

**CERTIFICATION OF CLERK**

I, Brenda K. Wolf, the duly appointed, qualified, and Assistant City Clerk of Manhattan, Kansas, do hereby certify that the foregoing Minutes were duly adopted at a meeting of the City of Manhattan, Kansas, held on the 4th day of November, 2008, and that said Minutes have been compared by me with the original thereof on file and of record in my office, is a true copy of the whole of said original.

**IN WITNESS WHEREOF**, I have hereunto set my hand and the seal of the City of Manhattan, Kansas, this 5th day of November, 2008.



*Brenda K. Wolf*  
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Brenda K. Wolf, CMC, Assistant City Clerk

***MINUTES***  
***CITY COMMISSION MEETING***  
***TUESDAY, OCTOBER 21, 2008***  
***7:00 P.M.***

The Regular Meeting of the City Commission was held at 7:00 p.m. in the City Commission Room. Mayor Mark J. Hatesohl and Commissioners Bob Strawn, Bruce Snead, James E. Sherow, and Tom Phillips were present. Also present were Assistant City Manager Jason Hilgers, Assistant City Manager Lauren Palmer, City Attorney Bill Frost, City Clerk Gary S. Fees, 9 staff, and approximately 32 interested citizens.

**PLEDGE OF ALLEGIANCE**

Members of the Big Brothers/Big Sisters Program led the Commission in the Pledge of Allegiance.

**COMMISSIONER COMMENTS**

Bill Frost, City Attorney, commented on issues presented to the City's legal staff and some individual City Commissioners concerning the proposed smoking ordinance on the November 4, 2008, ballot. He stated that the legal staff has received several inquiries from members of the public and media and that individual Commissioners have also received inquiries asking to comment on the proposed smoking ordinance. He also stated that it is inappropriate for the City as an entity to take a position on the proposed ordinance that might appear to be either in favor of, or in opposition to the ordinance; and, therefore, most of the questions asked would fall into that category, so we have declined to give those answers and we've indicated to the Commission that it is inappropriate for the Commission as a whole, or the City as an entity, to do so.

Mayor Hatesohl updated the community on the upcoming Veteran's Day parade and events on November 11, 2008, and encouraged everyone to attend the parade and show your support for our veterans and soldiers.

## CONSENT AGENDA

(\* denotes those items discussed)

### CLAIMS REGISTER NO. 2592

The Commission approved Claims Register No. 2592 authorizing and approving the payment of claims from October 8, 2008, to October 14, 2008, in the amount of \$880,314.78.

### ORDINANCE NO. 6727 – 2009 BOUNDARY AND SERVICE FEES – DOWNTOWN BUSINESS IMPROVEMENT DISTRICT

The Commission approved Ordinance No. 6727, continuing the establishment of a Downtown Business Improvement District, amending the boundaries, and levying Business Improvement Service Fees, for the year 2009, on businesses located within the District.

### ORDINANCE NO. 6728 – 2009 SERVICE FEES – AGGIEVILLE BUSINESS IMPROVEMENT DISTRICT

The Commission approved Ordinance No. 6728, continuing the establishment of an Aggieville Business Improvement District and levying Business Improvement Service Fees, for the year 2009, on businesses located within the District.

### ORDINANCE NO. 6729 – EXPAND – NORTH PROJECT AREA TRANSPORTATION DEVELOPMENT DISTRICT

The Commission approved Ordinance No. 6729 amending the North Project Area Transportation Development District.

### ORDINANCE NO. 6730 – REZONE – PENNY'S CONCRETE

The Commission approved Ordinance No. 6730 rezoning Penny's Concrete, generally located south of the eastern intersection of Eureka Drive and Eureka Terrace, from C-6, Heavy Commercial District with AO, Airport Overlay District, to PUD, Industrial Planned Unit Development District with AO, Airport Overlay District, based on the findings in the Staff Report (*Attachment No. 1*), with the nine conditions, as modified by the Manhattan Urban Area Planning Board.

### ORDINANCE NO. 6731 – ADOPT – 2008 STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES

The Commission approved Ordinance No. 6731 incorporating by reference the Standard Traffic Ordinance for Kansas Cities, Edition of 2008.

- \* ORDINANCE NO. 6732 – AMEND – UNLAWFUL HOSTING OF MINORS  
Commissioner Snead requested that Item F be moved to the beginning of the general agenda.

## CONSENT AGENDA (CONTINUED)

### ORDINANCE NO. 6733 – RENAME – HAWTHORNE TERRACE TO HAWTHORNE WOODS TERRACE and HAWTHORNE CIRCLE TO HAWTHORNE WOODS CIRCLE

The Commission approved Ordinance No. 6733 renaming Hawthorne Terrace to Hawthorne Woods Terrace; and Hawthorne Circle to Hawthorne Woods Circle, both streets being located in Hawthorne Woods Addition, approximately 115 feet west of the intersection of Gary Avenue and Churchill Street.

### ORDINANCE NO. 6734 – AMEND COMPOSITION – AIRPORT ADVISORY BOARD

The Commission approved Ordinance No. 6734 amending Section 7-12 of the Code of Ordinances amending the composition of the Airport Advisory Board to include a position representing Pottawatomie County.

### FIRST READING – DESIGNATION -MAIN TRAFFICWAY - TUTTLE CREEK BOULEVARD and MAIN TRAFFICWAY CONNECTION – MARLATT AVENUE (TUTTLE CREEK BOULEVARD TO CASEMENT)

The Commission approved first reading of an ordinance designating Tuttle Creek Boulevard as a main trafficway and designating Marlatt Avenue from Tuttle Creek Boulevard to Casement Road as a main trafficway connection.

### FIRST READING – INSTALL – STOP AND YIELD SIGNS

The Commission approved first reading of an ordinance establishing traffic control devices at certain intersections within the city limits of Manhattan, based on the recommendations in the Manhattan Area Transportation Strategy Report and Manual of Uniform Traffic Control Devices (MUTCD), and consistent with current practices/policies of the City of Manhattan (*See Attachment No. 2*).

### RESOLUTION NO. 102108-A – SET SELL DATE – GENERAL OBLIGATION BONDS (SERIES 2008-C)

The Commission approved Resolution No. 102108-A setting November 18, 2008, as the date to sell \$1,865,000.00 in general obligation bonds (Series 2008-C) for the following for the following Street Improvement Projects: *Eureka Addition – Street (ST0613); and Limey Pointe/McCall Road Improvements – Street (ST0627)*.

### FIRST READING – ISSUE – GENERAL OBLIGATION BONDS (SERIES 2008-C)

The Commission approved first reading of an ordinance issuing \$1,865,000.00 in general obligation bonds (Series 2008-C) for the following for the following Street Improvement Projects: *Eureka Addition – Street (ST0613); and Limey Pointe/McCall Road Improvements – Street (ST0627)*.

## CONSENT AGENDA (CONTINUED)

### RESOLUTION NO. 102108-D – 2008 IVY DRIVE STORM CHANNEL IMPROVEMENTS (SM0809)

The Commission found the petition sufficient; approved Resolution No. 102108-D, finding the project advisable and authorizing construction; and authorized City staff to perform engineering services for the 2008 Ivy Drive Storm Channel Improvements (SM0809).

### AGREEMENT FOR PURCHASE OF REAL ESTATE – KANSAS STATE UNIVERSITY – US 24 AND MARLATT AVENUE (ST0612)

The Commission approved and authorized the Mayor and City Clerk to execute the agreement for the acquisition of permanent road easement, permanent drainage easement, and temporary construction easement with Kansas Board of Regents for the US 24 and Marlatt Avenue Street and Stormwater Drainage Improvements (ST0612).

### AMENDMENT – ENGINEERING SERVICES – US 24 AND MARLATT AVENUE (ST0612)

The Commission approved and authorized the Mayor and City Clerk to execute an amendment to the Engineering Services Agreement to the contract with Bartlett and West, Inc., of Manhattan, Kansas, in the amount of \$18,339.00 for the US-24 and Marlatt Avenue Street and Stormwater Drainage Improvements (ST0612).

### BOARD APPOINTMENTS

The Commission approved appointments by Mayor Hatesohl to various boards and committees of the City.

#### *City/University Special Project Committee*

Re-appointment of Becky Ballard, 333 Denison Avenue, to a two-year citizen term. Ms. Ballard's term begins immediately, and will expire June 30, 2010.

Appointment of Oscar Montenegro, 1403 College Avenue, to a two-year citizen term. Mr. Montenegro's term begins immediately, and will expire June 30, 2010.

#### *Housing Appeals Board*

Appointment of Mark Bachamp, 1213 Hylton Heights, Suite 129, to a three-year term. Mr. Bachamp's term begins immediately, and will expire June 30, 2011.

## CONSENT AGENDA (CONTINUED)

After discussion, Commissioner Snead moved to approve the consent agenda, as amended, with Item F- *Ordinance No. 6732 – Amend – Unlawful Hosting Of Minors*, which was moved to the beginning of the General Agenda. Commissioner Sherow seconded the motion. On a roll call vote, motion carried 5-0.

## ITEM REMOVED FROM CONSENT AGENDA

### **ORDINANCE NO. 6732 – AMEND – UNLAWFUL HOSTING OF MINORS**

Bill Frost, City Attorney, presented the item and responded to questions from the Commission.

Bill Muir, 2040 Shirley Lane, read a prepared letter from Joe Knopp, 104 Oakwood Circle, expressing his opinion that the proposed ordinance be repealed and allow all cases of hosting to be taken by the Riley County Police Department to the Riley County Attorney to enforce state laws. He stated that we don't need to make the resources of the City of Manhattan available for the enforcement of these laws and have more important public safety issues to be concerned about.

Tim Lindemuth, 500 Denison Avenue, private citizen, informed the Commission that the state law was passed to control situations of hosting minors and voiced concern with the loss of control that some of our young leaders at K-State would encounter, especially if they are officers that cannot be responsible for the actions of everyone.

Scott Jones, Director of Greek Affairs and Assistant Dean of Students, Kansas State University, provided a packet of information dealing with making Healthy Decisions and Interfraternity Council Event Responsibility Policy to the Commission. He then answered questions from the Commission regarding responsibilities of the students, responsibilities of the organization, and policy compliance.

Charles Hostetler, 1715 Thomas Circle, active in fraternity alumni group, informed the Commission that when a policeman asks for the President of the fraternity and cites him for underage drinkers, when he was asleep and had no prior knowledge or involvement, is wrong. He stated that this young man did not meet the criminal test, but had to hire an attorney before the prosecuting attorney finally dismissed the case. He asked to do away with the proposed ordinance and let the County Attorney handle these cases.

Bill Frost, City Attorney, responded to questions from the Commission regarding the types of cases handled in Municipal Court and provided additional information and clarification on the City Ordinance and state law. He stated the difference is whether or not you want these cases handled in Municipal Court or in District Court.

ITEM REMOVED FROM CONSENT AGENDA

**ORDINANCE NO. 6732 – AMEND – UNLAWFUL HOSTING OF MINORS  
(CONTINUED)**

Commissioner Snead stated that the Riley County Police Department enforces our laws and has a clearer understanding of the regulation. He stated that it is appropriate to have Municipal Court deal with these offenses and is an appropriate ordinance.

Commissioner Strawn stated this is a well intended law that has went beyond its intent and has unintended consequences that negatively impact people.

Commissioner Sherow stated that this is a state law enforced by the Riley County Police Department and is a matter of these issues handled at District Court or being handled more efficiently by Municipal Court.

Commissioner Phillips stated that this ordinance has been on the books for the past four years and appears that additional training and communication has occurred to address the concerns to make this work.

Bill Frost, City Attorney, responded to additional questions from the Commission and provided additional information on the item. He stated that the law applies to everyone, not just fraternities and sororities, and that the dividing line is that you intentionally allowed your premises to be used for underage drinking.

After discussion, Commissioner Snead moved to approve Ordinance No. 6732 amending Section 4-3 of the Code of Ordinances, relating to the unlawful hosting of minors. Commissioner Sherow seconded the motion.

After additional discussion, on a roll call vote, motion carried 3-2, with Mayor Hatesohl and Commissioner Strawn voting against the motion.

GENERAL AGENDA

**RESOLUTION NO. 102108-C – AUTHORIZE - SUPPLEMENTAL BOND  
INDENTURE AGREEMENT and ISSUE - JUNIOR LIEN TAX INCREMENT  
FINANCING(TIF) REVENUE BONDS**

Jason Hilgers, Assistant City Manager, presented the item. He then answered questions regarding the rating of the bonds and the agreement.

Bill Frost, City Attorney, provided additional information on the bonds.

## GENERAL AGENDA (CONTINUED)

### RESOLUTION NO. 102108-C – AUTHORIZE - SUPPLEMENTAL BOND INDENTURE AGREEMENT and ISSUE - JUNIOR LIEN TAX INCREMENT FINANCING(TIF) REVENUE BONDS (CONTINUED)

Jason Hilgers, Assistant City Manager, responded to additional questions and informed the Commission that tonight's action has no bearing on the City's previous agreement. He stated that this action will allow Dial Realty to obtain additional collateral required to secure private construction loans for the North Project.

Bob Welstead, Dial Realty, informed the Commission that the economic climate has changed and that it is tougher doing business. He provided background information on Dial's request and gave a general construction update on the North Project area.

Dee R. Ross, 2304 Brockman Street, asked if Dial had obtained the 70 percent amount required to be leased in the North Project area and asked by the project was delayed.

After discussion, Commissioner Snead moved to approve Resolution No. 102108-C authorizing the supplemental bond indenture agreement and issuance of junior lien special obligation TIF revenue bonds for the North Project. Commissioner Sherow seconded the motion. On a roll call vote, motion carried 5-0.

### POLICY RESOLUTION NO. 102108-B - CODE OF ETHICS

Brian Williams, Management Assistant, presented the item and responded to questions from the Commission.

Commissioner Sherow suggested that the Conflict of Interest section, include the word "Individual" at the beginning of paragraph b.) i.) a) found in Section One of the resolution.

Commissioner Strawn stated that he sent Mr. Williams and the City Commissioners sample language for consideration to the Conflict of Interest portion of the policy resolution.

Brian Williams, Management Assistant, and Bill Frost, City Attorney, discussed the proposed changes offered by Commissioner Strawn and the current wording and intent of the wording in the proposed policy resolution.

The Commission discussed the wording in the Conflict of Interest section of the proposed resolution. There was additional discussion about objectivity, impartiality, biases, experiences, expertise, family conflicts, quasi judicial matters, and the importance of the individual to make a judgment whether he/she has a conflict of interest or not.

## GENERAL AGENDA (CONTINUED)

### POLICY RESOLUTION NO. 102108-B - CODE OF ETHICS (CONTINUED)

Commissioner Strawn stated that the Code of Ethics adopted needs to be held to a higher standard and that matters should be judged objectively and impartially. If not, he said that the individual should not be judging the matter and will need to recuse yourself.

Bill Frost, City Attorney, and Brian Williams, Management Assistant, provided additional clarification to the wording in the proposed resolution, specifically in the Conflict of Interest section.

Dee R. Ross, 2304 Brockman Street, asked the Commission what the penalties are for failure to comply with the ethics policy.

Commissioner Strawn stated that it is up to the individual to make the call if you have a conflict of interest. He re-iterated that the Code of Ethics is a higher standard and if you have a conflict that you need to step down.

Jason Hilgers, Assistant City Manager, informed the Commission that the City Manager would implement an ethics policy to be incorporated into the City Personnel Policy.

Dee R. Ross, 2304 Brockman Street, asked what actions or penalties would be taken against an employee breaking the Code of Ethics policy.

Jason Hilgers, Assistant City Manager, responded to questions.

Mayor Hatesohl stated that the Code of Ethics policy would apply to City Commissioners, Board and Committee members, and would be addressed by the City Manager into the employee policy manual for City employees.

Brian Williams, Management Assistant, provided clarification on the item.

Commissioner Strawn thanked those involved with crafting the Code of Ethics document and to proceed ahead with the implementation process within the City, Commissioners, and Boards and Committees.

Commissioners Phillips thanked Commissioner Strawn for his leadership and efforts on the Code of Ethics committee and thanked Edd Savage and City staff for their work on this document.

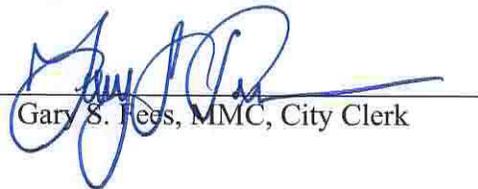
## GENERAL AGENDA (CONTINUED)

### POLICY RESOLUTION NO. 102108-B - CODE OF ETHICS (CONTINUED)

After discussion, Commissioner Sherow moved to approve Resolution No. 102108-B, establishing a Code of Ethics for the City of Manhattan's elected and appointed officials, and granting specific authority, and direction, to the City Manager to establish and maintain a comparable administrative Code of Ethics and relevant administrative policies for the City's employees, with the provision to amend statement under b.)i.)a) Legal Standards pertaining to Conflicts of Interest on page three of the resolution and insert "Individual" before City Commissioners. Commissioner Strawn seconded the motion. On a roll call vote, motion carried 5-0.

### ADJOURNMENT

At 9:15 p.m. the Commission adjourned.



Gary S. Fees, MMC, City Clerk

**STAFF REPORT**

**APPLICATION TO REZONE PROPERTY TO PLANNED UNIT DEVELOPMENT DISTRICT**

**BACKGROUND**

**FROM:** C-6, Heavy Commercial District, with AO, Airport Overlay District.

**TO:** PUD, Industrial Planned Unit Development District, with AO, Airport Overlay District.

**APPLICANT:** Penney's Concrete Inc. - David Hoover, President.

**ADDRESS:** 23400 West 82<sup>nd</sup> Street, Shawnee Mission, KS 66227.

**OWNER:** SSF Development, LLC % SCI of Manhattan Inc. – Tim Schultz.

**ADDRESS:** 1213 Hylton Heights, Ste 129, Manhattan, KS 66502.

**DATE OF PUBLIC NOTICE PUBLICATION:** Monday, August 25, 2008.

**DATE OF PUBLIC HEARING: PLANNING BOARD:** Monday, September 15, 2008.

**CITY COMMISSION:** Tuesday, October 14, 2008.

**LOCATION:** Generally located south of the eastern intersection of Eureka Drive and Eureka Terrace along the east side of Eureka Terrace, and immediately south of Star Lumber & Supply.

**AREA:** Total area: 6.6 acres, which will consist of Lot 12 (2.299 acres), Lot 13 (1.382 acres),  
Lot 14 (1.481 acres), and Lot 15 (1.481 acres.)

**PROPOSED USE:** The proposed use is a permanent Concrete Batch Plant, a portable Concrete Batch Plant, the production and storage of concrete landscaping blocks for retaining walls, office, other accessory uses such as landscaping, lighting, signage, and a future shop. Both plants may operate on the site if concrete demand requires both plants to operate concurrently, or the portable plant may relocate if demand for a remote site is needed. Kansas Department of Health and Environment (KDHE) air and water quality regulations affecting the use are attached. The property will be owned and maintained by Penny's Concrete Inc.

*Attachment No. 1*

Concrete Batch Plants and the other uses described above are permitted uses in the I-4, Heavy Industrial District (attached). However, proposed setbacks and screening, which will exceed the requirements of the I-4 District or the current C-6 District.

The application documents indicate there will be ten employees initially consisting of drivers and plant operators. Hours of operation are from 6 a.m. to 7 p.m., with other hours possible depending on concrete demand. For example, in summer months, deliveries may be made to sites at 3 a.m. due to hot weather. On an average day, from 30 to 46 trucks may be in and out of the PUD.

**PROPOSED BUILDINGS AND STRUCTURES:** Two concrete batch plants, one of which is a fixed structure inside a shell building and is a permanent plant on the site. The second plant is portable and can be relocated as needed, or may be operational in the PUD, to meet concrete demand. Attached to the permanent batch plant is an office and shop. A separate future shop is shown to the north of the permanent batch plant (structural elements of the building and batch plants are shown on the PUD plan sheets.)

An above ground diesel fuel station and a wash-out pit are generally located in the northern part of the site, with aggregate storage generally in the southeastern part of the site. The washout pit is for cleaning of concrete trucks into sedimentation basins. Landscape block production and storage is in the north central part of the site, to the east of the future shop. A majority of the site will be concrete surfaced (62%). To capture the increased storm water runoff, a retention basis and drainage channels are proposed. The basin is proposed on the eastern side of the site with drainage channels on the north and south sides of the site.

A ground sign is proposed along Eureka Terrace. A flag pole is also proposed to the south of the ground sign. Flag poles are generally exempt from the yard requirements, provided no part of the flag extends beyond the property line.

The proposed PUD is on Lots 12-15 of the Eureka Addition. Proposed building placement over lot lines may require a Final Plat to create one lot in order to address Building Code requirements.

### **PROPOSED LOT COVERAGE**

<u>Use</u>	<u>Square Feet</u>	<u>Percentage</u>
Buildings and Structures	30,177	11%
Driveways/Paving	179,300	62%
Landscape Area	79,300	27%

### **PROPOSED SIGNS**

The sign proposal consists of one ground sign, constructed of concrete, which measures seven feet in length by three feet six inches in height, or 24.5 square feet in area. The sign is externally lit and located parallel to Eureka Terrace and midway between the two access points to the site. The sign is set back approximately 20 feet from the front lot line. The proposed sign meets the sign requirements for the I-2, Industrial Park District, which is the recommended zoning district for industrial PUD signage. In addition, exempt signage such as address numerals and other exempt signs will be part of the proposal (attachment.)

**PROPOSED LIGHTING:** Thirty five foot light pole on a two foot six inch base and full cutoff lights on buildings.

## **REVIEW CRITERIA FOR PLANNED UNIT DEVELOPMENTS**

**1. LANDSCAPING:** Landscaping is functional for the heavy industrial nature of the site and will consist of a landscaped front yard of grass with foundation plantings along the front screening wall, facing Eureka Terrace. The perimeter of the site will be fenced along the north, south and east lot lines and landscaped inside the same perimeter with 98, five to six foot evergreen trees around the majority of those boundaries, except for the Breakout Area, see below under **DRAINAGE**, along the southeastern lot line, which will be landscaped with 14 ornamental trees to maintain conveyance of the flood waters in the Breakout Area. The proposed evergreens have a mature height of 40 to 50 feet. A short two to three foot berm is also proposed along the south lot line to elevate the evergreen trees to screen industrial operations in the southern part of the PUD. The northern, eastern and southern boundaries of the site will also include grass lines drainage ditches and the retention pond. Landscaped areas will be irrigated with underground systems and maintained by the applicant.

*Attachment No. 1*

**2. SCREENING:** A six foot eight inch concrete block screening wall is proposed along the majority of the eastern, Eureka Terrace frontage, except for two, four foot tall gray steel tubing entrance gates. The remainder of the site will be screened by a six foot slatted security fence on the east and south lot lines. There is an existing screening fence on the Star Lumber property abutting the proposed PUD; however, the applicant has proposed a dense row of evergreen trees to further screen the Star Lumber site. The bottom of fencing in the Breakout Area will be elevated approximately two feet to allow conveyance of flood waters in the Breakout Area. Ornamental trees will be pruned to allow conveyance of flood waters.

Trash dumpsters are intended to be behind buildings.

**3. DRAINAGE:** A drainage study was submitted in 2006 with the Preliminary Plat for the entire Eureka Addition subdivision. The study was reviewed and accepted by the City Engineer (attachments.)

The proposed PUD will drain to grass lined drainage ditches along the north and south edges of the site or directly to the grass lined retention pond proposed on the east side of the PUD. The retention pond will be owned and maintained by the applicant. An updated description of the proposed retention basin and resulting storage was submitted by Monty Prescott, P.E., BG Consultants, dated September 10, 2008. The update was reviewed and accepted by the City Engineer (attachments.) The retention pond is designed to hold the 100 Year storm. If needed a storm water small pump will pump retained water into the City's storm water system, consisting of curb and gutter and storm water pipes and inlets, located near the northwest corner of the site.

Part of the proposed PUD is in the regulated and buildable portion of the 100 Year Flood Plain, with the remainder is in the 500 Year Flood Plain, which is not regulated.

Specifically, the southeastern portion of Lot 12 is in the 100 Year Flood Plain and divided into the buildable portion, Floodway Fringe, with development subject to the Flood Plain Regulations. A small portion in the 100 Year Flood Plain is in a unique area identified on the Flood Insurance Rate Map and Flood Insurance Study (FIS) as a Breakout Area. The Breakout Area is treated like a Floodway. The FIS indicates the Floodways of the Eureka Valley tributary were computed based on a reduced discharge due to a split flow from the north towards Eureka Lake. Because of this, the conveyance of flood waters must be maintained at 2,000 cubic feet per second in the Breakout Area (page 16 of the adopted Flood Insurance Study for Riley County and Incorporated Areas, February 4, 2005 attached.) The applicant's consultant, Monty Prescott, P.E., BG Engineering, provided a statement (attached), dated September 8, 2008 that the proposed ornamental trees would not interfere with the flood water conveyance within the Breakout Area. In addition, the slatted fence will be elevated 2.2 feet above grade for conveyance of flood water in the breakout Area. Prescott has verbally indicated that the slatted fence posts in the Breakout Area will not interfere with the conveyance of flood waters.

*Attachment No. 1*

Development is defined in Article X, Flood Plain Regulations, of the Manhattan Zoning Regulations and means “Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, levees, levee systems, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard.” A Flood Plain Development permit will need to be applied for and approved prior to development of that part of the site in both the Breakout Area and Floodway Fringe. Additional review by the Kansas Division of Water Resources may be needed dependent upon the extent of fill in the 100 Year Flood Plain and other factors.

**4. CIRCULATION:** Access to the PUD is safe and efficient. Access is from two curb cuts onto Eureka Terrace. Internal circulation within the industrial site is on concrete pavement. A small portion of Eureka Drive between Eureka Terrace and S. Scenic Drive is in the Riley County budget for improvement in 2009 (application documents page 4 of 6.) The site and Eureka Addition will be served by the future K-18 realignment, which currently shows the highway near the eastern boundary of the PUD (application documents page 4 of 7.)

#### Traffic Analysis

A traffic analysis of the Eureka Addition was submitted with the Preliminary Plat and reviewed and accepted by the City Engineer (attachment.) An updated analysis was not required with the PUD application.

Minimal impact to the surrounding street system was determined with the Preliminary Plat. The number of vehicle trips associated with the concrete batch plat is minimal in comparison to the total number of trips expected with the full build out of the Eureka Addition. Based on the application documents, the Eureka Addition will generate 785 vehicles per day at the east entrance (Eureka Terrace and Eureka Drive) and 2,045 vehicles per day at the west entrance (Eureka Terrace and Eureka Drive). The proposed PUD will generate 60 to 92 trips per day (application documents page 4 of 6.)

#### Sidewalks

A sidewalk was shown on the Preliminary Plat on the west side of the Eureka Addition, which met the requirement for sidewalks on local streets as required by the Manhattan Urban Area Subdivision Regulations.

### Off-Street Parking

Off-street parking was calculated based on the floor area of the office/shop for Plant 1. A minimum of four spaces are required as a manufacturing and processing activity and seven are proposed. The future shop would require 20 parking spaces based on floor area. Adequate space for off-street parking is available on the site for concrete trucks and other vehicle storage.

**5. OPEN SPACE AND COMMON AREA:** The site is primarily a heavy industrial processing site for concrete production and storage. Open landscaped space around the perimeter of the site will be owned and maintained by the property owner.

**6. CHARACTER OF THE NEIGHBORHOOD:** A largely undeveloped light industrial/industrial park and heavy commercial neighborhood within the Eureka Addition, with Star Lumber & Supply being the only existing business in the subdivision. The neighborhood to the north of rezoning site is Star Lumber, the Flint Hills Job Corps Center and agricultural fields. The neighborhood to the immediate south and west of the rezoning site is undeveloped light industrial and industrial park lots. Further to the south are agricultural fields. The dominate use to the southwest is the Manhattan Regional Airport. Residential neighborhoods are to the west of the Eureka Addition. The neighborhood to the east of the rezoning site is the future realigned K-18 Highway Corridor. Its current use is an agricultural field. The Comprehensive Plan suggests the area to the east of the rezoning site and may develop as Industrial and Community Commercial. In the future, the neighborhood will be along a major highway corridor and continue to be an important gateway to the City.

## **MATTERS TO BE CONSIDERED WHEN CHANGING ZONING DISTRICTS**

**1. EXISTING USE:** The site is a vacant heavy commercial property, which is zoned and platted, and can be served by public improvements for heavy commercial land uses allowed in the C-6/AO District, as well as the permitted uses of the C-5, Highway Service Commercial District, subject to a Conditional Use Permit, which must be approved by the Manhattan Board of Zoning Appeals.

**2. PHYSICAL AND ENVIRONMENTAL CHARACTERISTICS:** The site is flat and covered with field grasses, and within the 100 Year and 500 Year flood Plains.

*Attachment No. 1*

The site is entirely within the Horizontal and Conical Zones of Manhattan's Regional Airport, which requires that the AO, Airport Overlay District, be added to the site. The northwest corner of the site is also within the Approach and Transitional Zones of the airport. Future uses (structures and trees), which are within these Zones may be required to obtain, and be granted, an Airport Compatible Use Permit prior to construction, planting or change to the structure or tree, see below under **CONSISTENCY WITH INTENT AND PURPOSE OF THE ZONING ORDINANCE** for further information concerning the AO District.

**3. SURROUNDING LAND USE AND ZONING:**

**(a.) NORTH:** Lumber wholesale (Star Lumber & Supply, Eureka Drive, Flint Hills Job Corps, and agricultural fields; C-6/AO Districts, U, University District, and Riley County G-1, General Agricultural District.

**(b.) SOUTH:** Undeveloped heavy commercial lots and agricultural fields; C-6/AO Districts and Riley County G-1 District.

**(c.) EAST:** Agricultural fields, Eureka Drive, Scenic Drive, and K-18 highway; Riley County G-1 District.

**(d.) WEST:** Eureka Terrace, and undeveloped light industrial lots and undeveloped industrial park lots; I-3, Light Industrial District with AO District and I-2, Industrial Park District with AO District.

**4. CHARACTER OF THE NEIGHBORHOOD:** See above under number 6, **CHARACTER OF THE NEIGHBORHOOD.**

**5. SUITABILITY OF SITE FOR USES UNDER CURRENT ZONING:** The site is suitable for the Permitted and Conditional Uses of the C-6/AO Districts.

**6. COMPATIBILITY OF PROPOSED DISTRICT WITH NEARBY PROPERTIES AND EXTENT TO WHICH IT MAY HAVE DETRIMENTAL AFFECTS:** Nearby properties to the north are a lumber wholesale supply, Flint Hills Job Corps and Eureka Drive, a portion of which is within the City of Manhattan and a portion, between Eureka Terrace and Scenic Drive, is in Riley County. Nearby properties to the east are undeveloped County G-1. Nearby properties to the west are undeveloped light industrial and industrial park lots in the Eureka Addition. Further to the west are single-family homes in the Ady Addition; residential property lines are approximately 890 feet west of the rezoning site. Eventually, these residential neighborhoods will be separated by I-3, Light Industrial and I-2, Industrial Park development. Nearby properties to the south are undeveloped parts of the Eureka Addition, agricultural fields and the Manhattan Regional Airport.

*Attachment No. 1*

Current, comparable, and proposed setbacks, as well as other limitations to development and operations on the site should reduce adverse impacts on nearby properties, resulting in a use compatible to the neighborhood.

Setbacks

The current C-6 District has a minimum 25 foot front yard setback. There is no minimum side yard or rear yard setback for uses in the C-6 District when abutting commercial or other zoning districts, other than residential districts. No residential districts abut the site. Likewise, the proposed PUD implements a permitted use of the I-4 District, and minimum front, side and rear yard requirements are the same as the current C-6 District. However, the proposed site plan depicts proposed structures and other activities at setbacks that are greater than the minimum required for either zoning district.

Proposed setbacks, with the exception of the concrete wall and off-street parking, exceed the minimum requirements of either the underlying C-6 District, or the I-4 District, if that zoning district was permitted.

The proposed PUD's front yard setback of the six foot eight inch concrete screening wall is 25 feet, which is consistent with either the C-6 District or I-4 District. Off-street parking is located immediately behind the wall and consistent with the two zoning districts.

Plant 1 and the office/shop's front yard setback 93 feet, and Plant 2's front yard setback is no less than 95 feet from the western front lot line along Eureka Terrace. Plant 1 and the office/shop's side yard setback are 235 feet from the northern side lot line and 258 feet from the south lot line. Plant 2's side yard setback is 40 feet from the southern side lot line and 460 feet from the north side lot line. Plant 1 and the office/shop and Plant 2's rear yard setbacks are 195 feet and approximately 200 feet, respectively, from the eastern rear lot line.

The future shop's front yard setback is 65 feet, north and south side yard setbacks are 53 feet and 480 feet, and the rear yard setback is 265 feet.

Front yard setbacks for the diesel fueling point and wash-pit are setback 215 feet and 315 feet, 150 feet and 60 feet from the northern side lot line, 510 feet and 560 feet, from the southern side lot line, and 165 feet and 60 feet, from the eastern rear lot line, all respectively.

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The aggregate storage area in the southeastern part of the site is generally set back 230 feet from the front lot line, 245 feet and 40 feet from the northern and southern side lot lines, and 85 feet from the rear lot line. Aggregate storage will be stored in movable concrete block bins. KDHE requirements and applicant practices minimize blowing dust and other matter.

Block production and storage setbacks areas are generally 170 feet from the front lot line, 60 feet from the northern side lot line, 540 feet from the southern lot line, and 170 feet from the eastern rear lot line.

Other Site Limitations

As previously described above under **SCREENING**, the site will be well screened with a combination slatted fence and evergreen trees, with the exception being the Breakout Area where ornamental trees will be used to allow conveyance of flood waters.

The applicant has indicated the maximum height of aggregate storage is fifteen feet (application page 2 of 7.) Storage of aggregate will be in the area noted on the plan and in movable concrete block bins to meet demand. The applicant's dust reduction process also includes a sprinkler system in aggregate storage areas, as well as dust control systems with each batch plant. The concrete batch plants are subject to particulate emission standards and air quality permits, which are required by KDHE. In addition, water control pollution permits must be obtained from KDHE and a federal permit for authorization of discharge under the National Pollutant Discharge Elimination System.

The proposed PUD is entirely within the Horizontal and Conical Zones of Manhattan's Regional Airport, which requires that the AO, Airport Overlay District, be added to the site. The northwest corner of the site is also within the Approach and Transitional Zones of the airport. Future uses (structures and trees), which are within these Zones may be required to obtain, and be granted, an Airport Compatible Use Permit prior to construction, planting or change to the structure or tree (see below under **CONSISTENCY WITH INTENT AND PURPOSE OF THE ZONING ORDINANCE** for further information concerning the AO District).

The proposed maximum structure height in the PUD is 68 feet to the top of the cement silo. Schultz Construction requested the Federal Aviation Administration (FAA) conduct an aeronautical study for a proposed Concrete Batch Plant with a height of 100 feet on Lots 12-15, of the Eureka Addition. The FAA made a determination of no hazard to air navigation, based on a height of 100 feet for a proposed Concrete Batch Plant, with a determination for each individual lot, subject to certain conditions set out in the determination (attachments.)

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While the proposed PUD is not consistent with the original intent of the light industrial/industrial park/heavy commercial nature of the Eureka Addition, the proposed Concrete Batch Plant, with significant screening and operational setbacks, should have reduced impacts on nearby properties beyond the Eureka Addition, the Eureka Addition, as well as along the future K-18 Highway corridor. The proposed PUD will be screened with a concrete wall on the west side of the site, except for two, four foot entry gates, and a densely planted row of evergreen trees around the remainder of the site, with the exception of the Breakout Area, which will be screened with ornamental trees. Building and outdoor activities are set back greater distances than are required by standard commercial and industrial districts. KDHE and FAA and other federal requirements impose environmental standards more stringent than commonly found with Use Limitations of the Manhattan Zoning Regulations, which are associated with commercial and industrial districts. In combination, the above factors should result in a compatible use with nearby properties.

**7. CONFORMANCE WITH COMPREHENSIVE PLAN:**

The Southwest Planning Area of the Future Land Use Map of the Manhattan Urban Area Comprehensive Plan designates the majority of the proposed Eureka Addition as Industrial (IND). The southern part of the site is designated Flood Hazard Area. The northwest corner of the site is within the Approach and Transitional Zones of the Manhattan Regional Airport, and entirely within the Horizontal and Conical Zones of the Airport, as shown on the Environmental Values and Constraints Map. The site is also within the Eureka Valley Special Planning Area.

Specific policy statements of the Comprehensive Plan, as they relate to the proposed rezoning site include:

***I 1: Characteristics.** The Industrial designation is intended to provide locations for light and heavy manufacturing, warehousing and distribution, indoor and screened outdoor storage, and a wide range of other industrial services and operations. Typically, heavy industrial uses involve more intensive work processes, and may involve manufacturing or basic resource handling and/or extraction. Design controls within an Industrial area are not as extensive as in the Office/Research Park category and a broader range of uses is permitted. (Chapter 4: Land Use and Growth Management, page 4-15)*

***I 2: Location.** Because of their potential environmental impacts, Industrial uses should generally be located away from population centers or must be adequately buffered. Traffic generated by industrial uses should not pass through residential areas. Sites should have access to one or more major arterials or highways capable of handling heavy truck traffic. Railroad access is also beneficial to certain types of heavy industrial uses. Light industrial uses can typically be located in areas that also contain some highway-oriented commercial uses, and might benefit from close proximity and better access to their local customer base. (Chapter 4: Land Use and Growth Management, page 4-15)*

***I 3: Screening.*** *Storage, loading and work operations should be screened from view along all industrial area boundaries (when adjacent to non-industrial uses) and along all public streets. (Chapter 4: Land Use and Growth Management, page 4-15)*

***NRE 6: Natural Hazards.*** *Development shall be prohibited in areas where natural hazards have been identified which have the potential to endanger life, resources, and property. Within the Manhattan Urban Area, these hazards include steep slopes (20% or greater slope), floodways, and other special flood hazard areas. (Chapter 5, Natural Resources and Environment, page 5-3)*

***EV 1: Manhattan Regional Airport.*** *The location and design of future development should be compatible and consistent with the goals and policies of the Airport Master Plan. (Chapter 13: Special Planning Area Policies, page 13-6)*

***EV 7: Gateway Corridor Design.*** *The Fort Riley Boulevard/K-18 Corridor leading into the community from the southwest, should be enhanced through such approaches as landscape treatments, coordinated signage and lighting and development of design guidelines in order to create an attractive gateway into the community. (Chapter 13: Special Planning Area Policies, page 13-6)*

The development within the 100 Year Flood Plain, Floodway Fringe and Breakout Area, is identified on Lot 12 and will be regulated according to the Flood Plain Regulations of the Manhattan Zoning Regulations. Development is defined in the Flood Plain Regulations and includes fill as well as excavation. A Flood Plain Development Permit is required for development in the 100 Year Flood Plain.

The AO District is proposed to be added to the underlying zoning district, which will control construction within the AO District.

The Comprehensive Plan recognizes that heavy industrial use is an activity within the IND category, which is a type of activity involving more intensive processes than other industrial activities. The proposed rezoning site will be near the proposed realignment of the K-18 Highway, which is noted as a Gateway to the City from the southwest. The proposed rezoning provides for screening of the site, which should provide a visual barrier from the public's view along the future highway realignment. The proposed rezoning conforms to the Comprehensive Plan.

## **8. ZONING HISTORY AND LENGTH OF TIME VACANT AS ZONED:**

*Attachment No. 1*

- February 6, 2006: Manhattan Urban Area Planning Board considers annexation of the 53-acre site and conducts the public hearings on the proposed rezoning of three tracts of land from County G-1, General Agricultural District, and N-1, Airport Noise Hazard District, to I-2, Industrial Park District; C-6, Heavy Commercial District; and I-3, Light Industrial District, all with AO, Airport Overlay District. The Planning Board recommends approval of the annexation on a vote of 5-1; and recommended approval of the rezoning of three tracts of land on a vote of 5-1. The Board tabled the Preliminary Plat to the February 23, 2006, Planning Board meeting, on a vote of 6-0.
- February 21, 2006 City Commission, on a vote of 5-0, approves Resolution No 022106-A, requesting that the Board of Riley County Commissioners make positive findings regarding the island annexation of the proposed Eureka Addition.
- February 23, 2006 Manhattan Urban Area Planning Board approves Preliminary Plat 6-0, with three conditions.
- March 16, 2006 Board of Riley County Commissioners considers island annexation request, as per K.S.A. 12-520c and tables for additional information.
- March 30, 2006 Board of Riley County Commissioners continues consideration of island annexation request, as per K.S.A. 12-520c, and approves Resolution No. 03006-13, finding that the annexation will not hinder development or prevent proper growth.
- April 18, 2006 City Commission approves first reading of ordinances annexing and rezoning the proposed Eureka Addition.
- May 2, 2006 City Commission approves Ordinance Nos. 6537 and 6538 annexing and rezoning the proposed Eureka Addition.
- August 7, 2006 Manhattan Urban Area Planning Board approves Final Plat Eureka Addition.
- September 5, 2006 City Commission accepts easements and rights-of-way as shown on the Final Plat Eureka Addition.

July 21, 2008                      Manhattan Urban Area Planning Board recommends denial, on a vote of 4-1, of the proposed rezoning of Lots 12 - 15, Eureka Addition, from C-6, Heavy Commercial District, with AO, Airport Overlay District, to I-4, Heavy Industrial District, with AO, Airport Overlay District, based on the findings in the Staff Report. Reynard voted against the motion.

**9. CONSISTENCY WITH INTENT AND PURPOSE OF THE ZONING ORDINANCE:** The intent and purpose of the Zoning Regulations is to protect the public health, safety, and general welfare; regulate the use of land and buildings within zoning districts to assure compatibility; and to protect property values.

The proposed PUD will establish a Concrete Batch Plant, which is a permitted use of the I-4, Heavy Industrial District. The I-4 District is designed to allow industries involved with the basic manufacturing and processing of raw materials which are apt to have an extensive impact on the surrounding area. The proposed PUD is limited to a single permitted use of the I-4 District and will provide setbacks, screening and other regulatory restrictions that mitigate the impact of the heavy industrial character of the site. In addition, the Manhattan Zoning Regulations only allow limited opportunities for Concrete Batch Plants, either in the I-4 District as a Permitted Use, or as a Conditional Use in the LM-SC, Light Manufacturing-Service Commercial District, and only for existing Concrete Batch Plants. The proposed PUD implements a recommendation of the Comprehensive Plan, subject to the conditions of approval.

The AO District “is intended to promote the use and development of land in a manner that is compatible with the continued operation and utility of the Manhattan Municipal Airport so as to protect the public investment in, and benefit provided by the facility to the region. The district also protects the public health, safety, convenience, and general welfare of citizens who utilize the facility or live and work in the vicinity by preventing the creation or establishment of obstructions or incompatible land uses that are hazardous to the airport's operation or the public welfare.” Future uses (structures and trees, existing and proposed) in the AO District may be required to obtain an Airport Compatible Use Permit (AO District regulations attached.)

Development in the 100 Year Flood Plain is subject to the requirements of the Flood Plain Regulations of the Manhattan Zoning Regulations, which are intended to protect life and property from flooding.

**10. RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE THAT DENIAL OF THE REQUEST WOULD ACCOMPLISH, COMPARED WITH THE HARDSHIP IMPOSED UPON THE INDIVIDUAL OWNER:** There appears to be no relative gain to the public that denial would accomplish compared to the hardship to the owner. The proposed PUD provides for local review and consideration of the use and its impact on the public, as well as state and federal permits for environmental impacts.

The AO District requires that future uses be reviewed in order to protect airspace. The FAA made a determination of no hazard to air navigation, based on a height of 100 feet for a proposed Concrete Batch Plant on each individual lot, subject to certain conditions set out in the determination. Assuming the conditions are met, no adverse impact by the proposed structure is expected that would adversely affect safe and efficient use of navigable airspace by aircraft.

**11. ADEQUACY OF PUBLIC FACILITIES AND SERVICES:** Adequate street, sanitary sewer and water services are available to serve the proposed rezoning site.

**12. OTHER APPLICABLE FACTORS:** None.

**13. STAFF COMMENTS AND RECOMMENDATION:** City Administration recommends approval of the proposed rezoning of Penny's Concrete PUD C-6, Heavy Commercial District, with AO, Airport Overlay District, to PUD, Industrial Planned Unit Development District, with AO, Airport Overlay District, with the following conditions:

1. Permitted uses shall include a permanent Concrete Batch Plant, a portable Concrete Batch Plant, the production and storage of concrete landscaping blocks, and a vehicle and equipment maintenance shop.
2. Perimeter and front yard landscaping and screening shall be provided as proposed.
3. Landscaping and irrigation shall be provided pursuant to a Landscaping Performance Agreement between the City and the owner, which shall be entered into prior to issuance of a building permit.
4. All landscaping and irrigation shall be maintained in good condition.
5. Light poles shall be provided as described in the application documents and shall be full cutoff design. Building lighting shall not cast direct light onto public or private streets or adjacent property and shall be full cut-off design.
6. Signage shall be provided as proposed to include one ground entry sign.
7. Exempt signage shall include signage described in Article VI, Section 6-104 (A)(1),(2),(4),(5),(7) and (8); and Section 6-104 (B)(2), of the Manhattan Zoning Regulations. Temporary sales aids and portable signs, as described in Article VI, Signs, of the Manhattan Zoning Regulations, shall be prohibited.

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8. All trash enclosures shall be constructed of masonry walls with gates.
9. Dust control mitigation shall be provided as proposed for material storage areas and conveyors.

**ALTERNATIVES:**

1. Recommend approval of the proposed rezoning of Penny's Concrete PUD from C-6, Heavy Commercial District, with AO, Airport Overlay District, to PUD, Industrial Planned Unit Development District, with AO, Airport Overlay District, stating the basis for such recommendation, with the conditions listed in the Staff Report.
2. Recommend approval of the proposed rezoning of Penny's Concrete PUD from C-6, Heavy Commercial District, with AO, Airport Overlay District, to PUD, Industrial Planned Unit Development District, with AO, Airport Overlay District, and modify the conditions, and any other portions of the proposed PUD, to meet the needs of the community as perceived by the Manhattan Urban Area Planning Board, stating the basis for such recommendation, and indicating the conditions of approval.
3. Recommend denial of the proposed rezoning, stating the specific reasons for denial.
4. Table the proposed rezoning to a specific date, for specifically stated reasons.

**POSSIBLE MOTION:**

The Manhattan Urban Area Planning Board recommends approval of the proposed rezoning of Penny's Concrete PUD from C-6, Heavy Commercial District, with AO, Airport Overlay District, to PUD, Industrial Planned Unit Development District, with AO, Airport Overlay District, based on the findings in the staff report, with the nine conditions recommended by City Administration.

**PREPARED BY:** Steve Zilkie, AICP, Senior Planner

**DATE:** September 10, 2008

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*Attachment No. 2*

<b>INTERSECTION</b>	<b>FLOW CONTROL</b>	<b>TYPE OF CONTROL</b>
Brookville West and Walters Drive	South	Stop
Walters Drive and Brookpark Drive	North & South	Yield
Brookstone Drive/Brookstone Circle and Brookvill Drive	East & West	Yield
Little Kitten Avenue and Plymouth Road	Northeast & Southwest	Yield