

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 24th day of March, 2009, 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 25th day of March, 2009.



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



MINUTES
CITY COMMISSION MEETING
TUESDAY, MARCH 3, 2009
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 the City Manager Ron R. Fehr, Assistant City Manager Jason Hilgers, Assistant City Manager Lauren Palmer, City Attorney Bill Frost, City Clerk Gary S. Fees, 6 staff, and approximately 20 interested citizens.

PLEDGE OF ALLEGIANCE

Mayor Hatesohl led the Commission in the Pledge of Allegiance.

PUBLIC COMMENTS

Mayor Hatesohl opened the public comments.

Stan Hoerman, 2021 Bluehills Road, informed the Commission that he appreciated their assistance with lost luggage at the Manhattan Regional Airport and in listening to his concerns for additional security near their neighborhood. He then provided information on the difficulty in moving houses in Manhattan and relocating them to other sites. He asked the Commission to consider changing the current ordinance to make moving houses easier to accomplish and stated that the City of Manhattan owns 16 lots that is currently being used for the Community Gardens that could be used to relocate existing houses to provide for affordable housing.

Karen McCulloh, 1516 Leavenworth Street, and Jenny Reynard, Riley County Extension, issued the Commission with a friendly challenge from the Riley County Commission to form a team for Walk Kansas, March 8 through May 2, 2009. She then answered questions from the Commission.

PUBLIC COMMENTS (CONTINUED)

Ron Cochran, 1618 Delany Drive, President, Westwood Homeowners Association, informed the Commission of drainage issues with his property, nearby properties, and issues with Professional Place. He stated that the drainage issues have resulted in a muddy mess, with odor, and a mosquito problem. He stated that he has contacted the City and the Riley County Health Department with little response. He asked that the issue be taken care of and that the City fix the drainage ditch.

Mayor Hatesohl informed Mr. Cochran that the Commission will direct the Public Works Department and the City Engineer to look at this issue and let the Commission know how they plan to address it. He then left the Commission Meeting at 7:25 p.m. and informed the public that he would return after his daughter's musical performance.

Dale Houdeshell, Director of Public Works, provided additional information on the item and responded to questions from the Commission.

Ron Cochran, 1618 Delany Drive, President, Westwood Homeowners Association, provided additional information on the item and expressed his concern that the problem needs to be addressed and asked for the City's help.

Hearing no other comments, Mayor Pro-Tem Strawn closed the public comments.

COMMISSIONER COMMENTS

Commissioner Sherow thanked Mr. Hoerman, 2021 Bluehills Road, for bringing the item of moving houses to the Commission's attention and asked that City staff provide background information for the Commission's consideration.

Bill Frost, City Attorney; Jason Hilgers, Assistant City Manager; and Ron Fehr, City Manager, responded to questions on the item and informed the Commission that they would look at the current ordinance and prepare background information for the Commission's consideration.

Commissioner Sherow read a statement voicing his concern in conducting the business or affairs of the City of Manhattan on the *Manhattan Mercury* blog and possibly violating provisions of the Kansas Open Meetings Act, when participating on a blog. He asserted that the City Commission Room is the proper place for the discussion of the business and affairs of the City when a quorum is present. He also stated that the Commission Room is where the public, in person, by name, is welcomed and encouraged to present their ideas and concerns to the Commission. He then requested that the City work toward enhancing public awareness of the affairs and business of the City Commission meetings through the City's website and Channel 3.

COMMISSIONER COMMENTS (*CONTINUED*)

Commissioner Strawn stated that he supported expanding public awareness initiatives of City Commission meetings, as soon as the equipment is available.

CONSENT AGENDA

(* denotes those items discussed)

MINUTES

The Commission approved the minutes of the Regular City Commission Meeting held Tuesday, February 17, 2009.

CLAIMS REGISTER NOS. 2604 and 2605

The Commission approved Claims Register Nos. 2604 and 2605 authorizing and approving the payment of claims from February 11, 2009, to February 24, 2009, in the amounts of \$143,415.80 and \$2,217,590.60.

LICENSE – TREE MAINTENANCE

The Commission approved a Tree Maintenance license for calendar year 2009 for Wassenburg Stump Removal, 108 2nd Street, Home, Kansas.

ORDINANCE NO. 6752 – LEVY – SPECIAL ASSESSMENTS

The Commission approved Ordinance No. 6752 levying special assessments against the benefiting properties in the eleven (11) public improvement districts which have been completed: *Cedar Glen Addition – Street (ST0618); Grand Mere Vanesta, Unit Two – Street and Storm Drainage (ST0629/SM0605); Hawthorne Woods Addition – Sanitary Sewer (SS0711), Street (ST0715), Water (WA0709), and Trail (SP0707); Scenic Meadows Addition, Unit Two, Phase I – Sanitary Sewer (SS0702), Sanitary Sewer – Lift Station (SS0703), Street (ST0701), and Water (WA0702), and; 1600 Block Alley between Houston and Pierre Streets– Street (ST0801).*

ORDINANCE NO. 6753 – REZONE – STONE POINTE TOWNHOMES, UNIT TWO

The Commission approved Ordinance No. 6753 rezoning the proposed Stone Pointe Townhomes, Unit Two, generally located north of Stone Crest Drive along the east side of North Scenic Drive, from R, Single-Family Residential District with AO, Airport Overlay District, to PUD, Residential Planned Unit Development District with AO, Airport Overlay District, based on the findings in the Staff Report, with the five conditions recommended by the Manhattan Urban Area Planning Board (*See Attachment No. 1*).

CONSENT AGENDA (CONTINUED)

ORDINANCE NO. 6754 – INSTALL – 15 MINUTE LOADING ZONE – BOYS AND GIRLS CLUB REQUEST

The Commission approved Ordinance No. 6754 removing a “2 hour parking” zone and installing a “15 Minute Loading Zone” on the west side of the 200 block of South 5th Street beginning 56 feet north of the center line of Pierre Street and continuing north 100 feet.

CHANGE ORDER NO. 1 – LEE MILL HEIGHTS ADDITION, UNIT 4 – STORM SEWER IMPROVEMENTS (SM0703)

The Commission approved Change Order No. 1 for Lee Mill Heights Addition, Unit 4, Storm Sewer Improvements (SM0703), resulting in a net increase of \$40,882.04 (+21.68%) to the contract with Manhattan Trenching, Inc., of Manhattan, Kansas.

CHANGE ORDER NO. 1-FINAL – 2008 CONCRETE PANEL REPLACEMENT (ST0817)

The Commission approved Change Order No. 1 - Final for the 2008 Concrete Panel Replacement (ST0817), resulting in a total increase of \$13,243.65 (+3.3%) to the contract with Pavers Incorporated, of Salina, Kansas.

* **CHANGE ORDER NO. 2 – CITY PARK PAVILION (CPX04P)**

Curt Loupe, Director of Parks and Recreation, provided additional background information on the item.

Ron Fehr, City Manager, responded to questions from the Commission regarding change orders.

Commissioner Sherow complimented Commissioner Strawn on the fundraising efforts for the City Park Pavilion.

The Commission approved Change Order No. 2 for City Park Pavilion Project (CPX04P), resulting in a total increase of \$38,501.00 to the contract with R.M. Baril Contractors, of Manhattan, Kansas.

* **SET JUST COMPENSATION – MOYER RANCH INC. – WATER TREATMENT PLANT AND WELLFIELD IMPROVEMENT PROJECT (WAX90P)**

Commissioner Sherow requested this item be moved to the end of the General Agenda.

CONSENT AGENDA (CONTINUED)

AWARD CONTRACTS – HOUSING REHABILITATION PROJECTS

The Commission accepted the bids for 1201 Yuma Street and 619 Thurston Street; awarded the bids to the lowest responsible bidders; authorized the Mayor and City Clerk to enter into agreements with the contractors and property owners for expenditure of Housing Rehabilitation Funds; and authorized City Administration to approve any necessary change orders.

AGREEMENT – VETERINARY SERVICES – SUNSET ZOO

The Commission authorized the City of Manhattan to renew the agreement with Kansas State University for Veterinary Services at Sunset Zoological Park.

* AUTHORIZE PURCHASE - VEHICLES

Ron Fehr, City Manager, provided additional information on the purchase of vehicles. He then answered questions from the Commission regarding the vehicles and the Capital Improvements Program.

The Commission authorized the purchase of one (1) vehicle [WW #50 (WW901E)] utilizing state vehicles bids, two (2) vehicles [Traffic #45 (TR901E); P&R #77 (CP902E)] through Dick Edwards, of Manhattan, Kansas, and one (1) vehicle [Finance #2 (FN901E)] through Ed Schram, of Manhattan, Kansas, all in accordance with the 2009 Capital Improvement Program for a total cost of \$67,631.50.

APPLICATION – 2009 EMERGENCY SHELTER GRANT FUNDS

The Commission authorized Mayor and City Clerk to sign an application for 2009 Emergency Shelter Grant funds.

BOARD APPOINTMENT – BICYCLE ADVISORY COMMITTEE

The Commission approved the appointment by Mayor Hatesohl of Julie Gibbs, 2216 Butternut, to fill the unexpired Riley County-Manhattan Health Department term on the Bicycle Advisory Committee of Susanne Kufahl. Ms. Gibbs' term begins immediately, and will expire October 31, 2010.

Mayor Hatesohl rejoined the Commission at the dais.

After discussion, Commissioner Sherow moved to approve the consent agenda, as amended. Commissioner Phillips seconded the motion. On a roll call vote, motion carried 5-0, with the exception of Item I: City Park Pavilion Change Order, which carried 4-0, with Commissioner Strawn abstaining from the item and Item J: Setting Just Compensation for Acquiring Property and Easements for Water Treatment Plant and Wellfield Improvement Project, which was moved to the end of the General Agenda.

GENERAL AGENDA

RESOLUTION NO. 030309-A - CALL FOR SPECIAL QUESTION ELECTION and SET BALLOT LANGUAGE - SPECIAL SALES TAX AND GENERAL OBLIGATION BOND AUTHORITY FOR PUBLIC IMPROVEMENTS

Curt Loupe, Director of Parks and Recreation, presented the item and responded to questions from the Commission.

Bernie Hayen, Director of Finance, responded to questions from the Commission regarding the potential pay-off of the bonds and the revenue collection process for the special sales tax.

Ron Fehr, City Manager, provided additional information on the item.

Curt Loupe, Director of Parks and Recreation, presented the proposed educational materials that would be on the City's website and stated that he would be conducting informational meetings and would be working on a tri-fold educational flyer. He then responded to additional questions from the Commission.

Ron Fehr, City Manager, responded to questions from the Commission regarding the City Park Pool, the design-bid-build process, and provided additional information on the item.

Dale Houdeshell, Director of Public Works, provided additional information on the design-bid-build process and incentive mechanisms.

Curt Loupe, Director of Parks and Recreation, informed the Commission and community of the open house scheduled for Thursday, March 12, 2009. He then responded to questions from the Commission regarding feedback received from the Parks and Recreation Advisory Board and provisions in the design-bid-build process.

After discussion, Commissioner Sherow moved to approve Resolution No. 030309-A calling a special question election for the identified public improvements and authorizing the imposition of the identified special citywide retailers' sales tax and general obligation bond authority, all as more specifically set forth in the resolution. Commissioner Snead seconded the motion.

Curt Loupe, Director of Parks and Recreation, responded to questions from the Commission about the preliminary concepts and potential of a cover over the pool.

After additional discussion and comments from the Commission, on a roll call vote, motion carried 5-0.

GENERAL AGENDA (CONTINUED)

FIRST READING – AMEND - MANHATTAN ZONING REGULATIONS

Eric Cattell, Assistant Director for Planning, presented the item.

Bill Frost, City Attorney, and Eric Cattell, Assistant Director for Planning, provided additional information on the item and responded to questions from the Commission.

After discussion, Commissioner Sherow moved to approve first reading of an ordinance amending the Manhattan Zoning Regulations to clarify when the Final Decision of the Board of Zoning Appeals occurs, by modifying Article XIV, Sections 14-405, 14-506, 14-607, and 14-706; and, Article VIII, Section 8-501(I), based on the findings in the Staff Memorandum, as recommended by the Manhattan Urban Area Planning Board (*See Attachment No. 2*). Commissioner Snead seconded the motion. On a roll call vote, motion carried 5-0.

ITEM REMOVED FROM CONSENT AGENDA

SET JUST COMPENSATION – MOYER RANCH INC. – WATER TREATMENT PLANT AND WELLFIELD IMPROVEMENT PROJECT (WAX90P)

Dale Houdeshell, Director of Public Works, presented an overview of the item and responded to questions from the Commission regarding the need to protect the area around the well from cattle and chemicals.

Bill Frost, City Attorney, responded to questions from the Commission regarding acquiring the property and the process.

After discussion, Commissioner Snead moved to establish the values of “just compensation” as outlined in the confidential documents for the acquisition of property and easements for the Water Treatment Plant and Wellfield Improvement Project (WA0611) and authorize City Administration to extend a formal offer and negotiate with the property owner, Moyer Ranch Inc., for acquisition of the required properties and easements and to make offers to the property owner based upon such “just compensation”. Commissioner Sherow seconded the motion. On a roll call vote, motion carried 5-0.

ADJOURNMENT

At 8:58 p.m. the Commission adjourned.



Gary S. Fees, MMC, City Clerk

STAFF REPORT

APPLICATION TO REZONE PROPERTY TO PLANNED UNIT DEVELOPMENT DISTRICT

BACKGROUND

FROM: R, Single-Family Residential District and AO, Airport Overlay District.

TO: PUD, Residential Planned Unit Development District and AO, Airport Overlay District.

OWNER/APPLICANT: Stone Crest Land Company, LLC - Tim Schultz.

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

DATE OF PUBLIC NOTICE PUBLICATION: Monday, December 29, 2008.

DATE OF PUBLIC HEARING: PLANNING BOARD: Thursday, January 22, 2009.

CITY COMMISSION: Tuesday, February 17, 2009.

LOCATION: North of Stone Crest Drive along the east side of N. Scenic Drive.

AREA: 33,015 square feet (.75 acres); Lot 111 and Lot 112, Stone Pointe Addition, Unit Two.

PROPOSED USES: The Permitted use is a four-family attached residential townhome. Common area, Tract D, will be owned and maintained by the Stone Point Townhomes Community Association (Declarations attached.)

PROPOSED BUILDINGS AND STRUCTURES: One residential building consisting of four, single-family townhome units. Each unit is a two-story, three bedroom townhome with two and one-half bathrooms, living room, kitchen and dining room. Each unit has a two car enclosed garage with a driveway for two additional cars. Building heights are approximately 28 feet from grade to roof peak. Exterior materials are vinyl siding with first floor brick accent on the front and architectural roof shingles. Colors are in a range from earth tone colors such as brown, beige, and grey to muted shades such as red, blue and green. Each unit has a first floor covered rear patio..

Attachment No. 1

Building setbacks generally range from 27-31 feet from south lot line off Stone Crest Drive, 78-85 feet from west lot line off N. Scenic Drive, 37-57 feet from the north lot line, and 17-32 feet off the east lot line.

Proposed residential density is approximately 5.2 dwelling units per net acre.

The target market is primarily the military due to the site's location along N. Scenic Drive.

PROPOSED LOT COVERAGE

<u>Use</u>	<u>Acres/Square Feet</u>	<u>Percentage</u>
Building	5,366 square feet	16.3%
Driveways	2,520 square feet	7.6%
Landscape/Open Space/Common Area	25,129 square feet	76.1%

PROPOSED SIGNS

No signs are proposed. Exempt signs such as address numerals, real estate signs and similar signs will be permitted. A ground entry signage for the Stone Pointe Townhomes PUD is located in the entry island off Stone Crest Drive with a second future sign at the Scenic Park Lane entry. The Townhomes Community Association is responsible for maintenance of both signs.

PROPOSED LIGHTING: One standard Westar street light pole will be in the public street. Residential lights are standard residential front door and porch lights (see building elevation).

REVIEW CRITERIA FOR PLANNED UNIT DEVELOPMENTS

1. LANDSCAPING: The site will be landscaped with a mixture of deciduous, ornamental, and evergreen trees, primarily along streets and at entrances to the PUD. Areas around the dwelling units will be seeded. Landscape planting beds are proposed at the exterior fronts of dwellings. Underground irrigation will be provided to maintain these areas. Tract D will be landscaped and owned and maintained by the Townhomes Community Association.

Attachment No. 1

The proposed townhome's location along N. Scenic Drive could be buffered with a combination of shade and evergreen trees along the western part of the site, which would minimize the impact of views along Scenic Drive corridor. This landscape buffer would implement policy statement MR 5: Views from Scenic Drive (see below under Comprehensive Plan.)

2. SCREENING: No dumpsters are proposed and units will have individual trash pickup.

3. DRAINAGE: The tract drains to the east to a natural drainage ravine. A letter (attached), dated December 31, 2008, was submitted by Monty Prescott P.E. at the request of the City Engineer, regarding drainage impacts associated with the rezoning. The letter indicates negligible effects generated from storm water associated with the proposed development. The finding was accepted by the City Engineer.

4. CIRCULATION: Internal circulation is safe and efficient. Driveway access is off Stone Crest Drive.

A sidewalk will be provided on the south side of Stone Crest Drive. Sidewalks along N. Scenic Drive should be provided when the street is built to an urban section, which has been noted with the previously approved Preliminary Plat of Stone Pointe Addition, Unit Two, and Stone Pointe Townhomes PUD.

Off-street parking should be adequate for the townhome units, which consists of four off-street parking spaces per unit, two in the garage and two on the driveway for each three bedroom unit.

A letter (attached), dated December 31, 2008, was submitted by Monty Prescott P.E. at the request of the City Engineer, regarding traffic impacts associated with the rezoning. The letter indicates insignificant traffic impacts from the proposed development. The finding was accepted by the City Engineer.

5. OPEN SPACE AND COMMON AREA: Each residential building and a portion of the surrounding yard will be platted as individual lots. The remainder of the PUD is common area/open space, which will be owned and maintained by the Townhomes Community Association.

6. CHARACTER OF THE NEIGHBORHOOD: The area to the south, east and northeast is characterized as a developing growth corridor of the City with single-family, two-family and multiple-family residential development, as well as a large undeveloped tract, which remains in Riley County. Development occurring in the Lee Mill Heights and Miller Ranch areas, which are further to the east, can be expected to grow towards the site. Street connections with Lee Mill Heights and Miller Ranch will accommodate future access to the eastern parts of the City. The single-family, two-family and multiple-family residential development in the Highland Meadows Additions are to the northwest. The area to the west of N. Scenic Drive is largely open range land with some low density residential homes to the southwest.

MATTERS TO BE CONSIDERED WHEN CHANGING ZONING DISTRICTS

- 1. EXISTING USE:** The site is platted as two vacant single-family residential lots.
- 2. PHYSICAL AND ENVIRONMENTAL CHARACTERISTICS:** The site slopes downhill from west to east and drains to a natural drainage channel and easement along the east side of the site. There are large mature cedar trees on the north part of the site and mature deciduous trees along the east side of the site.

The site is within the Conical Zone of Manhattan's Regional Airport, which requires that the AO, Airport Overlay District, be added to site. Future uses (structures and trees), which are within the limits of the Conical Zone 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:** Agricultural wooded and rural home site; G-1 District.
- (b.) **SOUTH:** Residential four-family and six-family single-family attached residential townhomes, with two townhome buildings under construction, and common area in Stone Pointe Townhomes PUD; Residential Planned Unit Development District.
- (c.) **EAST:** Platted and vacant single-family residential lots in Stone Pointe Addition, Unit Two; R/AO Districts.

(d.) **WEST:** N. Scenic Drive, agricultural and rural single-family dwellings; G-1 District and A-5, Single Family Residential District.

4. CHARACTER OF THE NEIGHBORHOOD: See above.

5. SUITABILITY OF SITE FOR USES UNDER CURRENT ZONING: Lot 111 and Lot 112 are suitable for one single family residential building on each separate lot, subject to the requirements of the R/AO Districts.

6. COMPATIBILITY OF PROPOSED DISTRICT WITH NEARBY PROPERTIES AND EXTENT TO WHICH IT MAY HAVE DETRIMENTAL AFFECTS: The site is in a growth corridor of the City. Increases in light, noise and traffic are expected, which should be similar to the same affects generated by Highland Meadows and Stone Pointe subdivisions. The Stone Pointe Townhomes PUD was anticipated with the rezoning to R-3/AO District in 2006. The proposed four family townhome is consistent with the character of the neighborhood. In addition, the proposed townhome building will be separated from single-family development to the east by the 70-foot wide natural drainage channel and easement, which provides greater than normal spacing between the different types residential uses.

7. CONFORMANCE WITH COMPREHENSIVE PLAN: The proposed site is shown on the Future Land Use map in the Southwest Planning Area, generally in an area consisting of a combination of Residential Medium High Density (RMH), and Preserved Open Space. The site is also located in the Miller Ranch Special Planning Area and is in the Conical Zone of the Manhattan Regional Airport. The AO, Airport Overlay District will be added as an overlay district due to the Conical Zone.

Residential designations: Densities within a Residential Medium/High neighborhood range from 11 to 19 dwelling units per net acre. Appropriate housing types may include a combination of small lot single-family, duplexes, townhomes, or four-plexes on individual lots. However, under a planned unit development concept, or when subject to design and site plan standards (design review process), larger apartment or condominium buildings may be permissible as well, provided the density range is complied with.

Applicable policies to The Miller Ranch Special Planning Area include:

MR 5: Views from Scenic Drive

Development, including signage, should be set back from Scenic Drive to protect views and existing vegetation. The master plan for Miller Ranch should incorporate a buffer zone or overlay area along Scenic Drive designed to protect views, existing vegetation, and other important attributes of the area's scenic quality. Development of a neighborhood center, as described in MR 4, should occur east of the Scenic Drive buffer or overlay and be sited in a manner that minimizes visual impact on the Scenic Drive Corridor.

MR 7: Airport Airspace Regulations

Development shall be consistent with established airspace regulations for the Manhattan Regional Airport and the Airport Master Plan.

The existing R District would allow no more than eleven dwelling units per net acre. The proposed net density is 5.2 dwelling units per net acre. Additional landscape buffering on the western part of the site will minimize the visual impact of the development from N. Scenic Drive.

The proposed rezoning conforms to the Comprehensive Plan.

8. ZONING HISTORY AND LENGTH OF TIME VACANT AS ZONED: The chronology below describes all of Stone Pointe Addition, Unit Two, to include Lots 111 and 112, and the existing Stone Pointe Townhomes PUD.

July 17, 2006 Manhattan Urban Area Planning Board recommends approval of annexation and rezoning of the Stone Pointe Addition, Unit Two, from G-1, General Agricultural District, to R, Single-Family Residential District with AO, Airport Overlay District; and R-3, Multiple-Family Residential District with AO, Airport Overlay District; and C-2, Neighborhood Shopping District with AO, Airport Overlay District.

August 15, 2006 City Commission approves first reading of annexation and rezoning to R, Single-Family Residential District with AO, Airport Overlay District; and R-3, Multiple-Family Residential District with AO, Airport Overlay District; and C-2, Neighborhood Shopping District with AO, Airport Overlay District.

Attachment No. 1

- September 5, 2006 City Commission approves Ordinance Nos. 6564 and 6564 annexing and rezoning Stone Pointe Unit Two, to R, Single-Family Residential District with AO, Airport Overlay District; and R-3, Multiple-Family Residential District with AO, Airport Overlay District; and C-2, Neighborhood Shopping District with AO, Airport Overlay District.
- November 6, 2006 Manhattan Urban Area Planning Board approves Preliminary Plat of Stone Pointe Addition, Unit Two.
- December 19, 2006 Manhattan Urban Area Planning Board approves Final Plat of Stone Pointe Addition, Unit Two.
- January 9, 2007 City Commission accepts easements and right-of-way as shown on the Final Plat of Stone Pointe Addition, Unit Two.
- March 17, 2008 Manhattan Urban Area Planning Board recommends approval of the rezoning of the Stone Pointe Townhomes PUD, from R-3, Multiple-Family Residential District with AO, Airport Overlay District, to PUD, Residential Planned Unit Development District with AO, Airport Overlay District.
- April 1, 2008 City Commission approves first reading of the rezoning of the Stone Pointe Townhomes PUD, from R-3, Multiple-Family Residential District with AO, Airport Overlay District, to PUD, Residential Planned Unit Development District with AO, Airport Overlay District.
- April 15, 2008 City Commission approves Ordinance No. 6693 rezoning Stone Pointe Townhomes PUD, from R-3, Multiple-Family Residential District with AO, Airport Overlay District, to PUD, Residential Planned Unit Development District with AO, Airport Overlay District.
- June 2, 2008 Manhattan Urban Area Planning Board approves the Final Plat and the Final Development Plan of the Stone Pointe Townhomes Residential Planned Unit Development.
- June 17, 2008 City Commission accepts easements and right-of-way as shown on the Final Plat of Stone Pointe Residential Townhomes Planned Unit Development.

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 PUD Regulations are intended to provide a maximum choice of living environments by allowing a variety of housing and building types; a more efficient land use than is generally achieved through conventional development; a development pattern that is in harmony with land use density, transportation facilities and community facilities; and a development plan which addresses specific needs and unique conditions of the site which may require changes in bulk regulations or layout. The proposed PUD is consistent with the intent and purposes of the Zoning Regulations, and the intent of the PUD Regulations, subject to the conditions of approval.

Subject to the conditions of approval, proposed Stone Pointe Townhomes PUD, Unit Two, is consistent with the Zoning Regulations.

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.”

The site is within the Conical Zone, which is, in general terms, established as an airspace that extends outward and upward in relationship to the Airport and is an approach zone height limitation on the underlying land. Future uses (structures and trees, existing and proposed) in the AO District may be required to obtain an Airport Compatible Use Permit, unless circumstances indicate that the structure or tree has less than 75 vertical feet of height above the ground and does not extend above the height limits prescribed for the Conical Zone.

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, which denial would accomplish. The AO District requires that future uses be reviewed in order to protect airspace. No adverse impacts to the public are expected. There may be a hardship to the applicant if the rezoning is denied.

Attachment No. 1

11. ADEQUACY OF PUBLIC FACILITIES AND SERVICES: Public improvements, including street, water, fire service and sanitary sewer are adequate and available to serve the PUD.

12. OTHER APPLICABLE FACTORS: None.

13. STAFF COMMENTS AND RECOMMENDATION:

City Administration recommends approval of the proposed rezoning of the Stone Pointe Townhomes Residential Planned Unit Development, Unit Two, from R, Single-Family Residential District and AO, Airport Overlay District, to PUD, Residential Planned Unit Development District and AO, Airport Overlay District, with the conditions:

1. The Permitted Use shall include one residential four-family attached townhome unit.
2. 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.
3. Exempt signage described in Article VI, Section 6-104 (A)(1),(2),(4),(5),(7) and (8); and Section 6-104 (B)(1) and (2), of the Manhattan Zoning Regulations shall be permitted.
4. All landscaping and irrigation shall be maintained in good condition.
5. To minimize the impact of views along N. Scenic Drive, a combination of shade and evergreen trees shall be shown on the Final Development Plan's Landscape Plan, which shall generally be located to the west of the townhome building.

ALTERNATIVES:

1. Recommend approval of the proposed rezoning of the Stone Pointe Townhomes Residential Planned Unit Development, Unit Two, from R, Single-Family Residential District and AO, Airport Overlay District, to PUD, Residential Planned Unit Development District and AO, Airport Overlay District, stating the basis for such recommendation, with the conditions listed in the Staff Report.

Attachment No. 1

2. Recommend approval of the proposed rezoning of the Stone Pointe Townhomes Residential Planned Unit Development, Unit Two, from R, Single-Family Residential District and AO, Airport Overlay District, to PUD, Residential Planned Unit Development District and 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.

Recommend denial of the proposed rezoning, stating the specific reasons for denial.

3. 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 the Stone Pointe Townhomes Residential Planned Unit Development, Unit Two, from R, Single-Family Residential District and AO, Airport Overlay District, to PUD, Residential Planned Unit Development District and AO, Airport Overlay District, based on the findings in the staff report, with the five (5) conditions recommended by City Administration.

PREPARED BY: Steve Zilkie, AICP, Senior Planner

DATE: January 15, 2008

09003



INTER-OFFICE MEMORANDUM

DATE: February 12, 2009

TO: Manhattan Urban Area Planning Board

FROM: Chad Bunger, Planner

RE: Amend the Manhattan Zoning Regulations to Clarify the Final Decision of the Board of Zoning Appeals

BACKGROUND

The Board of Zoning Appeals (BZA) is required to render a written decision without unreasonable delay after the close of a public hearing, but in all cases, within sixty (60) days of the close of the hearing, to meet the requirements of decisions related to approvals or denials of Appeals, Variances, Exceptions, Conditional Uses, and Modifying Nonconforming Uses Utilizing A Conditional Use.

The current procedure, which is referred to as a Notice of Decision, is a document that sets out the BZA's decision to approve, approve with conditions, or deny an application, finding of facts, conditions of approval, as well as information about the 180 day period of validity. Previous to the beginning of 2009, the BZA Chairperson and BZA Secretary (Staff Liaison) signed the Notice at the BZA meeting following the date of decision, which resulted in a four to five week delay. For example, if a decision was made in January, the Notice would be signed in February. Generally, this was due to the BZA considering its findings, which are set out in the Minutes, and which are not considered until the next month's meeting. A new Notice of Decision process was implemented and the BZA Chairperson and BZA Secretary either sign the Notice on the same night the decision is made, the BZA's findings are determined on the same night, and the applicant and/or owner are sent the Notice within one week of BZA meeting. If the BZA has any concerns about findings of fact, the public hearing is tabled until the findings are determined.

The Legal Department advised the Community Development Department that Articles VIII and XIV should be amended to clearly indicate when the BZA's final decision is made to avoid confusion if a decision is appealed to district court.

Procedurally, the final decision of the BZA could be interpreted to have occurred when the BZA Chairperson signed the Notice of Decision, rather than at the conclusion of the public hearing.

The proposed text amendments to the Zoning Regulations clarify when the final decision of the Board of Zoning Appeals is made.

The proposed changes to the Zoning Regulations are shown in ***bold italics***. Words proposed to be removed from the Zoning Regulations are shown with a ~~strike through~~. The proposed changes are as follows:

- 8-501(I) Decisions and Records. ***A final decision of the Board of Zoning Appeals occurs upon the majority vote of the Board on the conditional use and exception request at the public hearing.*** The Board of Zoning Appeals shall render a written decision containing specific findings of fact on an application for a conditional use and exception, if any, without unreasonable delay after the close of the hearing, ~~and in all cases, within sixty (60) days from the close of the hearing.~~ The Zoning Administrator shall maintain complete records of all actions of the Board of Zoning Appeals with respect to such applications. (Note: This conditional use and exception decision is only applicable to legally nonconforming uses.)
- 14-405. Decision of Appeals. The Board of Zoning Appeals may affirm or reverse, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and to that end shall have all the powers of the Zoning Administrator, may attach appropriate conditions and may issue or direct the issuance of a permit. The concurring vote of three members of the Board of Zoning Appeals shall be necessary to reverse, wholly or partly, modify, or attach any additional conditions to any decision or determination appealed from the Zoning Administrator under these regulations. ***A final decision of the Board of Zoning Appeals occurs upon the concurring vote of three members of the Board on the appeal at the public hearing.*** The Board of Zoning Appeals shall render a written notice of final decision on the appeal without unreasonable delay after the close of a hearing, ~~and in all cases, within sixty (60) days after the close of the hearing.~~ (Explanation: Concurring means that at least three members of the BZA must vote to affirm or reverse the appeal, as opposed to a simple majority of a quorum of three members' decisions for exceptions, variances and conditional uses.)

- 14-506. Decisions and Records. *A final decision of the Board of Zoning Appeals occurs upon the majority vote of the Board on the variance request at the public hearing.* The Board of Zoning Appeals shall render a written notice of final decision on an application for a variance without unreasonable delay after the close of a hearing, ~~but in all cases, within sixty (60) days from the close of the hearing.~~ The Zoning Administrator shall maintain complete records of all actions of the Board of Zoning Appeals with respect to applications for variances.
- 14-607. Decisions and Records. *A final decision of the Board of Zoning Appeals occurs upon the majority vote of the Board on the exception request at the public hearing.* The Board of Zoning Appeals shall render a written notice of final decision on an application for an exception without unreasonable delay after the close of the hearing, ~~but in all cases, within sixty (60) days from the close of the hearing.~~ The Zoning Administrator shall maintain complete records of all actions of the Board of Zoning Appeals with respect to applications for exceptions.
- 14-706. Decisions and Records. *A final decision of the Board of Zoning Appeals occurs upon the majority vote of the Board on the conditional use request at the public hearing.* The Board of Zoning Appeals shall render a written notice of final decision containing specific findings of fact on an application for a conditional use without unreasonable delay after the close of the hearing, ~~and in all cases, within sixty (60) days from the close of the hearing.~~ The Zoning Administrator shall maintain complete records of all actions of the Board of Zoning Appeals with respect to applications for conditional uses.

AMENDMENTS TO THE TEXT OF THE ZONING REGULATIONS

When proposed amendments result in a change to the text of the Zoning Regulations, the report from the Planning Staff shall contain a statement as to the nature and effect of the proposed amendments, and determinations as to the following:

WHETHER SUCH CHANGES ARE CONSISTENT WITH THE INTENT AND PURPOSE OF THE ZONING REGULATIONS

The intent of the Zoning Regulations is to protect the public health, safety and general welfare, and to protect property values, through the creation of zoning districts in which land uses are controlled in order to be compatible with other nearby uses. The proposed amendments implement the intent and purpose of the regulations by clarifying when the final decision is made by of the Board of Zoning Appeals. Clarifying when the final

decision occurs prevents any ambiguity regarding when the decision was made. The proposed amendments are consistent with the intent and purposes of the Zoning Regulations.

AREAS WHICH ARE MOST LIKELY TO BE DIRECTLY AFFECTED BY SUCH CHANGES AND IN WHAT WAY THEY WILL BE AFFECTED

All zoning districts are equally affected. The Board of Zoning Appeals can hear cases for Appeals, Variances, Exceptions, Conditional Use and Conditional Use to Modify a Nonconforming Use, in all zoning districts in the City.

WHETHER THE PROPOSED AMENDMENTS ARE MADE NECESSARY BECAUSE OF CHANGED OR CHANGING CONDITIONS IN THE AREAS AND ZONING DISTRICTS AFFECTED, OR IN THE CITY PLANNING AREA, GENERALLY, AND IF SO, THE NATURE OF SUCH CHANGED OR CHANGING CONDITIONS

The proposed amendments are not made because of changing conditions in the City or planning area. The amendments clarify when the Board of Zoning Appeals makes a final decision.

WHETHER SUCH CHANGES ARE CONSISTENT WITH THE INTENT AND PURPOSE OF THE POLICIES AND GOALS AS OUTLINED IN THE ADOPTED COMPREHENSIVE PLAN OF THE CITY

The Zoning Regulations implement the Comprehensive Plan and its goals, objectives and policies, which are general in nature and do not specify administrative details such as the proposed amendments. However, the proposed amendments clarify when a final decision of the Board of Zoning Appeals is made to ensure that the general statements in the Comprehensive Plan are implemented consistent with legal requirements.

ALTERNATIVES

It appears the MUAPB has the following alternatives concerning the issue at hand. The Board may:

1. Recommend approval of the proposed amendments to the Zoning Regulations to the City Commission.
2. Recommend denial of the proposed amendments to the Zoning Regulations to the City Commission.
3. Modify the proposed amendments to the Zoning Regulations and forward the modifications, along with an explanation, to the City Commission.
4. Table the public hearing to a specific date, and provide further direction to City Administration.

RECOMMENDATION

City Administration recommends approval of the amendments to the Manhattan Zoning Regulations to Article XIV, Administration, PART 4, Appeals, Section 14-405, Decision of Appeals; PART 5, Variances, Section 14-506, Decisions and Records; PART, 6, Exceptions, Section 14-607, Decisions and Records; PART 7, Conditional Uses, Section 14-706, Decisions and Records; and, Article VIII, Nonconformities, PART 5, Modifying Nonconforming Uses Utilizing a Conditional Use Application, Section 8-501(I), Decisions and Records: Article VIII, Nonconformities; and Article XIV, Administration, based on the findings in the Staff Memorandum.

POSSIBLE MOTION

The Manhattan Urban Area Planning Board recommends approval of the amendments to the Manhattan Zoning Regulations to Article XIV, Administration, PART 4, Appeals, Section 14-405, Decision of Appeals; PART 5, Variances, Section 14-506, Decisions and Records; PART, 6, Exceptions, Section 14-607, Decisions and Records; PART 7, Conditional Uses, Section 14-706, Decisions and Records; and, Article VIII, Nonconformities, PART 5, Modifying Nonconforming Uses Utilizing a Conditional Use Application, Section 8-501(I), Decisions and Records, as described in the Staff Memorandum, based on the findings in the Staff Memorandum.

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