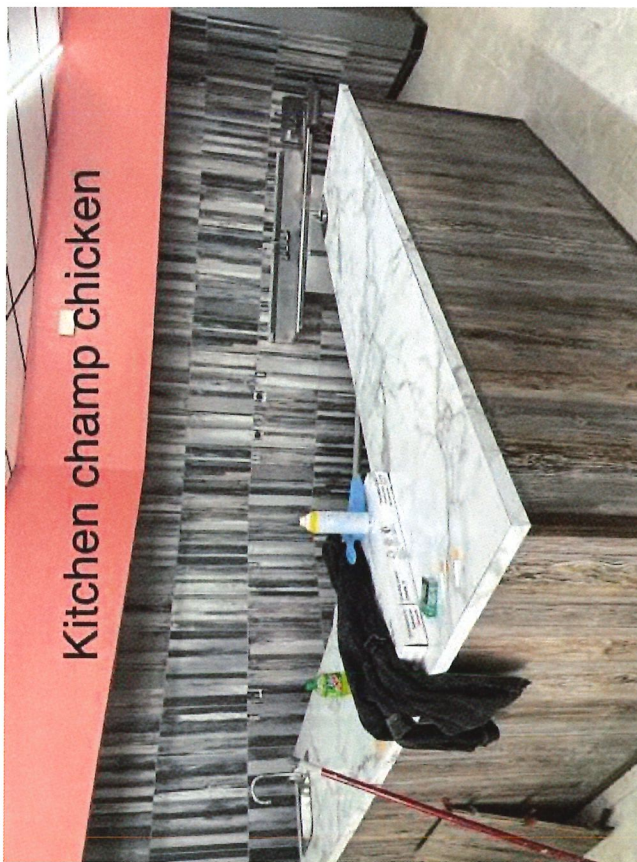


www.world-kinect.com





Kitchen champ chicken





www.world-kinect.com



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al. All Right

CFN - Commercial Fueling Network Simplest Way to Grow Your Fuel Volume and Your Top Line

Through our partnership with CFN, our expanded fuel card network offers fuel retailers access to new fuel volume at no cost to you.

- Access a **network of 300,000+** U.S. fleet transportation companies looking for locations to fuel at.
- Opportunity to untap previously restricted CFN Fleetwide network fuel volume in the area.
- We'll be marketing to local area fleets.
- No out-of-pocket cost to join!

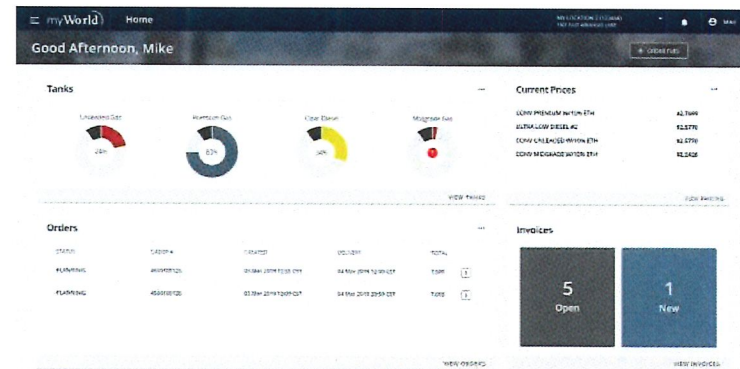
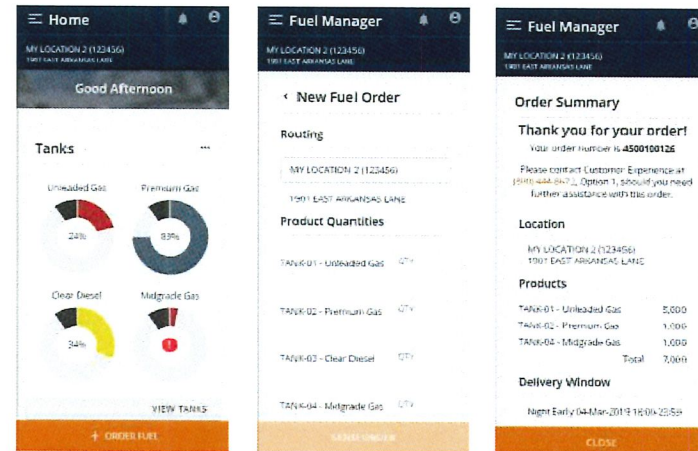


MyWorld Customer Portal

Gain Instant Access to All your Fuel Information in One Place

Focus on your business, not on ordering fuel or searching for invoices. Our single reporting platform creates visibility to fuel deliveries, pricing and invoicing.

- Never run out of fuel – track tank levels, see fuel prices, place orders and track real-time delivery status.
- Simplify invoice management with access to digitized billing statements. Download invoice data reports with customizable filters.
- Exclusive only to World Kinect customers!



World Kinect Energy Services Discretionary Marketing Support Funds

Local marketing funds to build Bobby and Steve's brand across the Minneapolis metro.

- Social Media
- Billboard
- Radios
- Print Advertising

