



6. Defendants Dennis Gerard, John A. Smith, Jason Wentland, Barry Long and Amy Blair were members of the LeClaire City Council at all times material to this petition.

### **B. Factual Background**

7. Griffith's residence at 1210 Eagle View Court is located in a "P/R-2" "One & Two Family Residential Overlay Planned Development".
8. Santillan's residence at 130 Riverview Heights Drive is located in a "R-1" "Single Family Residential District".
9. Brecht's residence at 1204 Eagle View Court is located in a "P/R-2" "One & Two Family Residential Overlay Planned Development".
10. Kwik Trip, Inc. (Kwik Star) is a Wisconsin corporation based in La Crosse, Wisconsin which operates commercial gasoline stations in the United States.
11. On December 1, 2017 Kwik Star simultaneously filed a petition to rezone 3.3 acres of "R-1" "Single Family Residential District" real property to a "C-3" "Highway Oriented Commercial Service District" and a Site Plan application to build a 24 hour, 7 day a week commercial gasoline station.
12. The Kwik Star rezoning petition did not contain a Traffic Study pertaining to the amount of vehicle traffic trips the 24 hour gasoline station would generate on Eagle Ridge Road.
13. All proposed rezonings, Comprehensive Plan amendments and commercial site plans must first be reviewed by the LeClaire Planning and Zoning Commission (P&Z Commission) after a lawful public hearing is conducted by the P&Z Commission. A written recommendation must then be made by the P&Z Commission to the City Council regarding each site plan, amendment or rezoning.
14. Notice of publication of both the P&Z public hearing and the City Council public hearing on the Kwik Star rezoning, the Comprehensive Plan Amendment and the six

zoning amendments to the LeClaire City code must be published in a newspaper having a general circulation in the city of LeClaire. §362.3(1) of the Iowa code.

15. The 3.3 acre rezoning site, commonly known as 926 and 934 Eagle Ridge Road, is owned by Penelope Molumby (Molumby) and has always been zoned “R-1” “Single Family Residential District” by LeClaire.
16. After a study was completed by the Bi-State Regional Commission, the LeClaire Comprehensive Plan was updated and unanimously approved by the City Council through the passage of Resolution No. 16-156 on December 19, 2016.
17. The December 19, 2016 amended LeClaire Comprehensive Plan projected the future land use of the Molumby real property solely as an “R-1” “Single Family Residence District” use.
18. Plaintiffs own and live in real property adjacent to or near the Molumby real property and their use and enjoyment of their real property, including its monetary resale value, will be materially diminished by the rezoning of the Molumby real property from an “R-1” “Single Family Residential District” to a “C-3” “Highway-Oriented Commercial Service District”.
19. Plaintiffs hired licensed Iowa realtor John Lonergan as an expert consultant who determined that the surrounding residential properties, including but not limited to Plaintiffs’ residences, to the Molumby real property would be diminished ten to twenty percent in monetary value because of the Kwik Star commercial rezoning.
20. The P&Z Commission held a public hearing on January 11, 2018 regarding the Kwik Star rezoning petition, six proposed zoning ordinance amendments, an amendment to the LeClaire Comprehensive Plan and the Kwik Star Site Plan containing a 7,500 square foot commercial gasoline station with 16 gas pumping stations.
21. The six proposed zoning ordinance amendments to the LeClaire City Code pertained to:
  - a. The square footage definition of a convenience store. (Amendment 1)

b. The height regulations for accessory structures in the C-1, C-2 and C-3 districts. (Amendments 2, 3 and 4)

c. The size and number of allowable residential accessory structures (Amendment 5)

d. The size and maximum number of accessory buildings in a residential zoning district. (Amendment 6)

22. At the January 11, 2018 P&Z Commission public hearing a large number of LeClaire residents, including Griffith, Brecht and Santillan, publicly stated their opposition to the Kwik Star rezoning, the amendment to the Comprehensive Plan and the Kwik Star Site Plan.
23. LeClaire calculated the legal protest rate pursuant to § 414.5 of the Iowa Code and the LeClaire City Code at 64% of the lawful property owners within a 200 foot radius of the Molumby real property.
24. On January 11, 2018 the P&Z Commission recommended denial of the Kwik Star rezoning petition, recommended denial of the amendment to the Comprehensive Plan changing the Molumby real property from a residential to a commercial use and recommended denial of the Kwik Star Site Plan to the LeClaire City Council.
25. On January 11, 2018 the P&Z Commission did not vote on or make any recommendations regarding the six zoning ordinance amendments to LeClaire Zoning Ordinance.
26. After the January 11, 2018 P&Z recommendation, Kwik Star submitted two major changes to its Site Plan
  1. Changing the square foot size of its 24 hour 7 day a week retail commercial store by 1,800 feet.
  2. Substantially increasing the allowable height of accessory structures on the site plan.

27. LeClaire did not refer these two major changes to the Kwik Star Site Plan, that were made after the January 11, 2018 P&Z recommendation, to the P&Z Commission at any time before the final approval of the Kwik Star Site Plan by the City Council.
28. On January 19, 2018, three days before the City Council's January 22, 2018 public hearing, Kwik Star had a traffic study done on the amount of commercial traffic the 24 hour commercial store would generate. The traffic study was flawed.
29. The public hearing affidavit states that the notice of the January 11, 2018 P&Z public hearing and the January 22, 2018 City Council public hearing was published in the Muscatine Journal on January 4, 2018.
30. The Kwik Star Traffic Study was not referred to the P&Z Commission for their review and recommendation.
31. On January 22, 2018 the City Council held public hearings on the amendment to the Comprehensive Plan, the Kwik Star Site Plan and the Kwik Star rezoning.
32. On February 19, 2018 Resolution No. 18-28 amending the Comprehensive Plan was approved by the City Council. Resolution No. 18-28 was never signed by the Mayor or the City Administrator.
33. Resolution No. 18-28, amending the Comprehensive Plan, contains no land use designation changes of real property and does not contain a legal description of the Molumby real property.
34. Resolution No. 18-28 contains the postal address number for the Molumby residence.
35. The approved Comprehensive plan Amendment was labeled by LeClaire as "Resolution No.18-28, Comprehensive Plan Amendment #1". The motion carried by voice vote. *See attached, Ex. A.*
36. On February 19, 2018 the City Council approved Resolution No. 18-30, the Kwik Star Site Plan for the gasoline station.

37. On February 19, 2018 the City Council approved the first reading of an ordinance to rezone 3.3 acres of the Molumby real property for Kwik Star, labeled Ordinance No.18-792.
38. Ordinance No. 18-792 to rezone the Molumby real property contained six zoning amendments to the LeClaire Zoning Ordinance, pertaining to the definition and maximum allowable size of a convenience store, increasing the height limitations on accessory buildings in three commercial zoning districts, and amending the size and maximum number of accessory buildings on a commercial property.

**Count I – The LeClaire City Council March 19, 2018 Meeting Violated The Iowa Open Meetings State Law, Chapter 21 of the Iowa Code.**

39. Plaintiffs reallege paragraphs 1 through 38 of the petition as if fully set forth herein.
40. The City Council is a governmental body subject to Chapter 21 of the Iowa Code, the state Open Meetings Law.
41. The City Council has a statutory duty to provide notice of the time, date and place of each meeting it holds. §21.4(1)(a) of the Iowa Code.
42. On March 19, 2018 the City Council conducted a meeting in the LeClaire City Council chambers.
43. The March 19, 2018 posted City Council meeting agenda did not contain the time the City Council meeting would commence. *See attached Ex. B, March 19, 2018 LeClaire City Council Agenda.*
44. The City Council posted agenda for the March 19, 2018 meeting merely had the words “immediately following P.H.” on the agenda.
45. The March 19, 2018 posted City Council agenda did not state the place where the City Council meeting would be held.
46. The March 19, 2018 City Council meeting was a null and void meeting conducted in violation of Chapter 21, the Open Meetings Law, of the Iowa Code.

**Count II - The LeClaire City Council Approved the Comprehensive Plan Amendment and the Kwik Star Commercial Site Plan in Violation of City Code and State Law.**

47. Plaintiffs reallege paragraphs 1-46 of the petition as if fully set forth herein.
48. On February 19, 2018 the City Council acted in a manner that was illegal, arbitrary and capricious in approving changes to both the LeClaire Comprehensive Plan and the Kwik Star Site Plan simultaneously, for the sole benefit of Molumby and Kwik Star.
- 1. The Kwik Star Site Plan Pertains to a Non-Existent Real Property. There was no Site Plan Attached to Resolution No. 18-30.***
49. By law, a City Council is required to approve a Site Plan amendment by a Resolution and the Resolution must be duly signed and attested by the Mayor and City Clerk promptly after its passage.
50. Resolution No. 18-30, approving a Kwik Star Site Plan on February 19, 2018, had no Site Plan attached to it, making it impossible to know what site plan that the City Council allegedly approved.
51. The Site Plan Resolution No. 18-30 title states that it pertains to real property located at 1201 Eagle Ridge Road. The Molumby real property is located at 926 and 934 Eagle Ridge Road. There is no real property in LeClaire designated as 1201 Eagle Ridge Road. *See attached Ex. C., Resolution No. 18-30.*
52. The City Council did not consider the public's health, safety and welfare, and its actions in approving the Kwik Star Site Plan were illegal, arbitrary and capricious.
53. The Site Plan approved an accessory structure for a gasoline canopy twenty-six and one-half (26.5) feet in height, that exceeded the lawful height restriction of 15 feet for an accessory structure. *LeClaire City Code, XVIII.13-4 "Size and Maximum Number of Accessory Buildings"*

54. The Kwik Star commercial Site Plan cannot be lawfully approved by the City Council until after the Molumby residential real property is lawfully rezoned to a commercial use.

***2. The Comprehensive Plan Amendment, Resolution 18-28, Was Not Lawfully Approved.***

55. On February 19, 2018 the City Council claims to have passed Resolution No. 18-28 approving an amendment to the Comprehensive Plan, the first reading of an ordinance to rezone the Molumby residential real property for the Kwik Star commercial use and the Kwik Star Site Plan.

56. The February 19, 2018 Comprehensive Plan amendment #1, passed by the City Council, was unlawfully amended to change one spot of land on the Comprehensive Plan, the Molumby real property, for the benefit of the proposed Kwik Star commercial development.

57. The February 19, 2018 Comprehensive Plan motion, passed by City Council, states that it includes “revising and relocating the boundary of the proposed infill development area which has yet to be adopted”.

58. A City Council must approve and the Mayor must sign a written Resolution to make any Comprehensive Plan amendment lawful.

59. A resolution amending the Comprehensive Plan must describe the subject property in detail, the purpose of the land use amendment, and the rationale for making the amendment to the Comprehensive Plan.

60. The LeClaire City Council never passed any lawful Resolution to amend the Comprehensive Plan at the February 19, 2018 City Council meeting and merely passed a motion which stated:

“Moved by Smith, seconded by Gerard, to approve amending the future land use portion of the City’s comp plan, specifically the subject property, P. Molumby – 3.3 acres at 934 and 926 Eagle Ridge Road, from its current designation of residential use to commercial use, including revising and relocating



the boundary of the proposed infill development area which has yet to be adopted.”

61. There was never a valid resolution passed by the City Council on February 19, 2018 to amend the Comprehensive Plan.
62. The actions of the City Council regarding Resolution No. 18-28 are null and void because they were illegal, arbitrary, capricious and were acted upon in violation of state law and city code.
63. The City Council was required to amend the Comprehensive Plan by a valid and lawful Resolution as the Comprehensive Plan was updated and amended by Resolution No. 16-56 on December 19, 2016.
64. The City Council must specify a land area for changes in the Comprehensive Plan and cannot amend the Comprehensive Plan by referring to a spot of land by the postal service address to lawfully change the land use designation.
65. The City Council’s decision to amend the Comprehensive Plan was made in a haphazard manner, with little or no investigation, information, analysis, or fact finding necessary to ensure that this amendment furthers the public safety, health, morals and general welfare of the citizens of the City of LeClaire.
66. The City Council’s failure to lawfully amend the Comprehensive Plan on February 19, 2018 renders the Comprehensive Plan amendment and the March 19, 2018 rezoning of the Molumby real property null and void.

***3. The Kwik Star Traffic Study Was Not Submitted to The LeClaire P&Z Commission for their Review and Recommendation.***

67. All rezonings, amendments, and the integral components of a rezoning application must first be submitted to the P&Z Commission for their review, study and recommendation pursuant to state code and city ordinance.
68. A “C-3” commercial rezoning applicant which will operate 24 hours a day is required to submit a traffic study to LeClaire under the LeClaire city code.

69. The January 19, 2018 Kwik Star Traffic Study, created after the P&Z public hearing was conducted, was not referred back to the P&Z Commission for its review and recommendation.
70. Article XII.1 of the “C-3” zoning district states: “This District is normally located along the interstate-highway and major arterial and collector streets, capable of handling large volumes of traffic”.
71. Plaintiffs hired expert consultant John Lonergan to analyze the Kwik Star Traffic Study. Lonergan found fatal flaws in the Kwik Star Traffic Study and addressed these issues before the City Council at the February 19, 2018 City Council meeting. *See attached February 19, 2018 John Lonergan Letter to Mayor & City Council, Ex. D.*
72. Plaintiffs, their attorney, the public and expert consultant John Lonergan objected that the commercial development would cause serious problems with the traffic flow on Eagle Ridge Road and Cody Road.
73. Objections were made by Plaintiffs, their attorney and the public that the Kwik Star development would cause major traffic congestion and an increase in vehicular accidents on Eagle Ridge Road and Cody Road.
74. The Kwik Star January 18, 2018 Traffic Study was an integral component of the proposed rezoning that contained substantive traffic generation numbers by vehicles and other relevant information. This was required to be submitted to and reviewed by P&Z Commission for their recommendation before the City Council could act on the rezoning.
75. The failure of LeClaire to submit the traffic study to the P&Z Commission was done in violation of LeClaire city code and §414.4 through 414.6 of the Iowa Code.

**Count III - LeClaire Rezoning Ordinance No. 18-792 Constitutes Illegal Spot Zoning.**

76. Plaintiffs reallege paragraphs 1 through 75 of the petition as if fully set forth herein.

77. Rezoning Ordinance No. 18-792 constitutes a piecemeal or haphazard rezoning of a small tract of residential land to a high density highway oriented commercial use to serve transient Interstate-80 highway traffic for the sole benefit of Molumby and the Kwik Star out of state corporate developer.
78. Ordinance No. 18-792 is illegal, arbitrary, capricious, unreasonable and constitutes an abuse of zoning discretion.
79. There is not a reasonable basis for making a land use distinction between the Molumby residential property and the adjacent residential zoned properties to the north and east, including where Plaintiffs reside.
80. The rezoning is not consistent with the stated goals and stated uses in the Comprehensive Plan that was amended by LeClaire on December 16, 2016 by Resolution No. 16-156.
81. Neither Kwik Star nor defendants presented valid legal evidence as to any substantial benefit the rezoning would provide to the public before the vote to rezone the Molumby real property.
82. There is no evidence in the record, nor any consideration by LeClaire, in voting to rezone the Molumby real property, that commercial, as opposed to residential, was the best use of the land for the City's future land use needs.
83. LeClaire did not investigate or consider whether the Molumby real property had any uniqueness as a commercial property other than its proximity to the Interstate 80 auto and truck traffic for the Kwik Star sale of gasoline and diesel fuel.
84. The January 22, 2018 City Council public hearing record in this matter is devoid of any meaningful consideration or presentation of evidence by Kwik Star in support of the factors that would qualify the spot zoning of the Molumby real property as legal.
85. The City Council rezoned the Molumby real property in an unreasonable and haphazard manner for the monetary benefit of an out of state developer and Molumby and not for the welfare of the local community.

**Count IV - The City Council Unlawfully Approved Ordinance No. 18-792 and Unlawfully Approved Six Zoning Amendments to the LeClaire City Code.**

86. Plaintiffs reallege paragraphs 1 through 85 of the petition as if fully set forth herein.
87. Because the P&Z Commission did not make a recommendation to the City Council on any of the six proposed zoning amendments to the LeClaire city code, the City Council could not lawfully approve the six proposed zoning amendments.
88. Defendants made a major change to the contents of Ordinance No. 18-792, by changing the square footage of the Kwik Star building, without referring this major change to the P&Z Commission for their review and recommendation.
89. Defendants made a major change to the contents of Ordinance No. 18-792 by changing the allowable height of an accessory building, without referring the major change to the P&Z Commission for their review and recommendation.
90. LeClaire failed to lawfully set forth the text of the six amendments to the LeClaire Zoning Ordinance, in Ordinance No. 18-792, as required by §380.2 “Amendment” of the Iowa Code .
91. Ordinance No. 18-792 did not set forth the text of each of the six subsections of the zoning ordinance as amended that is required before any municipal zoning ordinance may be lawfully amended. §380.2 “*Amendment*” of the Iowa Code.
92. The City Council approval of the Kwik Star rezoning was illegal, arbitrary, capricious, unreasonable, not based on substantial evidence and an abuse of discretion because:
  - a. The rezoning was based on a change in the Comprehensive Plan that was done to satisfy one property owner, Molumby, and not on the basis of proper land use considerations.
  - b. The rezoning constituted illegal spot zoning by the City Council.

- c. The primary reason given by the members of the City Council for approving the rezoning was to increase the tax base of the City. This is not a proper zoning consideration.
- d. There was no evidence or information presented to the City Council to justify the rezoning on the basis of proper zoning considerations.
- e. The Resolution approving the Kwik Star Site Plan applies to *1201 Eagle Ridge Road*, not to the Molumby real property.
- f. The City Council violated the Iowa Open Meetings Law on March 19, 2018.
- g. The City Council violated §380.2 of the Iowa Code by not lawfully setting forth the zoning amendments in Ordinance No. 18-792.

**Count V- LeClaire Did Not Lawfully Notify All of the Real Property Owners of Their Right to Protest and Miscalculated the Lawful Protest Rate to the Kwik Star Rezoning.**

- 93. Plaintiffs reallege paragraphs 1-92 of the petition as if fully set forth herein.
- 94. LeClaire did not lawfully notify all of the property owners within 200 feet of the rezoning site of their legal right to protest the rezoning. LeClaire deprived these real property owners of the right to lawfully protest the rezoning.
- 95. LeClaire miscalculated the protest area by including the public right-of-way in the protest area for determining the two-hundred (200) foot protest radius surrounding the Molumby real property boundaries, thus precluding other lawful real property owners from filing a legal protest. *See attached Ex. E, Protest Area Map*
- 96. LeClaire failed to lawfully notify and properly calculate the protest rate regarding the correct percentage of protests within 200 feet of the Molumby real property.
- 97. If the real property owners within a 200 foot radius of the Molumby real property had been properly notified by LeClaire the legal protest rate would have exceeded 75% of the real property owners within 200 feet of the Molumby real property.

98. The material miscalculation of the protest rate and protest area violated the LeClaire real property owner's rights to due process and right to file a legal protest on the rezoning.
99. Plaintiffs are entitled to attorney fees and costs for violations of their due process property rights pursuant to the Iowa Constitution and the United States Constitution.

**Count VI – The City Council Usurped the Zoning Board of Adjustment's Powers by Passage of Ordinance No. 18-792 and the Kwik Star Site Plan. Ordinance No. 18-792 and the Kwik Star Site Plan are Null and Void.**

100. Plaintiffs reallege paragraphs 1-99 of the petition as if fully set forth herein.
101. The LeClaire Zoning Board of Adjustment (Zoning Board) has the exclusive authority to grant a land use variance in LeClaire.
102. The powers conferred upon a municipal Zoning Board by the Iowa Legislature may not be limited by city ordinance.
103. The Zoning Board's powers cannot be usurped by LeClaire in any manner.
104. The City Council cannot lawfully approve variances to a site plan.
105. On January 22, 2018 the City Council usurped the power of the Zoning Board by granting LeClaire and/or City Council the authority to grant variances to Kwik Star or future variances to the Kwik Star Site Plan.
106. Ordinance No. 18-792 states: "No accessory building, structure, or use will exceed the height of fifteen feet (15') unless otherwise approved upon review by the city as a part of the Site Plan consideration process". (underlining added) *See attached, Ex. F, LeClaire Ordinance No. 18-792*
107. Ordinance No. 18-792 grants the City of LeClaire authority to increase the height of an accessory building higher than fifteen feet as part of the Site Plan process, usurping the statutory authority of the Zoning Board as stated in Chapter 414 of the Iowa Code and the LeClaire City Code.

108. Ordinance No. 18-792 and the Kwik Star Site Plan are illegal, null and void because they delegate powers held by the zoning board to the City Council and City Administrator.

**Count VII – The LeClaire City Council Violated the State Law Requirement that an Ordinance Must be Approved at Three Different Meetings by the City Council.**

109. Plaintiffs reallege paragraphs 1-108 of the petition as if fully set forth herein.

110. State law requires that an ordinance must be approved on three different meetings by the City Council before it is a lawfully enacted ordinance, unless the rules of procedure are lawfully suspended. *§380.3 of the Iowa Code*.

111. On March 19, 2018 the City Council claimed that they suspended the rules of the City Council and allegedly voted to approve Ordinance No. 18-792 on both the second and the third readings of the rezoning ordinance.

112. LeClaire violated §380.3 of the Iowa Code and never lawfully approved the Kwik Star rezoning at three different meetings or lawfully waived the third reading of Ordinance No. 18-792.

113. In order to approve an ordinance on both the second and third readings at one City Council meeting, the City Council must first approve a motion to suspend the rules and then take a recorded vote on the motion to suspend the rules.

114. The City Council did not take a recorded vote of three-fourths of all its members on the suspension of rules before allegedly approving the Kwik Star rezoning on the third reading on March 19, 2018.

115. The March 19, 2018 city motion to approve the Kwik Star rezoning merely stated: “Motion to approve second reading in title only and waiving of the third reading.”

116. The City Council did not lawfully take a separate vote on a motion to suspend the rules of operation before voting on the third reading of the ordinance on March 19, 2018, as required by Iowa Code §372.13(5) and LeClaire City Code §17.04(3).

117. The City Council has never adopted its own rules of procedure pursuant to a resolution as required by the LeClaire city code. *§17.04(3) of the LeClaire City Code.*
118. The City Council does not have any rules of procedure on file for the public to inspect as required by §17.04(3) LeClaire City Code.
119. The actions of the City Council regarding the Kwik Star rezoning on March 19, 2018 were taken in violation of the Iowa Code and the LeClaire city code and are null and void.
120. The Iowa Code mandates that a vote to suspend the rules must occur first before the City Council has the authority to pass an ordinance on its second reading and then on its third reading. *§380.3 of the Iowa Code.*

### **Count VIII – Declaratory Judgment Action**

121. Plaintiffs reallege paragraphs 1-120 of the petition as if fully set forth herein.
122. Plaintiffs request the Court render a declaratory judgment on the actions taken by Defendants in the Kwik Star rezoning, the Comprehensive Plan Amendment and the Site Plan approval, pursuant to I.R.Civ.P. 1.1102.
123. The Court should declare Ordinance No. 18-792, Resolution No. 18-28 and Resolution No. 18-30 illegal, null and void.
124. The Court should declare the procedures followed by LeClaire, in the Kwik Star process, in violation of the LeClaire Code, arbitrary, capricious, illegal, null and void.
125. The Court should declare the procedures followed by LeClaire, in the Kwik Star process, in violation of the Iowa Code, arbitrary, capricious, illegal, null and void.
126. The Court should declare that Defendants violated Plaintiffs' real property rights in the rezoning process.



127. Plaintiffs are entitled to attorney fees and costs for the violations of their real property rights pursuant to Article 1, section 1 of the Iowa constitution and the 5<sup>th</sup> and 14<sup>th</sup> amendments to the United States Constitution.
128. Plaintiffs are entitled to attorney fees and costs for the violations of their due process rights pursuant Article 1, section 9 of the Iowa constitution and the 14<sup>th</sup> amendment to the United States Constitution.
129. Plaintiffs have sustained monetary damages, including attorney fees, that exceed the minimum jurisdictional amount of the district court.
130. Plaintiffs are entitled to reasonable attorney fees pursuant to 42 U.S.C. 1988.

**Count IX – Certiorari Appeal Pursuant to I.R.Civ.P.1.401-1.414**


131. Plaintiffs reallege paragraphs 1-130 of the petition as if fully set forth herein.
132. Plaintiffs are entitled to a Writ of Certiorari reviewing the acts of Defendants and an Order setting aside and annulling Defendant City Council's actions on the Comprehensive Plan Amendment, Resolution No. 18-28, the Kwik Star Site Plan, Resolution No. 18-30 and Ordinance No. 18-792.
133. Plaintiffs request the Court enter an order for Defendants to certify to the Court all records of the proceedings regarding the Comprehensive Plan Amendment, the Kwik Star Site Plan, the Kwik Star Rezoning and the six zoning amendments to the LeClaire zoning ordinance.
134. Plaintiffs request the Court grant a Writ of Certiorari to be issued by the Clerk of this Court commanding Defendants to certify to the Court transcripts and all records of proceedings pursuant to I.R.Civ.P. 1.1404
135. Plaintiffs request the Court set a hearing pursuant to I.R.Civ.P 1.1410 and after set hearing set aside the actions of Defendants as described in this petition.
136. The Court should stay all further proceedings in this matter by LeClaire without bond.

### **Prayer for Relief**

Plaintiffs request that the Court enter the following relief:

1. Stay further proceedings by LeClaire in this matter without bond;
2. Declare the March 19, 2018 City Council meeting void pursuant to §21.6(3)(c) of the Iowa Code, the Iowa Open Meetings Law;
3. Declare the March 19, 2018 City Council procedure used to approve Zoning Ordinance No. 18-792 illegal, null and void pursuant to §380.2 and §380.3 of the Iowa Code;
4. Declare LeClaire Zoning Ordinance No. 18-792 illegal, null and void pursuant to the LeClaire City Code;
5. Declare the Comprehensive Plan amendment Resolution No. 18-28 illegal, null and void pursuant to the Iowa Code and the LeClaire City Code;
6. Declare the Kwik Star Site Plan Resolution No. 18-30 illegal, null and void pursuant to the Iowa Code and LeClaire City Code;
7. Declare that the City Council usurped the exclusive powers of the Zoning Board to grant variances, by the passage of Zoning Ordinance No. 18-792;
8. Declare that the City Council usurped the exclusive powers of the P&Z Commission to lawfully review and first make recommendations on all of the proposed zoning amendments and the Kwik Star Traffic Study before the City Council may approve Zoning Ordinance No. 18-792;
9. Find that Defendants violated Plaintiff's constitutional real property rights pursuant to 42 U.S.C. 1983, the Iowa Constitution and the United States Constitution;
10. Award Plaintiffs attorney fees pursuant to 42 U.S.C. 1988;


11. Award Plaintiffs costs of this action and interest as provided by law;
12. Grant Plaintiffs such other relief that the Court deems is just and equitable in the premises.



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**VERIFICATION**


We, the undersigned, David S. Griffith, Gary P. Brecht, and Lilly Santillan, are the Plaintiffs in this Petition have read the forgoing Petition and believe it to be true and correct.



David S. Griffith,  
Plaintiff



Gary P. Brecht,  
Plaintiff



Liliana Santillan,  
Plaintiff

**RESOLUTION #18-28 – 2018 COMPREHENSIVE PLAN AMENDMENT #1 – February 19, 2018**

Moved by Smith, seconded by Gerard, to approve amending the future land use portion of the City's comp plan, specifically the subject property, P. Molumby – 3.3 acres at 934 and 926 Eagle Ridge Road, from its current designation of residential use to commercial use, including revising and relocating the boundary of the proposed infill development area which has yet to be adopted. Roll Call: Blair, Gerard, Long, Smith, and Wentland, yes. Carried.



# CITY OF LECLAIRE, IOWA

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**COUNCIL AGENDA**

**MONDAY – MARCH 19, 2018**

**IMMEDIATELY FOLLOWING P.H.**  
**(2018 JOINT & CRACK SEALING PROJECT)**

\*\*\*\*\* PLEDGE OF ALLEGIANCE \*\*\*\*\*

**I. CONSENT AGENDA: RESOLUTION #18-044**

- A. Agenda & Revisions
- B. Receipts & Claims
- C. Minutes
- D. Licenses & Permits – “Sneaky Pete’s Class “C” Liquor License and Riverview Roadhouse Class “C” Liquor License
- E. Other Items\* - Annual MCDC Training Cert Acknowledgement; “Vettes on the River” Levee Event Approval;
- F. Bits & Pieces – April 2018

**II. PUBLIC APPEARANCES**

**III. MAYOR'S REPORT**

- A. “Junior Achievement Day” Proclamation

**IV. COUNCIL REPORTS:**

**A. FINANCES, ECON. DEV., STRATEGIC PLANS, I.T., CHAMBER – DENNIS GERARD**

**B. P&Z - B.O.A., STREETS, UTILITIES (SW & GARB), PWD LIAISON – JOHN SMITH**

- 1. Ord. #792 – 2018 Zoning District & Zoning Ordinance Text Amendments #1 – 2<sup>nd</sup> Reading
- 2. Res. #18 - - Board of Adjustment Membership Appointment Consideration
- 3. Res. #18 - - Resolution Finally Approving And Confirming Plans, Specifications, Form Of Contract, And Estimate Of Cost For The “2018 Crack And Seal Improvements” Project

**C. TOURISM BOARD, CIVIC GROUPS & DOWNTOWN BUSINESS LIAISON – BARRY LONG**

- 1. Res. #18 - - “Hot Dog Guy” Public Vending Permit Renewal

**E. PARKS & REC COMM. & LIBRARY LIAISON – AMY BLAIR**

- 1. Res. #18 - - P&R Commission Open House “Cash Acceptance” & Additional Expenditure Authorization
- 2. Res. #18 - - Huckleberry Park Pavilion Design Phase Services Authorization
- 3. Res. #18 - - Disposal of Public Property – Library Misc. Items
- 4. Res. #18 - - SCRA Grant Application & Additional Expenditure Authority – Parks & Rec Commission
- 5. Res. #18 - - MRT Phase I Project - Preliminary Engineering Services Agreement – V&K
- 6. Res. #18 - - Library – Additional Expenditure Authorization – Training Request

**F. MAYOR PRO-TEM: PUBLIC SAFETY & PVCSD LIAISON – JASON WENTLAND**

**Title VI Notice to the Public**

*It is the policy of the City of Le Claire to assure full compliance with Title VI of the Civil Rights Act of 1964. Related statutes and regulations provide that no person shall on the basis of race, color, national origin, gender, age or disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity conducted by the City. Any person who believes that they are being denied participation in a project, being denied benefits of a program, or otherwise being discriminated against because of race, color, national origin, gender, age or disability, may contact the City Administrator for the City of LeClaire at (563)-289-6004.*

**EX. B**

**CITY OF LECLAIRE, IOWA**

**COUNCIL'S RESOLUTION OF ACTION ON COMMERCIAL SITE DEVELOPMENT PLAN**

**1201 EAGLE RIDGE ROAD – KWIK STAR DEVELOPMENT PROJECT - SITE PLAN**

**RESOLUTION #18-030**

**WHEREAS, KWIK TRIP, INC., (Applicant and Developer) c/o: Ms. Leah N. Berlin, Development Coordinator - Store Engineering, of 1626 Oak Street, La Crosse, WI 54602** has filed an application for the consideration of a commercial convenience store-gas station **SITE DEVELOPMENT PLAN** for the construction of such at the above-described location, which parcel is generally and locally described as follows, to-wit:

**924-936 EAGLE RIDGE ROAD – THE 3.3 ACRES+/- LYING IN THE NE QUADRANT OF THE INTERSECTION OF EAGLE RIDGE ROAD AND CODY ROAD (US 67) - LECLAIRE, SCOTT COUNTY, IOWA.**

**WHEREAS,** the said site development plan request is accompanied by the appropriate application, executed by the owner, which states and acknowledges that the said plan is being submitted by and with the free consent of the owner, and that the accompanying construction drawings, documents, and other attachments are complete, true, accurate, and representative in all regards of the intended development, and,

**WHEREAS,** the said site development plan request and the attachments thereto have been examined by the **CITY COUNCIL OF THE CITY OF LECLAIRE, IOWA**, and, unless otherwise further modified by conditions or stipulations herein specified, have been found to be in substantial conformance with the **SITE DEVELOPMENT PLAN REGULATIONS** and the requirements of the other ordinances of the CITY and State Laws governing such plans;

**WHEREAS,** the said site development plan request when fully constructed and developed will; affect the highest and best use of the above-described property; help to expand and diversify the City's commercial tax base; help to expand and diversify the City's employment base; help to expand and diversify the readily and locally available service delivery options to the residents; and lastly is hereby determined to be in the best overall interest of the **CITY OF LECLAIRE, IOWA**, as a whole;

**NOW, THEREFORE BE IT RESOLVED,** by the **CITY COUNCIL OF THE CITY OF LECLAIRE, IOWA**, that the said site development plan request and accompanying attachments are hereby approved and accepted for construction as presented, subject to the following stipulations and modifications:

1. The final site plan document(s) shall be modified to reflect those technical drafting changes and corrections as required by staff to comply with the terms and conditions as set forth herein and pursuant to the site plan submittal requirements ("technical item checklist") of the LeClaire Zoning Ordinance.
2. The City will continue to review and analyze the traffic needs at the intersection of Eagle Ridge Road and US 67 and will evaluate the need for and implement future improvements if the City deems that they are warranted.
3. The site landscaping plan as finalized and submitted to the City on February 8, 2018 (including site perimeter fencing and retaining wall fencing which samples (representative photos) have been previously submitted (12-18-'17) and reviewed) is hereby approved. Final site fencing and retaining wall screening materials (i.e. "Black Hills Spruce" trees) and location(s) to be reviewed and approved by the City Administrator as part of the building permit review and issuance process.
4. The revised and reduced building size of approximately 5,700+/- square feet as submitted on February 8, 2018 is hereby approved.
5. The requirements for on-site improvements as specified by the LCFD in their recommendations dated January 2, 2018 shall be incorporated into the final, approved site plan drawings and development.
6. Those items listed in the City Engineer's project review letter dated 12-28-'17 shall be specifically addressed, incorporated in the project if required, and approved by the City prior to the issuance of a project building permit.

7. The site lighting (photometric site plan) as dated December 18, 2017 is hereby approved subject to modification (and verification prior to the issuance of a project building permit) of the lighting scheme in the SW corner of the site to meet those maximum allowable "spill-over" requirements of the City's zoning ordinance.
8. The final location(s), details, and specifications of the proposed site signage shall be submitted to and approved by the City Administrator prior to the issuance of a project building permit. **Site signage shall include signs to be placed at the site entrance prohibiting semis (except for delivery and service vehicles).**
9. The proposed storm water drainage plan as presented and reviewed and preliminarily approved by the City Engineer is hereby preliminarily approved subject to the final submittal and receipt of the State NPDES and City COSESCO permits.
10. The existing structures on the site shall be removed prior to the start of construction of the principal structure (convenience store) and a final, site "demolition plan" shall be submitted indicating which of those trees, structures, etc., are to be removed and/or retained on the site and the timing of such removal activities. This plan shall be added to the complete construction plan set to be submitted to the City for review and approval.
11. The height, **size** and location of the gas canopy (accessory structure) as presented in those revised site plan drawings as last received by the City on February 08, 2018 have been reviewed and considered and are preliminarily approved and said height, **size** and location are contingent upon and shall only become effective and permitted after the final approval and recording of proposed Ord. #792. **The overall canopy height shall not exceed 26'-6". The Northerly portion of the vertical decorative canopy band shall be plain white in color (no company logo or signage) and shall not be lighted in any fashion.**
12. Pursuant to the authority granted in Section XVIII.19-5.1 of the City's Zoning Ordinance this site plan approval and authorization shall be valid for a period not to exceed eighteen (18) months from the date of issuance of a project building permit at which time all of the development components must be substantially completed.
13. This resolution and the final approval of the various authorizations granted herein as a part of this proposed site plan are contingent upon and shall only become effective after the final approval and recording of proposed Ord. #792.

**BE IT FURTHER RESOLVED**, by the **CITY COUNCIL** that the **MAYOR, CITY CLERK, BUILDING AND ZONING ENFORCEMENT OFFICER**, and the **BUILDING INSPECTOR** be, and are hereby authorized, to enter a record of such approval upon said site development plan, landscaping plans, construction plans, building permit(s), and other such documents for the development and improvements, as shown on said plans, approved construction drawings, and/or as otherwise specified or stipulated herein.

**PASSED, ADOPTED AND APPROVED** this the **19<sup>th</sup>** day of **February, 2018**.

  
 \_\_\_\_\_  
**Ray C. Allen, Mayor**

**ATTEST:**  
  
 \_\_\_\_\_  
**Edwin N. Choate, City Administrator**

(CITY SEAL)





Mayor Allen & City Council  
LeClaire City Hall  
325 Wisconsin Street  
LeClaire, Iowa 52753

Re: January 19, 2018 Kwik Star #1005 Convenience Store Traffic Impact Study.

Dear Mayor Allen and City Council Members Blair, Gerard, Long, Smith and Wentland,

I have reviewed the January 19, 2018 Kwik Star #1005 Convenience Store Traffic Impact Study. I conclude that the traffic "study" has significant flaws regarding the traffic congestion the site will generate and the corresponding negative safety impact to the public.

The stated purpose of the study was to "identify potential traffic impacts due to the proposed Kwik Star". The report does not do that. Instead the report relays various facts and assumptions that do not apply to this site.

There are at least seven issues that were not adequately addressed in the Kwik Star Traffic Study:

**1. Slope:** The slope of Eagle Ridge Road begins to rise immediately from the road intersection with the proposed Kwik Star site. This will make traffic stopping and turning a problem for other traffic when ice, snow or even rain is present.

**2. Geometry:** The sharp curve in the roadway 100 feet from the intersection of Highway 67 and Eagle Ridge Road is not addressed. This is a serious omission. The sharp curve negatively impacts the development. The speed that the curve can safely be traveled is less than 15 miles per hour. The sole access to the subject property is immediately after the curve radius ends. The spacing of the intersection cited has to do with a straight street, not a curve in excess of 90 degrees with a centerline turning radius of 50 feet. The sharp curve will exacerbate traffic collisions as a direct result of the Kwik Star operation.

**3. Road and Traffic Conditions:** Both the slope and the sharp curve will produce substantial and serious traffic problems when conditions are not optimal and when traffic is heaviest at the site.

**4. Traffic Trip Generations:** The trip generation was only briefly addressed with the analysis of the intersection only done on January 9, 2018. The data was not corrected for the time of year or conversion to the 30<sup>th</sup> highest hour for the trip generation statistics. Further, the traffic capacity of the streets was not listed. These street capacities need to be calculated for Eagle Ridge Road with a speed of 25 MPH on a 2 lane street. The further limitation of the curve speed will reduce the capacity of the street at the point of the access to the subject property.



**5. Emergency Access:** When a collision occurs at the intersection of Eagle Ridge Road and the Kwik Star access point that blocks the road, there will be a significant impact on the emergency needs of the residential and commercial properties located in either direction on Eagle Ridge Road. Emergency access will be severely limited to the adjoining residential and commercial properties when a collision occurs.

**6. Visibility:** Visibility was only addressed with a comment about prohibiting planting and other items that might obscure the intersection. No consideration was given to the site distances and stacking distances between the signalized intersection and the problems of having an expanded attention area for the driver. Not only does a motorist have to look at the activity of Kwik Star, a motorist also has to be aware of traffic approaching on Eagle Ridge Road from the West as one enters the sharp curve.

**7. Traffic circulation within the Kwik Star Site:** The site entrance and sole access point is directly in front of the 16 gas pumps. The circulation within the site is a significant problem because the store is in the rear and automobiles waiting to fuel at the pumps will block Eagle Ridge Road. This will even be a larger issue when semi-trucks are at the site. There is no second curb cut to relieve pressure. One entrance/exit point is another serious flaw with the site.

## CONCLUSION

In conclusion, the January 19, 2018 Kwik Star report does **not** address critical components of the traffic analysis necessary to evaluate the traffic flow of the proposed site. The developer is forcing the site to capture trips from other existing business up the hill. The site access at this point is not something that can be justified only with traffic generation numbers. One has to look at the logic of the development.

This development will negatively impact the adjacent residential and commercial properties. The January 19, 2018 Kwik Star Traffic Study is flawed and skewed to minimize the major traffic congestion and traffic safety issues the proposed development will generate from semi-truck and automobile traffic generated from Interstate 80.

Dated this 14<sup>th</sup> day of February 2018



John F.H. Lonergan, II  
JFHLII Consulting  
4708 Belle Avenue  
Davenport, Iowa 52807  
(563) 349-7300

cc: Michael J. Meloy  
Meloy Law Office  
2535 Tech Drive, Suite 206  
Bettendorf, IA 5222

**JOHN F. H. LONERGAN II**  
**4708 Belle Avenue**  
**Davenport, Iowa 52807**

**563-349-7300**

## **PROFESSIONAL EXPERIENCE**

### Management

- Administered and organized the Office of Land Development Services for the City of Davenport, Iowa, which consolidated all aspects of development regulation and inspection City under one office.
- Administered the Community Development Block Grant program with a staff of 24 including program design and monitoring for capital improvements, rehabilitation, public services, code enforcement, and economic development and planning.
- Supervised professional and technical personnel in planning, code enforcement, rehabilitation and other related activities.
- Provided coordination with Federal, State and Local Governments, Regional Agencies, Developers and private organizations.
- Developed computerized management tools to measure productivity, monitor development trends, measure progress and determine impact of investment and improvements.
- Managed construction projects from concept development and planning through final inspection.
- Designed and implemented a housing inspection program for the City of Davenport.
- President of Design & Development Group Ltd. of general planning consulting firm which is involved in a broad range of planning and development activities.

### Economic Development

- Administered Economic Development program funded under CDBG including: revolving loan funds, minority business loans and commercial building rehabilitation.
- Analyzed development alternatives; prepared policies and programs to stimulate community growth.
- Revised zoning and subdivision ordinances to facilitate development and reduce housing costs.
- Prepared economic and market impact analysis for various proposals.
- Performed, industrial, commercial, and residential site searches.
- Maintained development statistics and land inventory data.
- Worked with TIF Development and justification.

### Planning

- Prepared and administered community master plans including inventory, analysis, plan elements and implementation measures.
- Supervised update of geo-based data processing system and developed applications for trends, impact analysis, and capital programming.
- Prepared special reports on neighborhood planning, urban revitalization, river front development, growth management, project development, sewers, parking and other related topics.
- Performed current planning functions including maintenance and enforcement of zoning, subdivision ordinances and other development regulations.
- Developed traffic impact studies for proposed projects.
- Analyzed land use and prepared development recommendations.
- Prepared preliminary and final subdivision plats.
- Prepared impact analysis for the impact of externalities on residential development

## Development and Redevelopment

- Directed comprehensive housing rehabilitation program including: code enforcement, demolition, housing counseling, single, multiple family and mixed use programs.
- Initiated and implemented model projects involving condominium conversions, cooperatives, and special incentive private market housing.
- Prepared development analysis for private clients including physical land planning, financing strategies and recommended courses of action.
- Coordinated project implementation for housing and land development.
- Supervised and coordinated construction of improvements on various projects.
- Designed, developed and managed subdivision and condominium projects.

## Grants Administration

- Model Cities Program
- 701 Planning Grants, Annexation Studies, Computer Applications
- Community Development Block Grants
- Section 312 Loan Program
- Urban Homesteading Program, Section 810 Acquisition
- Section 8 Housing Program
- Bi-Centennial Grant
- 701 Planning Grants
- Multiple Family Housing Rehabilitation Program
- Economic Development Grants and Loans
- R.E.A.P. Open Space Preservation Grant, State of Iowa

## Real Estate

- Listing and selling transactions in Iowa and Illinois
- Price opinions for Commercial, Industrial, farms and lots; and residential.

## **EDUCATION**

M.A. in Government, Southern Illinois University, Carbondale, Ill.  
Fields: Economics, Urban and Regional Planning, Public Administration and State and Local Government.  
Research Tools: Computer Science and Statistics.  
B.A. Mathematics, Southern Illinois University, Carbondale, Illinois.  
Minor Concentrations: Architecture, Engineering and Art  
Completed Real Estate License for Iowa in December 2008 and Illinois License in 2010.

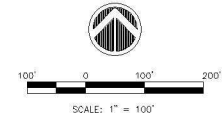
## **EMPLOYERS**

Realtor, RE/MAX River Cities, 4555 Utica Ridge Road, Bettendorf, Iowa 52722  
March 2009 to present  
Principal, JFHLII Consulting, 4708 Belle Ave. Davenport, Iowa 52807  
March 2009 to present  
President, Design and Development Group Limited, 4708 Belle Ave., Davenport, Iowa  
52807 June 1990 - March 2009  
Vice President, Facilities Development Company, Jan. 1988 - June 1990, 1443 Brown Street,  
Bettendorf, Iowa 52722.  
Associate Director of Community Development, Office of Land Development Services, City of  
Davenport, Iowa September 1986 - January 1988  
Redevelopment Coordinator, Community and Economic Development Department, Davenport,  
Iowa. August 1981 - September 1986.

Senior Planner, Planning Division, Community Development Department, Davenport, Iowa.  
September 1977 - August 1981  
Planner, Planning Division, Community Development Department, Davenport, Iowa. March  
1977 - September 1977 Population 101,500  
Associate Planner, Planning and Zoning Division, City of Dubuque, Iowa. Population 63,000.  
November 1973 - March 1977  
Assistant Planner, Planning and Zoning Division, City of Carbondale, Illinois. Population 27,000,  
November 1972 - November 1973  
Administrative Aide, City Manager's Office, City of Carbondale, Illinois, May 1972 - September  
1972  
Specialist 5, US Army, Ft. Hood. Texas 1969-1971







THIS EXHIBIT PREPARED FOR:  
**Kwik Trip, Inc.**  
 P. O. Box 2107  
 La Crosse, WI 54602  
 Attn: Brad Fry  
 (608) 793-6414

**Condominium Owners**

1. Jano L. Coats  
843 Stagecoach Trail  
LeClaire, IA  
Zoned P/R-2
2. David S. Griffin  
1210 Edge View Court  
LeClaire, IA 52753  
Zoned P/R-2
3. Neo A. Miltons  
1208 Edge View Court  
LeClaire, IA 52753  
Zoned P/R-2
4. Pruden Living Trust  
1208 Edge View Court  
LeClaire, IA 52753  
Zoned P/R-2
5. Brent Family Trust  
1204 Edge View Court  
LeClaire, IA 52753  
Zoned P/R-2
6. Vicky L. Meyermeier  
1202 Edge View Court  
LeClaire, IA 52753  
Zoned P/R-2
7. Daniel Froelich  
1114 Edge View Court  
LeClaire, IA 52753  
Zoned P/R-2
8. Colene Family Trust  
1112 Edge View Court  
LeClaire, IA 52753  
Zoned P/R-2
9. Allen D. Maltrich  
1110 Edge View Court  
LeClaire, IA 52753  
Zoned P/R-2
10. Richard J. Junge  
1108 Edge View Court  
LeClaire, IA 52753  
Zoned P/R-2

No.	REVISIONS	DESCRIPTION	DATE
1	INITIAL CONFORMANCE REVIEW	REVISIONS TO: 12/07/2017	12/07/2017

**Missman, Inc.**  
 Professional Engineers & Land Surveyors

1525 N. Main St., LeClaire, IA 52753  
 (563) 793-2444 • (563) 344-0300 • (608) 956-6400 • (608) 748-6443  
 www.missman.com

**Kwik Trip Store # 1005**  
 926 Eagle Ridge Road, LeClaire, Iowa

**Zoning Exhibit**

Missman Project No: C17S014  
 File Name: C:\17014-Zoning-Exhibit.dwg  
 © COPYRIGHT 2017 ALL RIGHTS RESERVED  
 Field Book No:  
 Drawn By: DAB  
 Checked By: DAB  
 Date: 12/8/2017

## ORDINANCE #792

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF LECLAIRE, IOWA, BY AMENDING CHAPTER 165 - ZONING REGULATIONS - JUNE 21, 1999 - ZONING ORDINANCE (SPECIFICALLY ARTICLE I, SUB-SECTION 7-1.43 – DEFINITIONS – CONVENIENCE STORE; ARTICLE X, XI, AND XII SECTION 4 (IN EACH) – HEIGHT REGULATIONS; AND ARTICLE XVIII.13 – ACCESSORY BUILDINGS OR USES) AND THE ZONING DISTRICT MAP.**

**WHEREAS,** After having published notice of multiple public meetings and official public hearings on the matter; after having solicited and received verbal and written public input on the matter; and, after having consulted, discussed and previously amended the City's comprehensive plan in this matter;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LECLAIRE, IOWA, THAT:**

**Section 1.** The LeClaire Municipal Zoning District Map (Ord. #553, 06-21-1999) be and is herewith amended as follows:

1. Rezone the following legally described tract of land from its current **Single-Family Residential (R-1)** classification to a **Highway-Oriented Commercial Service District (C-3)** classification:

### Legal Description

#### Parcel A:

Part of the Southeast Quarter (S.E.1/4) of Section Three (3) and part of the Fractional Southwest Quarter (S.W.1/4) of Section Two (2), all in Township Seventy-eight (78) North, Range Five (5) East of the 5th P.M., in Scott County, Iowa, more particularly described as follows:

Commencing at the Northeast corner of the S.E.1/4 of said Section 3; thence South 364.32 feet along the East line of the S.E.1/4 of said Section 3; thence South 62° 30' West 38 feet to the place of beginning of the tract of land herein described; thence South 28° East 140 feet; thence South 62° 30' West 315 feet; thence North 28° West 140 feet; thence North 62° 30' East 315 feet to the place of beginning. Together with a private roadway easement (20 feet in width) of which the centerline is described as follows:

Commencing at the Northeast corner of the S.E.1/4 of said Section 3; thence South 364.32 feet along the East line of the S.E.1/4 of said Section 3; thence South 62° 30' West 38 feet; thence South 28° East 140 feet; thence South 62° 30' West 305 feet to the place of beginning of the centerline of the private driveway herein described; thence South 28° East 90 feet; thence South 78° 34' East 120.02 feet; thence South 25° 31' East 202 feet to a point in the present Northerly right of way line of the U.S. Route #67 (Davenport-LeClaire Road).

#### Parcel B:

Part of Sections Two (2) and Three (3) in Township Seventy-eight (78) North, Range Five (5) East of the 5th P.M.; commencing at the Northeast corner of the S.E.1/4 of said Section 3; thence South on the Section line 364.32 feet; thence South 62° 30' West 38 feet for a place of beginning; thence South 28° East 552 feet to the North line of the Davenport and LeClaire Road; thence South 64° 29' West along the North line of said road 315 feet; thence North 28° West 541.1 feet; thence North 62° 30' East 315 feet to the place of beginning. EXCEPTING therefrom that portion of the above described real estate deeded to Robert L. Browning and M. Bernice Browning, husband and wife, by Warranty Deed dated November 2, 1965 and recorded in 291 Deeds, 458, records in the Office of the Recorder of Scott County, Iowa, and described as follows:

Part of the S.E.1/4 of Section 3 and part of the fractional S.W.1/4 of Section 2, all in T78N, R5E of the 5th P.M., in Scott County, Iowa, more particularly described as follows:

Commencing at the Northeast corner of the S.E.1/4 of said Section 3; thence South 364.32 feet along the East line of the S.E.1/4 of said Section 3; thence South 62° 30' West 38 feet to the place of beginning of the tract of land herein described; thence South 28° East 140 feet; thence South 62° 30' West 315 feet; thence North 28° West 140 feet; thence North 62° 30' East 315 feet to the place of beginning. Also EXCEPTING that parcel of land conveyed to State of Iowa by Warranty Deed recorded in Volume 276 Deeds, page 555. Also EXCEPTING that parcel of land conveyed to the State of Iowa by Warranty Deed recorded as Document No. 09534-95. **This parcel contains 3.3 acres more or less. (See attached exhibit.)**

**Section 2.** The LeClaire Municipal Zoning Ordinance (Ord. #553, 06-21-1999, Article I, Sub-Section 7-1.43 – Definitions – Convenience Store; Article X, XI, and XII, Section 4 (In Each) – Height Regulations; And Article XVIII.13 – Accessory Buildings Or Uses) be and are herewith amended as follows:

1. In Sub-Section 7.1.43 – Convenience Store, change the maximum allowable size from the current 5,000 square feet to 6,500 square feet.
2. In Section X.4 (C-1) add the following new language to the end of this Section:

**X.4 HEIGHT REGULATIONS.** No principal building or structure or portion thereof will exceed a height of forty feet (40'). No accessory building, structure, or use will exceed a height of fifteen feet (15') *unless otherwise approved upon review by the City as a part of the site plan consideration process. In no case shall any accessory building, structure, or use exceed the maximum height allowed for a principal building or structure in this District.*

3. In Section XI.4 (C-2) add the following new language to the end of this Section:

**XI.4 HEIGHT REGULATIONS.** No principal building or structure or portion thereof will exceed a height of seventy-five feet (75'). No accessory building, structure, or use will exceed a height of fifteen feet (15') *unless otherwise approved upon review by the City as a part of the site plan consideration process. In no case shall any accessory building, structure, or use exceed the maximum height allowed for a principal building or structure in this District.*

4. In Section XII.4 (C-3) add the following new language to the end of this Section:

**XII.4 HEIGHT REGULATIONS.** No principal building or structure or portion thereof will exceed a height of one hundred feet (100'). No accessory building, structure, or use will exceed a height of fifteen feet (15') *unless otherwise approved upon review by the City as a part of the site plan consideration process. In no case shall any accessory building, structure, or use exceed the maximum height allowed for a principal building or structure in this District.*

5. Amend the title of Section XVIII.13 to read: **RESIDENTIAL ACCESSORY BUILDINGS, STRUCTURES, OR USES (See ILLUSTRATION “A”) – Applicable to Residential Zoning Districts & Uses Only.**
6. In Section XVIII.13-4 – **Size and Maximum Number of Accessory Buildings** – delete the words “commercial” and “industrial” in the 3<sup>rd</sup> line.

**Section 3. REPEALER.** All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**Section 4. SEVERABILITY CLAUSE.** If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

**Section 5. WHEN EFFECTIVE.** This ordinance shall be in effect from and after its final passage, approval, publication, and/or recording as required by law.

**PASSED, APPROVED, AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, **2018.**



\_\_\_\_\_  
**Ray C. Allen, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Edwin N. Choate, City Administrator**

MAYOR:            2-16-2018  
COUNCIL:         2-16-2018  
ATTORNEY:       2-16-2018  
PUBLIC:           2-16-2018

POSTED:           3-1-2018  
POSTED:           \_\_\_\_\_  
PUBLISHED:       \_\_\_\_\_  
CITY CODE:        \_\_\_\_\_

	READINGS:	BLAIR	GERARD	LONG	SMITH	WENTLAND
1st	2-19-18	YES	YES	YES	YES	YES
2nd	3-5-18	_____	_____	_____	_____	_____
3rd	_____	_____	_____	_____	_____	_____