

MINUTES
CITY COMMISSION MEETING
TUESDAY, SEPTEMBER 15, 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 Bob Strawn and Commissioners Bruce Snead, James E. Sherow, Loren J. Pepperd, and Jayme Morris-Hardeman were present. Also present were the City Manager Ron R. Fehr, Assistant City Manager Jason Hilgers, City Attorney Bill Frost, City Clerk Gary S. Fees, 7 staff, and approximately 70 interested citizens.

PLEDGE OF ALLEGIANCE

Mayor Strawn led the Commission in the Pledge of Allegiance.

Mayor Strawn welcomed Barry Michie, Director of International Program Support Office of International Programs, Kansas State University, and a group of students visiting from Pakistan, learning about how local government works in the United States.

PROCLAMATIONS

Mayor Strawn proclaimed September 17-23, 2009, ***Constitution Week***. Peggy Flourer, Historian; Carol Ann Holcomb, Treasurer; and Laura Lee Cross, Vice Regent, Sydney Carlin, and Linda Weis, Daughters of the American Revolution, were present to receive the proclamation.

Mayor Strawn proclaimed September 20-25, 2009, ***Community Cultural Harmony Week***. Doug Benson and Candi Hironaka, Co-Chairs, Community Cultural Harmony Week Planning Committee, were present to receive the proclamation.

Mayor Strawn proclaimed September 20-26, 2009, ***National Rehabilitation Week***. Lou Irwin, Nursing Director, Mercy Regional Health Center, In-Patient Rehabilitation, was present to receive the proclamation.

Mayor Strawn proclaimed October 4-10, 2009, ***Fire Prevention Week***. Ryan Almes, Fire Marshall, was present to receive the proclamation.

PROCLAMATIONS (CONTINUED)

Mayor Strawn proclaimed October 1-31, 2009, *One Book, One Community 2009 Reading Program*. Fred Atchison, Library Director; Mary Renee Shirk, Public Relations Coordinator; and Susan Withee, Adult Services Manager, Manhattan Public Library, were present to receive the proclamation.

COMMISSIONER COMMENTS

Commissioner Morris-Hardeman brought to the attention of the community story-time activities at the Manhattan Public Library. She encouraged citizens to be informed on domestic violence crimes in our community and to see the upcoming Silent Witness display at the Riley Court House Plaza by members of the Domestic Violence Task Force.

Commissioner Pepperd informed his fellow Commissioners that today he attended his first meeting with the Manhattan Area Chamber of Commerce Board of Directors and provided a report to the Commission during the Discussion/Briefing Session held prior to the Commission meeting.

Commissioner Sherow commented on the new City Park Pavilion nearing completion and was pleased to see progress being made on the new aquatic center in City Park.

Mayor Strawn informed the community that the Commission discussed the potential appointment of two individuals to the Economic Development Committee within the Chamber of Commerce during the Discussion/Briefing Session. He also stated that he shared his concern in the way the Mayor is chosen in Manhattan and said that the Mayor should be elected based on merit and not by position for those that received the most votes in a previous election. He stated that in his view, this should be changed; however, after discussion by his fellow Commissioners, the idea was rejected.

CONSENT AGENDA

(* denotes those items discussed)

MINUTES

The Commission approved the minutes of the Regular City Commission Meeting held Tuesday, September 1, 2009.

CLAIMS REGISTER NO. 2620

The Commission approved Claims Register No. 2620 authorizing and approving the payment of claims from August 26, 2009, to September 8, 2009, in the amount of \$1,932,478.03.

CONSENT AGENDA (CONTINUED)

LICENSES

The Commission approved an annual Cereal Malt Beverage License for Floersch IGA, Inc. d/b/a Ray's Apple Market #447, 222 N. 6th Street and Floersch IGA, Inc. d/b/a Ray's Apple Market #448, 3011 Anderson Avenue.

* **ORDINANCE NO. 6782 – AMEND – LOT 2, MCCALL CATS COMMERCIAL PUD**

The Commission approved Ordinance No. 6782 amending Lot 2, McCall Cats Commercial Planned Unit Development and Ordinance No. 6705, generally located west of the intersection of McCall Road and Hayes Drive along the north side of McCall Road, for a proposed restaurant, based on the findings in the Staff Report, with the one condition of approval, as recommended by the Manhattan Urban Area Planning Board (*See Attachment No. 1*).

ORDINANCE NO. 6783 – SUNDAY SALES – CEREAL MALT BEVERAGES AND ALCOHOL

The Commission approved Ordinance No. 6783 expanding the days of sale at retail of both cereal malt beverages and alcoholic liquor, in the original package, on any Sunday, except Easter, between the hours of 12 noon and 8 p.m.

RESOLUTION NO. 091509-A – PETITION - SCENIC MEADOWS, UNIT 2, PHASE 2 – SANITARY SEWER IMPROVEMENTS (SS0813)

The Commission found the revised petition sufficient and approved Resolution No. 091509-A finding the project advisable, authorizing construction, and rescinding the Resolution No. 051909-G for Scenic Meadows, Unit 2, Phase 2, Sanitary Sewer Improvements (SS0813).

RESOLUTION NO. 091509-B – PETITION - SCENIC MEADOW, UNIT 2, PHASE 2 – WATER IMPROVEMENTS (WA0810)

The Commission found the revised petition sufficient and approved Resolution No. 091509-B finding the project advisable, authorizing construction, and rescinding the Resolution No. 051909-H for Scenic Meadows, Unit 2, Phase 2, Water Improvements (WA0810).

AWARD CONTRACT – SCENIC MEADOWS, UNIT 2, PHASE 2 – SANITARY SEWER (SS0813) AND WATER (WA0810) IMPROVEMENTS

The Commission accepted the Engineer's Estimate in the amount of \$340,813.00 and awarded a construction contract in the amount of \$173,275.20 to Manhattan Trenching, Inc., of Manhattan, Kansas, for Scenic Meadows, Unit 2, Phase 2, Sanitary Sewer (SS0813) and Water (WA0810) Improvements.

CONSENT AGENDA (CONTINUED)

* **RESOLUTION NO. 091509-C – CONVEY LAND TO FARRAR CORPORATION**

The Commission approved Resolution No. 091509-C authorizing the sale and conveyance of land by the City of Manhattan to the Farrar Corporation.

AWARD CONTRACT – LIME PIT SLUDGE REMOVAL (WA0904)

The Commission accepted the Engineer's Estimate in the amount of \$242,546.00 and awarded a contract to Midwest Concrete Materials, of Manhattan, Kansas, in the amount of \$206,914.10 for Lime Pit Sludge Removal (WA0904).

AWARD CONTRACT – BARTON PLACE ADDITION, UNIT 2, PHASE 1, STORM SEWER AND STREET IMPROVEMENTS (ST0620)

The Commission accepted the Engineer's Estimate in the amount of \$153,000.00 and awarded a contract in the amount of \$121,771.50 to Hayes Brothers Construction Company, of Bucyrus, Kansas, for Barton Place Addition, Unit 2, Phase 1, Storm Sewer and Street (ST0620) Improvements.

CHANGE ORDER NO. 1 – 402 BLUEMONT AVENUE FOUNDATION (SP0907)

The Commission approved Change Order No. 1 for the foundation re-establishment at 402 Bluemont Avenue (SP0907), resulting in a net increase in the amount of \$16,423.00 (+25.93 %) to the contract with R.M. Baril, General Contractor, of Manhattan, Kansas.

CHANGE ORDER NO. 2 – DEMOLITION OF CITY-OWNED PROPERTY (SP0904)

The Commission approved Change Order No. 2 for the demolition of City-owned property, resulting in a net increase in the amount of \$72,360.00.00 (+19.55%) to the contract with G&G Dozer, of Caney, Kansas.

BOARD APPOINTMENTS

The Commission approved the following appointments by Mayor Strawn to the Bicycle Advisory Committee.

Re-appointment of Brian Hardeman, 1822 Laramie Street, to a three-year At-Large term. Mr. Hardeman's term begins November 1, 2009, and will expire October 31, 2012.

Re-appointment of Diane Novak, 11330 Military Trail Road, to a three-year At-Large term. Ms. Novak's term begins November 1, 2009, and will expire October 31, 2012.

CONSENT AGENDA (CONTINUED)

BOARD APPOINTMENTS (CONTINUED)

Re-appointment of Dan Scott, 3137 Ella Lane, to a three-year At-Large term. Mr. Scott's term begins November 1, 2009, and will expire October 31, 2012.

Appointment of Brian Johnson, 1001 South Seth Child Road, to fill the unexpired Riley County Police Department term of Jeff Hooper. Mr. Johnson's term begins immediately, and will expire October 31, 2011.

After discussion, Commissioner Snead moved to approve the consent agenda, as presented. Commissioner Sherow seconded the motion. On a roll call vote, motion carried 5-0, with the exception of Item D, *Ordinance No. 6782 – Amend – Lot 2, McCall Cats Commercial PUD*, which carried 4 to 0, with Mayor Strawn abstaining; and, with the exception of Item G, *Resolution No. 091509-C – Convey Land to Farrar Corporation*, which carried 3 to 2, with Mayor Strawn and Commissioner Pepperd voting against the item.

GENERAL AGENDA

ORDINANCE NO. 6784 – ESTABLISH - RENTAL LICENSING AND INSPECTION PROGRAM

Mayor Strawn announced that he would be recusing himself from the item, because his wife's bookkeeping business included landlords and property manager customers. He stated that Mayor Pro-Tem Snead would be running this portion of the agenda item.

Commissioner Pepperd informed the public that he recently became an absentee agent, but said that this would not affect his decision and that he planned to participate on the item.

Commissioner Morris-Hardeman reiterated that she owns one rental property next to her home, which was purchased to help protect her home. She stated the rental house is not a primary business for her and that she can judge the item fairly and does not have a conflict of interest on the subject and will participate on the item.

Commissioner Sherow stated that he does not have a conflict of interest on the item and said that he previously voiced support for rental inspections. He stated that he owns a duplex at 621 Colorado Street and responded to a recent letter to the editor in the *Manhattan Mercury* and said that he has no ambition to be in the rental business.

GENERAL AGENDA (CONTINUED)

ORDINANCE NO. 6784 – ESTABLISH - RENTAL LICENSING AND INSPECTION PROGRAM (CONTINUED)

Commissioner Snead stated that he did not have a conflict of interest on the item and does not own rental property. He then provided background information on the item.

Brad Claussen, Building Official, presented the item and outlined changes made from the first reading of the proposed ordinance. He then responded to questions from the Commission.

Katharine Jackson, Assistant City Attorney, and Bill Frost, City Attorney, responded to questions from the Commission and provided clarification on the proposed ordinance.

Brad Claussen, Building Official, responded to additional questions from the Commission regarding when the program would begin, budget impact, personnel training, exterior paint concerns, compliance initiatives, and time frame for the registration and inspection process.

Elbert Newman, Chief, Fort Riley Housing Services, responded to questions from the Commission regarding the current process for inspections and stated that they would accept City inspections within one year from the date of the inspection. He then responded to additional questions regarding the availability of housing on Post.

Larry Limbocker, 2108 Snowbird Drive, informed the Commission that if they have a rental, whether it is a primary business or not, there is an implied conflict of interest. He asked that this item be taken seriously to those in Manhattan that own properties.

Brice Ebert, 1410 Poyntz Avenue, asked the Commission why the amount went from \$20 to \$65 annually and wanted to see what the inspection checklist looked like. He asked that additional details be provided before the item moves forward, to leave exterior paint out of the ordinance, to focus on problem areas in neighborhoods, and to not include larger complexes. He stated that the cost of living will go up dramatically if this proposed ordinance is approved.

Dalton Henry, Student Government President, Kansas State University, informed the Commission that the Rental Inspection Committee has been working on this for almost one year and asked that the ordinance be approved so that students can sign a contract, knowing that they will live in a safe place. He then responded to questions from the Commission about mandatory rental inspection policies in other Big 12 universities.

GENERAL AGENDA (CONTINUED)

ORDINANCE NO. 6784 – ESTABLISH - RENTAL LICENSING AND INSPECTION PROGRAM (CONTINUED)

Gary Olds, 3308 Frontier Circle, provided the Commission with information about universities in the Big 12 that have rental inspection programs and voiced numerous concerns with the proposed rental inspection ordinance and related concerns. He stated that they were not going to give up and would continue to fight. He said that this ordinance is unnecessary and informed the Commission that it is being done for the neighborhood associations.

Richard Hill, 3513 Stagecoach Circle, stated that landlords are concerned with the perceived or actual conflict and precedence between the Kansas Residential Landlord Tenant Act and the language in the proposed ordinance. He voiced concern with the proposed ordinance and was not in support of the ordinance.

Dixie West, 1014 Houston Street, Rental Inspection Committee member, informed the Commission that if this proposed ordinance passes, the City will ultimately end up with better, safer structures and improved property investments.

Sara Fisher, 811 Osage Street, informed the Commission that she supported the rental inspection ordinance being proposed and stated the need for rental inspections. She urged the Commission to pass the ordinance, which is the best solution that benefits the most people at the lower cost.

David McFarland, 2030 Hunting Avenue, stated that the progress made on the rental inspection program was encouraging and will solve some of the problems with rental housing to make Manhattan a better place to live if this ordinance passes.

Linda Morse, 2118 Spain Drive, stated that she supports this ordinance in concept and wanted to ensure that students are living in a safe environment. She informed the Commission that she appreciated the process and disclosure provided by the Commissioners.

Brice Ebert, 1410 Poyntz Avenue, asked that language be placed in the ordinance regarding tenant and landlord responsibility, especially, when the tenant should be held responsible for damages to the property. He also asked what will happen when it is determined that five unrelated individuals are living in one house.

Brad Claussen, Building Official, responded to questions about the inspection fee structure, incentives provided, other Big 12 universities and communities that have mandatory rental inspections, uniformity and impartiality, exterior paint concerns, checklist of items to be inspected, and discussed the possibility for those properties to be inspected to be listed on the web site.

GENERAL AGENDA (CONTINUED)

ORDINANCE NO. 6784 – ESTABLISH - RENTAL LICENSING AND INSPECTION PROGRAM (CONTINUED)

Katharine Jackson, Assistant City Attorney, responded to questions from the Commission regarding the Landlord Tenant Act and the proposed ordinance. She then responded to questions related to the conviction process.

Bill Frost, City Attorney, provided additional information and clarification on the Landlord Tenant Act, the proposed ordinance, and responded to questions regarding the designation of an agent.

Brad Claussen, Building Official, responded to questions from the Commission concerning lead-based, exterior paint.

After additional discussion of the Commission, Commissioner Morris-Hardeman moved to approve Ordinance No. 6784 authorizing the establishment of a Rental Licensing and Inspection Program. Commissioner Sherow seconded the motion.

Commissioner Sherow addressed doing the right thing and clarified his position on this item. He stated that this ordinance will improve property conditions in this community for the well-being of everyone and was pleased to support this ordinance for the health, safety, and well-being of our community. He said if the ordinance needs to be reviewed in the future, that he would be glad to work with tenants, the community, and with the Manhattan Landlord Association.

Commissioner Pepperd stated that he would not support the ordinance and that it was not fair and equitable to all landlords. He said that there is already an inspection program available and that this ordinance would be at the expense of landlords who already maintain compliance of their properties.

Commissioner Morris-Hardeman stated that the adoption of this ordinance will have a long-lasting, positive impact in our community for safety, health, and well-being. She encouraged landlords to provide educational information to tenants and stated that the Code Office will still be utilized to address noise, trash, parking and other items that are not addressed in this ordinance.

Commissioner Sherow said this ordinance will benefit the entire community and may be the responsibility of the entire community to bear some of the costs of this program as the Commission considers future budgeting sessions.

GENERAL AGENDA (CONTINUED)

ORDINANCE NO. 6784 – ESTABLISH - RENTAL LICENSING AND INSPECTION PROGRAM (CONTINUED)

Commissioner Snead stated that the fee structure and program can be revisited, if needed, and said that now is the time to address the health, safety, and welfare of our community that has 60% rental housing; and, said this ordinance addresses those concerns to improve housing in our community.

After discussion, on a roll call vote, motion carried 3-1, with Commissioner Pepperd voting against the motion.

The Commission took a brief recess.

NEGOTIATE CONTRACT - FLINT HILLS DISCOVERY CENTER CONSTRUCTION MANAGER AT-RISK SERVICES

Mayor Strawn returned to the dais.

Ron Fehr, City Manager, presented the item. He then responded to questions from the Commission regarding the guaranteed maximum price, anticipated construction costs, projected design fees, possible incentive clauses, and potential bid packages associated with the project.

After discussion, Commissioner Snead moved to accept the recommendation of the Selection Committee and authorize City Administration to negotiate a contract with McCownGordon Construction, of Kansas City, Missouri, for Construction Manager At-Risk services for the Flint Hills Discovery Center. Commissioner Sherow seconded the motion.

Commissioner Snead stated that he served on the Selection Committee to review the proposals submitted from four excellent firms for this project.

Commissioner Sherow encouraged the community to attend the South Redevelopment Public Input Session on Wednesday, September 16, 2009, at 7:00 p.m., in the City Commission Room.

Ron Fehr, City Manager, provided an overview on the South Redevelopment Public Input Meeting to be held tomorrow night.

Mayor Strawn informed the community that the South Redevelopment Public Input meeting is an excellent opportunity to engage the public and to provide input on the South Redevelopment project.

GENERAL AGENDA (CONTINUED)

NEGOTIATE CONTRACT - FLINT HILLS DISCOVERY CENTER CONSTRUCTION MANAGER AT-RISK SERVICES (CONTINUED)

Commissioner Pepperd stated that he would vote against the Discovery Center item, but would work hard to accomplish cost savings and quality construction as the project proceeds ahead.

On a roll call vote, motion carried 4-1, with Commissioner Pepperd voting against the motion.

WORK SESSION

Downtown Update and Downtown STAR and TIF Bonds

The City Commission held a work session to discuss and update the status of the Downtown Redevelopment project and STAR and TIF Bonds.

Jason Hilgers, Assistant City Manager, presented an update and overview of the finances associated with the Downtown Redevelopment Project. He then responded to questions from the Commission.

Bill Frost, City Attorney, responded to questions from the Commission regarding the status on the lawsuit filed by Manhattan Wholesale Meat Company.

Ron Fehr, City Manager, and Jason Hilgers, Assistant City Manager, provided additional information and responded to questions from the Commission on the Final Development Agreement and process for the south Preliminary PUD application.

David Darsey, Real Estate Research Consultants (RERC), presented the scope and methodology used, current retail development status, projection scenarios, projected sales performance, projected sales tax revenues, largest taxpayers, employment data, and housing production. He then responded to questions from the Commission.

Andy Kane, D.A. Davidson & Co., provided information on the evolving credit crisis, current market overview, bond sizing, revenue bonds, summary of projected taxable sales, rating analysis, Build America Bond summary, STAR/TIF Bond rating flowchart, and estimated results of STAR Bonds and TIF A Bonds. He then responded to questions from the Commission.

Joe Norton, Gilmore and Bell, City's bond counsel, responded to questions regarding the moral obligation, debt service reserve fund, and the annual appropriation obligations.

WORK SESSION (*CONTINUED*)

Downtown Update and Downtown STAR and TIF Bonds (*CONTINUED*)

Ron Fehr, City Manager, and Bernie Hayen, Director of Finance, provided additional information and responded to questions regarding sales tax projections, historic tax receipts, and budget consideration to include an annual appropriation.

Dave McGillivray, Springsted Inc., provided additional information to the Commission regarding the financial goals for the redevelopment. He discussed how best to insulate the City's credit rating, moral obligation, annual appropriation, and risk levels to the City. He then responded to questions from the Commission regarding TIF A Bonds, the City's bond rating, moral obligation, and the merits in budgeting for an annual appropriation.

Bernie Hayen, Director of Finance, and Ron Fehr, City Manager, provided additional information on the item regarding annual appropriation and reserve funds.

Joe Norton, Gilmore and Bell, presented an overview on STAR bonds and North TIF bonds. He then informed the Commission that these items are planned to be discussed in further detail during the Special Commission meeting on Tuesday, September 29, 2009. He then answered additional questions from the Commission.

Dave McGillivray, Springsted Inc., responded to questions from the Commission regarding timing for this project to take advantage of favorable market conditions and risk mitigation.

Ron Fehr, City Manager, and Jason Hilgers, Assistant City Manager, informed the Commission that if this project is delayed, an interest payment to Key Bank has not been budgeted, and provided additional information on the Final Development Agreement amendment.

David Darsey, Real Estate Research Consultants (RERC), provided clarification on the occupancy percentages.

Bob Welstead, Dial Realty, provided the Commission with an update on the North Redevelopment efforts and stated that Dial is anxious for the hotel/convention center to move forward in the South Redevelopment area. He then responded to questions from the Commission regarding the percentage leased in the North area, the residential progress made with Schultz Construction, and stated the senior facility is still in limbo.

Ron Fehr, City Manager, responded to questions regarding the use of STAR Bond proceeds and outlined the tentative agenda planned for the Special City Commission Meeting, to be held on Tuesday, September 29, 2009.

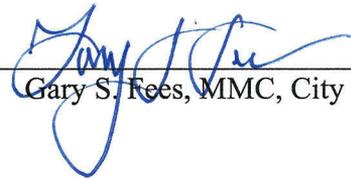
WORK SESSION (CONTINUED)

Downtown Update and Downtown STAR and TIF Bonds (CONTINUED)

Bill Frost, City Attorney, provided the Commission with an overview on the roles of the Commissioners as they consider the initial zoning application of land owned by the City in the South Redevelopment area. He then responded to questions from the Commission.

ADJOURNMENT

At 12:40 a.m., the Commission adjourned.

A handwritten signature in blue ink, appearing to read "Gary S. Fees", is written over a horizontal line.

Gary S. Fees, MMC, City Clerk

STAFF REPORT

ON AN APPLICATION TO AMEND THE APPROVED PLANNED UNIT MCCALL CAT COMMERCIAL PLANNED UNIT DEVELOPMENT (PUD)

BACKGROUND

APPLICANT: Dave Dreiling.

ADDRESS: 520 McCall Road, Manhattan, KS 66502.

OWNER: Dave Dreiling.

ADDRESS: 520 McCall Road, Manhattan, KS 66502.

LOCATION: Generally located 230 feet west of the intersection of McCall Road and Hayes Drive along the north side of McCall Road between Freddy's Frozen Custard restaurant and Firestone Complete Auto Care.

Lot 2, McCall Cats Commercial P.U.D., Commercial Planned Unit Development, an Addition to the City of Manhattan, Pottawatomie County, Kansas.

AREA: 42,688 square feet (0.98 acres).

DATE OF PUBLIC NOTICE PUBLICATION: Monday, July 27, 2009.

DATE OF PUBLIC HEARING: PLANNING BOARD: Monday, August 17, 2009.

CITY COMMISSION: Tuesday, September 1, 2009.

DESCRIPTION OF PROPOSED AMENDMENT: The amendment is for a proposed Cox Brothers drive-in restaurant. Ordinance No. 6705 (attached), Condition 10, requires, "Prior to the development of Lot 2, an amendment of the PUD shall be submitted and approved prior to issuance of any required permits." In addition, Condition No. 6 states, "The skirted pole signs shall include a three (3) foot tall masonry planter around the base, incorporating masonry materials similar to those used in the building, and landscaping within the planter." The proposed pole sign is a 30 inch diameter pole wrapped in corrugated metal consistent with the building's exterior material. The term "skirting" is not defined and the proposed pole sign may not be consistent with the intent of Condition No. 6, which seems to be to reduce the "pole" appearance of signs within the PUD.

Proposed Building

The proposed one story drive-in restaurant building is 4,177 square feet in area. It is 27 feet 8 inches in height, and will be constructed of primarily of unpainted galvanized metal siding and roofing, with “aged look” wood siding, trim and beams, and split face block (limestone color). An unpainted galvanized corrugated metal silo marks the entrance to restaurant, which faces southeast towards McCall Road. The restaurant has interior seating, a portion of which can function as patio seating by opening overhead doors located on the south end of the building. The wood oven and storage are located on the north end of the building. The architectural character of the building can be characterized as a “rib shack.” Light poles will be 28 feet in height, which includes the base. Light poles should be full cutoff design to reduce glare on streets and adjacent properties. Building lights are generally at entrances.

Proposed Restaurant Signage

The applicant’s overall sign proposal for the PUD is generally consistent with the sign requirements for the C-2, Neighborhood Shopping District, except that the total number of wall signs on the east and west facades of the restaurant as described below. As shown on the site plan, the pole and directional signs are in a dedicated utility easement and will need to be relocated by the owner out of the easement if the City or a utility company requires use of the easement. The signs were shown on the approved Preliminary Development Plan and the proposed site was designed around the understanding the signs could be in the easement.

Pole Sign

A 24-foot tall, 30-inch diameter, pole sign, proposed to be wrapped in galvanized metal, which will be located in the southwestern part of Lot 2. Total sign area in approximately 188 square feet consisting of internally illuminated restaurant name panel (70 square feet) and a separate menu board (117.5 square feet in area). The restaurant sign is in a three and one-half foot tall landscaped split face block base.

The proposed pole sign does not appear to be consistent with the intent of skirting, a term that is not defined in Ordinance No. 6705, even though it uses materials around the pole that are on the building. Based on the skirting of pole signs for the Comfort Suites hotel and Freddy’s Frozen Custard restaurant in the PUD in rectangular boxes around the pole, the proposed sign is not consistent with the term “skirting.” The applicant suggests the proposed pole sign captures the architectural character of the building, which it appears to do, be design and materials.

Wall and Other Signs

The total number of wall signs on the east and west elevations of the restaurant exceed the total number of wall signs that would be allowed in C-2 District, however, total square footage is well below the maximum 30 percent allowed per façade. Signs on the east and west facades will be illuminated with a red neon border and located above windows. A wall sign on the north façade is bordered in red neon and less than 30 percent of the façade and is otherwise non-illuminated. A wall sign on the southeast corner of the building on the silo entry is bordered in red neon and externally illuminated by goose neck lamps and is less than 30 percent of the silos façade. An order board will be located on the north side of the site in the landscape island.

Temporary banner signs are limited to no more than one (1) banner sign per lot. Exempt signage shall 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, are prohibited, as well as off-site advertising signs, which is in reference to a previous billboard on Lot 2 that was removed from the property.

An entry directional sign for the businesses in the PUD is proposed in the southwest corner of Lot 2 off McCall Road. The sign is internally illuminated entry/exit seven square foot location sign panel for the hotel.

PROPOSED LOT COVERAGE

<i>USE</i>	<u>Acres/Square Feet</u>	<u>Percentage</u>
Building	4,177	9.79%
Driveway/parking	20,587	48.25%
Travel Easement	9,527	22.33%
<i>Landscape Open</i>	<u>6,108</u>	<u>14.32%</u>
<i>Space</i>		
<i>Total</i>	42,688sf	100%

MATTERS TO BE CONSIDERED WHEN AMENDING A PLANNED UNIT DEVELOPMENT

WHETHER THE PROPOSED AMENDMENT IS CONSISTENT WITH THE INTENT AND PURPOSE OF THE APPROVED PUD, AND WILL PROMOTE THE EFFICIENT DEVELOPMENT AND PRESERVATION OF THE ENTIRE PUD: The proposed drive-in restaurant is a permitted use consistent with the approved PUD. No site or building plans were submitted at the time of rezoning; however, it was anticipated the site would develop with a drive-in restaurant, as proposed. The proposed drive-in is located on a major traffic corridor and will promote the efficient development and preservation of the PUD intended to serve the motoring public, in general, and visitors staying at Comfort Suites hotel to the north, which is also located in the McCall Cats PUD.

WHETHER THE PROPOSED AMENDMENT IS MADE NECESSARY BECAUSE OF CHANGED OR CHANGING CONDITIONS IN OR AROUND THE PUD, AND THE NATURE OF SUCH CONDITIONS: No specific changes have occurred in the surrounding area, which make the amendment necessary. The PUD amendment is necessary to meet Condition 10 of Ordinance No. 6705. At the time of Preliminary Development Plan approval, no plans were provided, other than the possible use as a drive-in restaurant.

WHETHER THE PROPOSED AMENDMENT WILL RESULT IN A RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY, CONVENIENCE OR GENERAL WELFARE, AND IS NOT GRANTED SOLELY TO CONFER A SPECIAL BENEFIT UPON ANY PERSON: Approval of the PUD will implement provision of a sidewalk along the north side of McCall Road as well as internal sidewalks from the PUD connecting to McCall Road, which is a benefit to the public. The amendment does not confer a specific benefit upon any person, rather the amendment implements development of Lot 2 in the PUD, which was anticipated with the original approval of McCall Cats PUD.

ADDITIONAL MATTERS TO BE CONSIDERED WHEN AMENDING A PLANNED UNIT DEVELOPMENT

REVIEW CRITERIA FOR PLANNED UNIT DEVELOPMENTS

Attachment No. 1

1. LANDSCAPING: Landscaping is functional for the service commercial nature of the site and will consist of canopy, ornamental and evergreen trees, shrubs and lawn areas to be owned and maintained by individual lot owners. Landscaped areas will irrigated with underground systems. Minimum landscaping requirement for a commercial development's parking lot is 5% of the paved area. Lot 2 exceeds the minimum requirement with 14% of the site set aside as landscaped open space, primarily perimeter landscaping. Four trees would be required, based on the pavement area, and eight are proposed.

2. SCREENING: One dumpster is proposed to be shared by Lot 2 and Lot 3 and is located Lot 1, as well as the enclosed dumpster for the hotel.

3. DRAINAGE: The site is flat and will drain to McCall Road through recently constructed underground storm water conduit, which carries storm water to the drainage channel along Tuttle Creek Boulevard. A Storm water Drainage Analysis was previously submitted by the applicant's consultant, Sloan Meier Hancock-Engineers Surveyors, P. A., dated January 31, 2008 (attachment). The City Engineer reviewed and accepted the storm water analysis (memorandum dated May 12, 2008 attached). Minimal impact is expected on the drainage system.

4. CIRCULATION: Lot 2 will be served internally by Lodging Cats Place, which connects with Hungry Cats Place to the west of Lot 2. Lodging Cats Place extends east to west and connects to Hostetler Drive and Hays Drive. Hungry Cats Place extends from McCall Road to Lodging Cats Place. The site can also be accessed from a curb cut/driveway in the southeastern part of the site, which connects to the restaurant to the east. Access to Lot 2 is safe and efficient. There is no direct access onto McCall Road or Hungry Cats Place.

The drive-in is a counter clockwise circulation with access to the drive-in lane from the south part of the site along the east side of the building to the pick-up window on the west side of the building and exiting either back to the north on the east side of the site to Lodging Cats Place or to the east through the common driveway connection wit the restaurant to the east.

A Transportation Impact Study was previously submitted by the applicant's consultant, Sloan Meier Hancock-Engineers Surveyors, P. A., dated January 28, 2008 (attachment). The City Engineer has reviewed and accepted the transportation analysis (memorandum dated May 12, 2008 attached). The surrounding transportation network is adequate for the increased trips expected with the proposed commercial development.

Attachment No. 1

Sidewalk is proposed, and required, along the north side of McCall Road and on the north side of Lodging Cats Place. Sidewalk will be provided from Lodging Cats Place to the common boundary line between Lots 2 and 3 and will extend to McCall Road for access for the public from the street to the hotel and the restaurants in lieu of sidewalk on Hays Drive and Hungry Cats Place. (Note: Hays Drive sidewalks will need to be provided at a future date when the street is built to an urban section.)

The restaurant requires 44 off-street parking spaces based on one parking space per three customers and one space for each employee on the work shift with the maximum number of employees present. Forty four parking spaces are proposed. Additionally, part of the customer traffic will be served by the drive-in and part from guests staying at the hotel to the immediate north that can walk to the restaurant.

5. OPEN SPACE AND COMMON AREA: Lot 2 is currently owned separately from Lots 1 and 3 in the subdivision. The majority of open space is in perimeter landscaping around the site.

6. CHARACTER OF THE NEIGHBORHOOD: Generally characterized as a mix of retail, drive-in and sit down restaurants, and industrial service businesses.

MATTERS TO BE CONSIDERED WHEN CHANGING ZONING DISTRICTS

1. EXISTING USE: Lot 2 is vacant.

2. PHYSICAL AND ENVIRONMENTAL CHARACTERISTICS: Generally a flat site located in the build-able portion of the 100 Year Flood Plain. The 100 Year Flood elevation is 1008 feet. The lowest enclosed floor must be at least 1009 feet and is shown on the building footprint at 1009.5 feet. A local flood plain permit is required, prior to issuance of a building permit, and a state flood plain fill permit may be required as well, prior to issuance of the local flood plain permit.

3. SURROUNDING LAND USE AND ZONING:

(a.) NORTH: Lodging Cats Place, hotel, industrial services and KSU research, new hotel; I-2, Industrial Park District, C-6, District and PUD.

(b.) SOUTH: McCall Road, Super Walmart; PUD.

(c.) EAST: Drive-in restaurant, Hayes Drive, self storage; PUD and I-2, Industrial Park District.

(d.) WEST: Hungry Cats Place, auto service store, Hostetler Drive, and drive-in restaurants in the Limey Pointe development; PUD.

4. CHARACTER OF THE NEIGHBORHOOD: Generally characterized as a mix of retail, drive-in and sit down restaurants, and industrial service businesses.

5. SUITABILITY OF SITE FOR USES UNDER CURRENT ZONING: Lot 2 was rezoned to McCall Cats PUD. The proposed drive-in restaurant is a permitted use in the PUD.

6. COMPATIBILITY OF PROPOSED DISTRICT WITH NEARBY PROPERTIES AND EXTENT TO WHICH IT MAY HAVE DETRIMENTAL AFFECTS: The site is in a commercial growth corridor and its development as a commercial PUD should be compatible with the surrounding neighborhood. Additional light, traffic and noise can be expected, but will be consistent with the predominately commercial neighborhood. The building is setback approximately 60 feet from McCall Road and parking is setback 15 feet from the front lot line along McCall Road. The proposed setbacks are generally consistent with the restaurant to the east, 70 feet for the building and generally 15 feet for the parking. Additional landscaping along McCall Road will buffer the reduced parking setbacks.

7. CONFORMANCE WITH COMPREHENSIVE PLAN: The Future Land Use Map for the Northeast Planning Area designates the site as Community Commercial (CC). The McCall Cats PUD was found to conform to the Comprehensive Plan when the PUD was approved June 17, 2008.

Applicable policies include:

COMMUNITY COMMERCIAL (CC)

CC 1: Characteristics

Community Commercial Centers provide a mix of retail and commercial services in a concentrated and unified setting that serves the local community and may also provide a limited draw for the surrounding region. These centers are typically anchored by a larger national chain, between 120,000 and 250,000 square feet, which may provide sales of a variety of general merchandise, grocery, apparel, appliances, hardware, lumber, and other household goods. Centers may also be anchored by smaller uses, such as a grocery store, and may include a variety of smaller, complementary uses, such as restaurants, specialty stores (such as books, furniture, computers, audio, office supplies, or clothing stores), professional offices and health services. The concentrated, unified design of a community commercial center allows it to meet a variety of community needs in a “one-

Attachment No. 1

stop shop” setting, minimizing the need for multiple vehicle trips to various commercial areas around the community. Although some single use highway-oriented commercial activities will continue to occur in some areas, this pattern of development is generally not encouraged.

CC 2: Location

Community Commercial Centers should be located at the intersection of one or more major arterial streets. They may be located adjacent to urban residential neighborhoods and may occur along major highway corridors as existing uses become obsolete and are phased out and redeveloped over time. Large footprint retail buildings (often known as “big-box” stores) shall only be permitted in areas of the City where adequate access and services can be provided.

CC 3: Size

Typically require a site of between 10 and 30 acres.

CC 4: Unified Site Design

A unified site layout and design character (buildings, landscaping, signage, pedestrian and vehicular circulation) shall be required and established for the center to guide current and future phases of development. Building and site design should be used to create visual interest and establish a more pedestrian-oriented scale for the center and between out lots.

CC 5: Architectural Character

Community Commercial Centers shall be required to meet a basic level of architectural detailing, compatibility of scale with surrounding areas, pedestrian and bicycle access, and mitigation of negative visual impacts such as large building walls, parking areas, and service and loading areas. While these requirements apply to all community commercial development, they are particularly important to consider for larger footprint retail buildings, or “big-box” stores. A basic level of architectural detailing shall include, but not be limited to, the following:

- Façade and exterior wall plane projections or recesses;*
- Arcades, display windows, entry areas, awnings, or other features along facades facing public streets;*

- Building facades with a variety of detail features (materials, colors, and patterns); and*
- High quality building materials.*

CC 6: Organization of Uses

Community commercial services should be concentrated and contained within planned activity centers, or nodes, throughout the community. Within each activity center or node, complementary uses should be clustered within walking distance of each other to facilitate efficient, “one-stop shopping”, and minimize the need to drive between multiple areas of the center. Large footprint retail buildings, or “big-box” stores should be incorporated as part of an activity center or node along with complementary uses. Isolated single store developments are strongly discouraged.

CC 7: Parking Design and Layout

Uninterrupted expanses of parking should be avoided. Parking areas should be broken into smaller blocks divided by landscaping and pedestrian walkways. Parking areas should be distributed between the front and sides of buildings, or front and rear, rather than solely in front of buildings to the extent possible.

CC 8: Circulation and Access

Clear, direct pedestrian connections should be provided through parking areas to building entrances and to surrounding neighborhoods or streets. Integrate main entrances or driveways with the surrounding street network to provide clear connections between uses for vehicles, pedestrians, and bicycles.

The PUD amendment is in general conformance to the Comprehensive Plan.

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

1968 - 1969	Site annexed and zoned to commercial and industrial districts.
1970's	Lot 2 rezoned from I-2 District to C-6, Heavy Commercial District.
Sept. 5, 2006	Lot 1 rezoned as part of Limey Pointe PUD.
Oct. 17, 2006	Lot 3 rezoned from C-6, to C-5, Highway Service Commercial District.
May 19, 2008	Manhattan Urban Area Planning Board recommends approval of rezoning entire site of McCall Cats to PUD, Commercial Planned Unit Development District, with 10 conditions.

Attachment No. 1

- June 3, 2008 City Commission approves first reading of an ordinance rezoning McCall Cats PUD.
- June 17, 2008 City Commission approves Ordinance No. 6705 rezoning McCall Cats PUD.
- August 4, 2008 Manhattan Urban Area Planning Board approves the Final Development Plan for Lots 1 and 3 of the McCall Cats PUD and the Final Plat of Lots 1, 2 and 3, McCall Cats PUD Addition.
- August 19, 2008 City Commission accepts easements and rights-of-way as shown on the Final Plat of McCall Cats PUD Addition.

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 amendment is generally consistent with the intent and purposes of the Zoning Regulations, the intent of the PUD Regulations, and Ordinance No. 6705, subject to the conditions of approval. The proposed rezoning implements the Comprehensive Plan and site plans ensure compatibility with surrounding properties and public facilities.

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 gain to the public that denial would accomplish. The public street network should not be adversely affected and storm water will be directed to public storm water improvements. Adequate public improvements can serve the site. It may a hardship to the owners if the rezoning is denied as no apparent public gain results from denial.

Attachment No. 1

11. ADEQUACY OF PUBLIC FACILITIES AND SERVICES: Adequate public improvements are available to serve the proposed development.

12. OTHER APPLICABLE FACTORS: None.

13. STAFF COMMENTS AND RECOMMENDATION: The Planning Board will need to determine if the proposed pole sign is consistent with Condition No. 6 of Ordinance No. 6705. If the proposed pole sign is not consistent, the Board will need to add an appropriate condition regarding the design of the sign and direct the applicant accordingly. If the Board determines the proposed pole sign is consistent, the Board should make a finding that the proposed design is consistent with Condition No. 6. No condition of approval will be required if the Board finds the proposed pole sign is consistent with Condition No. 6.

City Administration recommends approval of the proposed Amendment of the McCall Cats Commercial Planned Unit Development and Ordinance No. 6705, with the following condition of approval:

1. The Final Development Plan for Lot 2 shall be subject to the conditions of approval of Ordinance No. 6705.

ALTERNATIVES:

1. Recommend approval of the proposed Amendment of the McCall Cats Commercial Planned Unit Development and Ordinance No. 6705, stating the basis for such recommendation.
2. Recommend denial of the proposed Amendment of the McCall Cats Commercial Planned Unit Development and Ordinance No. 6705, stating the specific reasons for denial.
3. Table the proposed Amendment to a specific date, for specifically stated reasons.

POSSIBLE MOTION:

The Manhattan Urban Area Planning Board recommends approval of the proposed Amendment of the McCall Cats Commercial Planned Unit Development and Ordinance No. 6705, based on the findings in the Staff Report and the one condition of approval recommended by City Administration.

PREPARED BY: Steve Zilkie, AICP, Senior Planner

DATE: August 13, 2009.

09043