



## August 28, 2017 – Supplemental City Attorney's Report

1. **ULP Proposed Hotel Development - CZA.** At its Special Meeting August 21, 2017, the Council discussed the possibility of entering into a Conditional Zoning Agreement (“CZA”) with the proposed hotel developers to address and specify certain conditions/requirements to rezoning.
  - The Council scheduled a Work Session for August 28 to discuss a CZA further.
  - A draft version of a CZA is attached.
  - A prior version of this document was shared with the developers and their lawyer last week.
  - As outlined August 21, I anticipate that the Council will adopt a final version of the CZA at its meeting September 12, before the public hearing on the proposed rezoning request.
  
2. **Hotel-Motel Tax.** I am attaching two versions of Resolution No. 17-33, which requests that the Johnson County Auditor submit a ballot measure to voters at the November 7 City Election.
  - As discussed before, under Iowa law, half the revenue generated by such a tax must be spent on acquiring, constructing or maintaining recreation, convention, cultural, or entertainment facilities or on tourist and convention business; the other half may be spent for any lawful purpose (that is, spent for any of the things the City pays for with funds the City receives from property taxes).
  - The attached “lawful purpose” version of Resolution No. 17-33 says the City may use the remaining half for “any lawful purpose”.
  - The attached “specific” version of Resolution No. 17-33 says the City will use the remaining half for the following purposes:
    - Ninety percent (90%) for neighborhood housing and infrastructure revitalization, including road repairs, neighborhood stabilization, and affordable housing; and
    - Ten percent (10%) for any lawful purpose.
  - The “specific” version was drafted based upon comments received by Council Member Lane.
  - The Council may adopt either version of the Resolution or amend it further to specify additional or different purposes.
  - If a ballot measure specifying a particular purpose was adopted by voters, that purpose could be changes only by a further majority vote on a later election ballot.

RESOLUTION NO. 17-33

**RESOLUTION SUBMITTING LANGUAGE FOR A PUBLIC MEASURE TO BE  
INDLUCED ON THE NOVEMBER 7, 2017, CITY ELECTION BALLOT  
TO IMPOSE A HOTEL AND MOTEL TAX OF 7% PURSUANT TO  
IOWA CODE CH. 423A.**

**WHEREAS**, Iowa law permits Cities to impose a hotel and motel tax in an amount not exceeding 7% on the sales price of hotel rooms; and

**WHEREAS**, the City Council of the City of University Heights, Iowa, desires to submit the question whether to impose such a tax to voters; and

**WHEREAS**, if adopted, the tax would apply only if one or more hotels is constructed and operates in the City; and

**WHEREAS**, Iowa law requires that half the revenue generated from such a tax be spent on acquiring, constructing or maintaining recreation, convention, cultural, or entertainment facilities or on tourist and convention business; and

**WHEREAS**, the other half of revenue may be used for any lawful purpose,

**IT IS, THEREFORE, RESOLVED** that the City Council of the City of University Heights, Iowa, adopts and approves the following public measure ballot language and hereby submits this language to the Johnson County Auditor for inclusion on the City Election Ballot November 7, 2017:

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED?

Shall the City of University Heights, Iowa impose a hotel and motel tax as provided by Iowa Code ch. 423A at the rate of seven percent (7%) effective January 1, 2018, upon the gross receipts from the renting of any and all rooms in any hotel, motel, inn, or public lodging house and direct that fifty percent (50%) of revenue from this tax be used for the promotion and encouragement of tourism-related activities in the City and surrounding areas as provided by Iowa law. The remaining revenues from this tax shall be used for any lawful purpose.

Upon motion by \_\_\_\_\_, and seconded by \_\_\_\_\_, the vote was as follows:

	AYE	NAY	ABSENT	ABSTAIN
Haverkamp	_____	_____	_____	_____
Lane	_____	_____	_____	_____
Maher	_____	_____	_____	_____
Quezada	_____	_____	_____	_____
Zimmermann	_____	_____	_____	_____

Upon Roll Call thus recorded, the Resolution is declared adopted this 28<sup>th</sup> day of August, 2017.

---

Louise From, Mayor  
City of University Heights

ATTEST:

---

Christine M. Anderson, City Clerk

RESOLUTION NO. 17-33

**RESOLUTION SUBMITTING LANGUAGE FOR A PUBLIC MEASURE TO BE  
INDLUCED ON THE NOVEMBER 7, 2017, CITY ELECTION BALLOT  
TO IMPOSE A HOTEL AND MOTEL TAX OF 7% PURSUANT TO  
IOWA CODE CH. 423A.**

**WHEREAS**, Iowa law permits Cities to impose a hotel and motel tax in an amount not exceeding 7% on the sales price of hotel rooms; and

**WHEREAS**, the City Council of the City of University Heights, Iowa, desires to submit the question whether to impose such a tax to voters; and

**WHEREAS**, if adopted, the tax would apply only if one or more hotels is constructed and operates in the City; and

**WHEREAS**, Iowa law requires that half the revenue generated from such a tax be spent on acquiring, constructing or maintaining recreation, convention, cultural, or entertainment facilities or on tourist and convention business; and

**WHEREAS**, the City Council desires to specify that the other half of revenue generated from such a tax will be used for this purpose/these purposes:

- Ninety percent (90%) for neighborhood housing and infrastructure revitalization, including road repairs, neighborhood stabilization, and affordable housing; and
- Ten percent (10%) for any lawful purpose.

**IT IS, THEREFORE, RESOLVED** that the City Council of the City of University Heights, Iowa, adopts and approves the following public measure ballot language and hereby submits this language to the Johnson County Auditor for inclusion on the City Election Ballot November 7, 2017:

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED?

Shall the City of University Heights, Iowa impose a hotel and motel tax as provided by Iowa Code ch. 423A at the rate of seven percent (7%) effective January 1, 2018, upon the gross receipts from the renting of any and all rooms in any hotel, motel, inn, or public lodging house and direct that fifty percent (50%) of revenue from this tax be used for the promotion and encouragement of tourism-related activities in the City and surrounding areas as provided by Iowa law. The remaining revenues from this tax shall be directed as follows:

- Ninety percent (90%) for neighborhood housing and infrastructure revitalization, including road repairs, neighborhood stabilization, and affordable housing; and
- Ten percent (10%) for any lawful purpose.

Upon motion by \_\_\_\_\_, and seconded by \_\_\_\_\_,  
the vote was as follows:

	AYE	NAY	ABSENT	ABSTAIN
Haverkamp	_____	_____	_____	_____
Lane	_____	_____	_____	_____
Maher	_____	_____	_____	_____
Quezada	_____	_____	_____	_____
Zimmermann	_____	_____	_____	_____

Upon Roll Call thus recorded, the Resolution is declared adopted this 28<sup>th</sup>  
day of August, 2017.

\_\_\_\_\_  
Louise From, Mayor  
City of University Heights

ATTEST:

\_\_\_\_\_  
Christine M. Anderson, City Clerk

**CONDITIONAL ZONING AGREEMENT**

This agreement is made between the City of University Heights, Iowa, a municipal corporation ("the City"), Michal Flaum, University Lake Partners II, LLC, in its capacity of as owner of 905 Melrose Avenue, and Kinnick Yacht Club, LLC (collectively "Owners"); University Lake Partners II, LLC, in its capacity of proposed developer of a hotel (hereinafter referred to as "Developer"); and James Glasgow and Greg Stiltner, as members and managers of Developer, as of the 12<sup>th</sup> day of September, 2017.

**WHEREAS**, Michael Flaum is the owner of approximately 3.75 acres of property located at 901 Melrose Avenue in University Heights, Iowa; and

**WHEREAS**, University Lake Partners II, LLC is the owner of property located at 905 Melrose Avenue in University Heights, Iowa; and

**WHEREAS**, Kinnick Yacht Club, LLC is the owner of property located at 909 Melrose Avenue in University Heights, Iowa; and

**WHEREAS**, Developer has requested that the City rezone Owners' property, in whole or in part, from R-1 Single Family Residential to Commercial Hotel; and

**WHEREAS**, Owners have consented to Developer's rezoning request; and

**WHEREAS**, Iowa Code §414.5 (2017) provides that the City of University Heights may impose reasonable conditions on approving an applicant's rezoning request, over and above existing regulations, in order to satisfy public needs caused by the requested change; and

**WHEREAS**, the Developer acknowledges that certain conditions and restrictions are reasonable to insure that the development of the property is consistent with the City's comprehensive plan, and the Owners accept the development conditions as agreed by Developer and the City of University Heights; and

**WHEREAS**, the Developer acknowledges that the City has entertained and undertaken various efforts to stabilize City

neighborhoods, encourage owner-occupied dwellings, and limit and regulate the spread of commercial uses of property within the City, which is predominantly residential in character; and

**WHEREAS**, the Developer is committed to the City's vision to promote, create, and maintain an attractive community and to provide a residential-living environment for the neighbors of the proposed development, particularly those on Olive Court and Leamer Court; and

**WHEREAS**, the City has determined that, with appropriate conditions to ensure that neighborhood stabilization efforts are furthered and promoted, that development proceeds in an environmentally sensitive manner, and that measures to improve pedestrian, bicycle, and motor vehicle safety are observed, the requested zoning change is consistent with the City's Comprehensive Plan; and

**WHEREAS**, the Developer agrees, if the Developer ever acquires title to Owners' property, to develop this property in accordance with the terms and conditions of this Conditional Zoning Agreement, and the Owners agree that these conditions have been imposed upon their properties,

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:**

1. Michael Flaum ("Flaum") is the legal titleholder of the property known locally as 901 Melrose Avenue and legally described as follows:

\*\*\*\*

2. University Lake Partners II, LLC ("ULP II") is the legal titleholder of the property known locally as 905 Melrose Avenue and legally described as follows:

\*\*\*\*

ULP II is one and the same entity as Developer.

3. Kinnick Yacht Club, LLC ("Kinnick Yacht Club") is the legal titleholder of the property known locally as 909 Melrose Avenue and legally described as follows:

\*\*\*\*

4. Developer has entered into one or more Purchase Agreements, under the terms of which Flaum and Kinnick

Yacht Club have agreed to cooperate with the Developer's rezoning request in order to allow the Developer to meet one of the Developer's conditions requiring satisfactory rezoning of the property, and, if all conditions of sale are met, to sell 901 Melrose Avenue and 909 Melrose Avenue to the Developer.

5. Developer has submitted an application to rezone 901 Melrose Avenue, a portion of 905 Melrose Avenue, and 909 Melrose Avenue, as shown more particularly in the "Rezoning Exhibit" prepared by MMS Consultants, Inc., a copy of which is attached hereto as Exhibit "A" and made a part hereof by this reference. The property that is the subject of the rezoning request (and described and depicted in Exhibit "A" shall be referred to as "the Property").
6. Flaum, Kinnick Yacht Club, ULP II in its capacity as owner of 905 Melrose Avenue (collectively "Owners"), and Developer acknowledge that the City wishes to insure conformance to the principles of the City's Comprehensive Plan. Further, the parties acknowledge that Iowa Code §414.5 (2017) provides that the City may impose reasonable conditions on granting an applicant's rezoning request, over and above the existing regulations, in order to satisfy public needs caused by the requested change.
7. In consideration of the City's approval of Developer's rezoning request, Developer agrees to, and Owners accept, the following conditions:
  - a. That development of the Property will conform to all applicable requirements of the City's Zoning Ordinance, as amended.
  - b. That development of the Property will conform to all applicable requirements of all of the City's other Ordinances, as amended, including those that recently have been recommended for amendment or adoption by the City's Zoning Commission related to post-construction storm water runoff control; maximum building coverage; subdivision; and parkland dedication.
  - c. That Owners and Developer shall not challenge the authority of the City Council of the City of University Heights to regulate further the development of the Property under a Hotel

Commercial Planned Unit Development (PUD) Agreement, as provided in the City's Zoning Ordinance, as amended, including but not limited to regulation regarding erosion control and sensitive areas considerations; building size and location on the Property; site design and building elevations; vehicular access; landscaping and common open space; restrictions on types of commercial uses and hours of operation for such uses; restrictions on signage; and other restrictions, regulations, and requirements.

d. Developer agrees to convey, on the City's behalf, to one or more persons, organizations, or entities, to be specified by the City in the City's sole and absolute discretion, **property known locally as \_\_\_\_\_ Olive Court and \_\_\_\_\_ Olive Court**, for the purpose of facilitating the City's neighborhood stabilization efforts and goals. The conveyances shall occur no later than 90 days from the date the City approves Developer's PUD Plan Application. The City in its sole and absolute discretion may direct and impose restrictions, regulations, and requirements with respect to the properties conveyed, and Developer shall have no say in those matters. In no event shall the City approve Developer's Plan Application or issue a building permit with respect to the property until the requirements of this para. 7(d) have been met.

d. Developer agrees to convey, on the City's behalf, to one or more persons, organizations, or entities, to be specified by the City in the City's sole and absolute discretion, **two properties within the City on Olive Court that the City deems acceptable in the City's sole and absolute discretion**, for the purpose of facilitating the City's neighborhood stabilization efforts and goals. The conveyances shall occur no later than 90 days from the date the City approves Developer's PUD Plan Application. The City in its sole and absolute discretion may direct and impose restrictions, regulations, and requirements with respect to the properties conveyed, and

Developer shall have no say in those matters. In no event shall the City approve Developer's Plan Application or issue a building permit with respect to the property until the requirements of this para. 7(d) have been met.

- e. The Developer, James Glasgow, and Greg Stiltner, agree that neither they nor their agents, employees, successors, heirs, or assigns, nor any business, organization, corporation, partnership, or other entity in which they have an ownership, equity, or creditor interest or relationship shall become the owner or mortgagee of or otherwise have any legal, equitable, or creditor interest of any type, kind, or nature in any real property in the City that abuts or has a street address on Melrose Avenue, Olive Court, or Leamer Court for ancillary hotel-stay related business operations, except insofar as is necessary to comply with this Conditional Zoning Agreement, including para. 7(d), and to complete the proposed development.
- f. The Developer shall convey ownership of the historic house situated at 901 Melrose Avenue to the City, which shall have \_\_\_\_ months from the date the City approves Developer's PUD Plan Application to relocate the house, and if the City does not relocate the house within that time, ownership of the house shall revert to the Developer for disposition as the Developer sees fit.
- g. The Developer shall not seek Tax Increment Financing or other financial assistance from the City in connection with the proposed development.
- h. The brand or flag of the hotel to be operated on the Property, approved by the City as part of the Developer's PUD Plan Application, may not be changed except by written instrument approved by the City.

8. Owners, Developer, James Glasgow, Greg Stiltner, and the City acknowledge that the conditions contained herein are reasonable conditions to impose on the Property and on them under Iowa Code §414.5, and that the conditions satisfy public needs that are caused by the requested zoning change.
9. Owners, Developer, James Glasgow, Greg Stiltner, and the City acknowledge that, in the event the Property is transferred, sold, conveyed, redeveloped, or subdivided, all development or redevelopment will conform strictly to the terms of this Conditional Zoning Agreement.
10. Owners, Developer, James Glasgow, Greg Stiltner, and the City acknowledge that this Conditional Zoning Agreement shall be deemed to be a covenant running with the Property, and with title to the Property, and shall remain in full force and effect as a covenant with title to the Property, unless or until released of record by the City. Owners, Developer, James Glasgow, Greg Stiltner, and the City further acknowledge that this Conditional Zoning Agreement shall inure to the benefit of, and bind all successors, representatives, and assigns of all parties hereto.
11. Owners, Developer, James Glasgow, and Greg Stiltner acknowledge that nothing in this Conditional Zoning Agreement shall be construed to relieve the Owners and Developer from complying with all other applicable local, state, and federal laws, ordinances, rules and regulations.
12. Owners, Developer, James Glasgow, Greg Stiltner, and the City acknowledge and agree that this Conditional Zoning Agreement is hereby incorporated by reference into the ordinance rezoning the subject property (Ordinance No. 208), and that upon adoption and publication of Ordinance No. 208, this Conditional Zoning Agreement shall be filed in Johnson County Recorder's office at the Developer's expense.
13. This Conditional Zoning Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

CITY OF UNIVERSITY HEIGHTS, IOWA

\_\_\_\_\_  
Louise From, Mayor

ATTEST:  
(SEAL)

\_\_\_\_\_  
Christine M. Anderson, City Clerk

\_\_\_\_\_  
Michael Flaum

UNIVERSITY LAKE PARTNERS II, LLC  
(in its capacity as owner of 905 Melrose Avenue)

\_\_\_\_\_  
James Glasgow, Member and Manager

\_\_\_\_\_  
Greg Stiltner, Member and Manager

KINNICK YACHT CLUB, LLC

\_\_\_\_\_  
Scott Kading, Member and Manager

UNIVERSITY LAKE PARTNERS II, LLC  
(in its capacity as owner of 905 Melrose Avenue)

\_\_\_\_\_  
James Glasgow, Member and Manager

\_\_\_\_\_  
Greg Stiltner, Member and Manager

UNIVERSITY LAKE PARTNERS II, LLC  
(in its capacity as Developer)

\_\_\_\_\_  
James Glasgow, Member and Manager

\_\_\_\_\_  
Greg Stiltner, Member and Manager

\_\_\_\_\_

ST. ANDREW PRESBYTERIAN CHURCH

By: \_\_\_\_\_ (signature)  
\_\_\_\_\_ (printed name)

\_\_\_\_\_  
Jeffrey L. Maxwell

MIDWESTONE BANK

By: \_\_\_\_\_ (signature)  
\_\_\_\_\_ (printed name)

STATE OF IOWA            )  
                                  )     SS:  
COUNTY OF JOHNSON    )

On the \_\_\_\_ day of September, 2017, before me, a notary public in and for the State of Iowa, personally appeared Louise From, Mayor, and Christine M. Anderson, Clerk of the City of University Heights, to me personally known, and who, being by me duly sworn,

did say that they are the Mayor and City Clerk of the City of University Heights, Iowa; that the seal affixed to this instrument is the corporate seal of the City; and that said instrument was acknowledged and sealed on behalf of the City, and that Louise From and Christine Anderson acknowledged the execution of said instrument to be their voluntary act and deed and the voluntary act and deed of the City, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the  
State of Iowa

STATE OF IOWA            )  
                                  )     SS:  
COUNTY OF JOHNSON    )

This instrument was acknowledged before me on the \_\_\_\_\_ day of September, 2017, by \_\_\_\_\_ as the \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the  
State of Iowa

STATE OF IOWA            )  
                                  )     SS:  
COUNTY OF JOHNSON    )

This instrument was acknowledged before me on the \_\_\_\_\_ day of September, 2017, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the  
State of Iowa