

**MINUTES**  
**SPECIAL CITY COMMISSION MEETING**  
**TUESDAY, OCTOBER 13, 2009**  
**7:00 P.M.**

The Special 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, Assistant City Manager Lauren Palmer, City Attorney Bill Frost, City Clerk Gary S. Fees, 8 staff, and approximately 65 interested citizens.

**PLEDGE OF ALLEGIANCE**

Mayor Strawn led the Commission in the Pledge of Allegiance.

**PROCLAMATIONS**

Mayor Strawn proclaimed October 2009, ***Domestic Violence Awareness Month***. Judy Davis, Executive Director, Crisis Center, Inc., was present to receive the proclamation.

Mayor Strawn proclaimed October 18, 2009, ***Lafayette Lodge No. 16's Sesquicentennial Day***. Rod W. Kalivoda, Worshipful Master; John Spangler, Worshipful Brother; Marvin Rodriguez, Past Master; Dave Davis, Junior Warden; Steve Treloar, Chaplain; and Vincent Tracey, Brother, Lafayette Lodge #16, were present to receive the proclamation.

Mayor Strawn proclaimed November 7, 2009, ***Buddy Poppy***. Vincent Van Cleave, Commander, VFW Post 1786; Fiona Bushey, Buddy Poppy Princess; and James Bushey, Buddy Poppy Prince, were present to receive the proclamation.

**PUBLIC COMMENTS**

Mayor Strawn opened the public comments.

Hearing no comments, Mayor Strawn closed the public comments.

## COMMISSIONER COMMENTS

Commissioner Pepperd reported that Mayor Strawn, City Manager Fehr, and he attended the annual AUSA delegation meetings in Washington, D.C. last week with representatives from the Manhattan Area Chamber of Commerce and Fort Riley, as well as attended meetings with legislative representatives.

## CONSENT AGENDA

(\* denotes those items discussed)

### MINUTES

The Commission approved the minutes of the Regular City Commission Meeting held Tuesday, September 15, 2009.

### CLAIMS REGISTER NO. 2621

The Commission approved Claims Register No. 2621 authorizing and approving the payment of claims from September 9, 2009, to October 6, 2009, in the amount of \$5,134,057.17.

### LICENSES

The Commission approved a Tree Maintenance License for calendar year 2009 for Reichert Tree, 2004 Poppy Court, and an annual Cereal Malt Beverage On-Premises License for O'Malleys, Inc. d/b/a Porters Bar & Deli, 706 North Manhattan Avenue.

### FINAL PLAT – WESTPORT COMMONS ADDITION PUD

The Commission accepted the easements and rights-of-way, as shown on the Final Plat of Westport Commons Addition, a Commercial Planned Unit Development, generally located on the northeast corner of Claflin Road and Browning Avenue, based on conformance with the Manhattan Urban Area Subdivision Regulations.

### AGREEMENT CREATING RESTRICTIVE COVENANT ON REAL ESTATE – WESTPORT COMMONS ADDITION

The Commission authorized the Mayor and City Clerk to execute the Agreement regarding construction and maintenance of an off-site detention area for the Westport Commons Addition.

### FINAL PLAT – 17<sup>TH</sup> STREET PROPERTIES ADDITION PUD

The Commission accepted the easements and rights-of-way, as shown on the Final Plat of 17<sup>th</sup> Street Properties Addition, a Commercial Planned Unit Development, generally located southeast of the intersection of South 17<sup>th</sup> Street and Yuma Street and north of Fort Riley Boulevard, based on conformance with the Manhattan Urban Area Subdivision Regulations.

## CONSENT AGENDA (CONTINUED)

\* **FINAL PLAT – WILSON-WALKER ADDITION**

Bill Frost, City Attorney, responded to questions from the Commission and provided additional information on the item.

The Commission accepted the easements and rights-of-way, as shown on the Final Plat of the Wilson-Walker Addition, generally located 240 feet north of the intersection of North Mill Point and Miller Parkway along the west side of the North Mill Point cul-de-sac, based on conformance with the Manhattan Urban Area Subdivision Regulations.

**FIRST READING – SERVICE FEES – AGGIEVILLE BUSINESS IMPROVEMENT DISTRICT**

The Commission approved first reading of an ordinance continuing the establishment of the Aggieville Business Improvement Districts and levying Business Improvement Service Fees, for the year 2010, on businesses located within the District.

**FIRST READING – SERVICE FEES – DOWNTOWN BUSINESS IMPROVEMENT DISTRICT**

The Commission approved first reading of an ordinance continuing the establishment of the Downtown Business Improvement Districts and levying Business Improvement Service Fees, for the year 2010, on businesses located within the District.

**FIRST READING – KDHE THIRD LOAN AMENDMENT – WASTEWATER TREATMENT PLANT EXPANSION AND UPGRADE PROJECT (SP0705, WW106P), EAST MILLER RANCH INTERCEPTOR (SS0810), AND K-18 SANITARY SEWER RELOCATION (SS0907)**

The Commission approved first reading of an ordinance authorizing the execution of a third amendment to the loan agreement between the City of Manhattan, Kansas, and the State of Kansas, acting by and through the Kansas Department of Health and Environment for the purpose of obtaining a loan from the Kansas Water Pollution Control Revolving Loan Fund for the purpose of increasing the loan amount to fully fund the engineering of the Wastewater Treatment Plant Expansion and Upgrade Project (SP0705, WW106P), the East Miller Ranch Interceptor (SS0810), and the engineering of the K-18 sanitary sewer relocation (SS0907).

## CONSENT AGENDA (CONTINUED)

### RESOLUTION NO. 101309-A – AUTHORIZED REPRESENTATIVE – KDHE LOAN

The Commission approved Resolution No. 101309-A appointing Mr. Dale L. Houdeshell, Director of Public Works, as the Authorized Representative of the City of Manhattan for the original KDHE loan agreement and its amendments.

### RESOLUTION NO. 101309-B – ISLAND ANNEXATION – EUREKA DRIVE STORAGE ADDITION

The Commission approved Resolution No. 101309-B, requesting that the Board of Riley County Commissioners make certain findings regarding the island annexation of the proposed 11.3-acre Eureka Drive Storage Addition, generally located west of the Flint Hills Job Corps Center.

### AWARD CONTRACTS – HOUSING REHABILITATION PROGRAM PROJECTS

The Commission accepted the bids for 1133 Hudson Avenue, 2213 Sloan Street, and 1120 Colorado 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 – FIBER OPTIC UTILITY RELOCATION

The Commission authorized the Mayor and City Clerk to execute the Agreement for custom work with Southwestern Bell Telephone Company in the amount of \$23,753.81 for fiber optic utility relocation at the Manhattan Regional Airport for the Runway 13/31 Reconstruction/Extension project (Grant 39).

### CHANGE ORDER NO. 1-FINAL – 2006 NEW AND PARALLEL WATER LINES, PHASE II (WA0903)

The Commission approved Change Order No. 1-Final for the 2006 New and Parallel Water Lines Project, Phase II (WA0903), resulting in a net increase in the amount of \$29,157.60 (+53.1%) to the contract with Larson Construction, of Manhattan, Kansas.

### CHANGE ORDER NO. 1-FINAL – INVERTED SIPHON REHABILITATION AND ODOR CONTROL (SP0702P)

The Commission approved Change Order No. 1-Final for the Inverted Siphon Rehabilitation and Odor Control Project (SP0702P), resulting in a net increase in the amount of \$23,418.50 (+7.2%) to the contract with Walters-Morgan Construction, Inc., of Manhattan, Kansas.

## CONSENT AGENDA (CONTINUED)

\* **AMENDMENT/AGREEMENT – CITY/UNIVERSITY SPECIAL PROJECTS FUND AGREEMENT**

Ron Fehr, City Manager, provided an overview on the item.

The Commission authorized the Mayor and City Clerk to execute the Amendment to the 2009 City/University Special Projects Fund Agreement and the 2010 City/University Special Projects Fund Agreement with Kansas State University in the amount of \$369,300.00.

\* **KANSAS BIOSCIENCE AUTHORITY GRANT AGREEMENT – NISTAC PILOT SPACE BUILDOUT**

Ron Fehr, City Manager, provided additional information on the item and responded to questions from the Commission regarding the recent announcement of Megastarter relocating their operations to the Manhattan/K-State Innovation Center.

The Commission authorized the Mayor and City Clerk to execute a Grant Agreement with the Kansas Bioscience Authority, of Olathe, Kansas, in the amount of \$1,000,000.00, to be locally matched by \$425,000.00 of previously approved Economic Development Funds, conditioned upon NISTAC consenting, in writing, to a reduction in the City's obligation under its Agreement with NISTAC to \$1,425,000.00.

**NEGOTIATE CONTRACT – ARCHITECTURAL SERVICES – NISTAC PILOT SPACE BUILDOUT**

The Commission authorized City Administration to negotiate an architectural services contract with Bowman, Bowman, Novick, Inc., of Manhattan, Kansas, for the completion of the pilot space in the Manhattan/K-State Innovation Center.

**BOARD APPOINTMENTS**

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

*Chamber of Commerce Economic Development Committee*  
Appointment of Gwyn Riffel and Kurstin Harris.

*Douglass Center Advisory Board*  
Re-appointment of Glenna Burckel, 2031 Pierre Street, to a three-year At-Large term. Ms. Burckel's term begins immediately, and will expire October 2, 2012.

## CONSENT AGENDA (*CONTINUED*)

### BOARD APPOINTMENTS (*CONTINUED*)

#### *Social Services Advisory Board*

Appointment of Lindsay Randall, 323 Fort Riley Boulevard, to fill the unexpired term of Jamie Tiemeyer. Ms. Randall's term begins immediately, and will expire June 30, 2011.

After discussion, Commissioner Sherow moved to approve the consent agenda, as read. Commissioner Pepperd seconded the motion. On a roll call vote, motion carried 5-0.

## GENERAL AGENDA

### SOUTH FINAL DEVELOPMENT AMENDMENT

Jason Hilgers, Assistant City Manager, presented an overview of the South Final Development Agreement amendment, STAR Bond capacity and proceeds, financial snapshot analysis, and financial update on the scope of the project. He then responded to questions from the Commission regarding capitalized interest, the City of Manhattan's and Dial Realty's financial obligations, TIF proceeds, land acquisition and preparation, overage costs, and STAR bonds.

Linda Morse, 2118 Spain Drive, informed the Commission that the City and Dial Realty need to abide by the current contract and requested that the proposed amendment for the South Development Agreement not be accepted.

Mayor Strawn provided an overview of the Final Development Agreement for the South Redevelopment project and the proposed amendment changes. He then stated that he could not support the proposed South Final Development amendment.

Commissioner Sherow stated that he could not support the way the amendment was structured and recommended and moved to consider a list of proposed amendments to the South End Final Development Agreement and distributed these to the Commission.

Commissioner Snead stated that he appreciated if these amendments were not in the form of a motion until he had an opportunity to hear about and discuss those proposed amendments.

Commissioner Sherow agreed and withdrew his motion. He then provided the Commission with his proposed amendments to the South End Final Development Agreement. Those amendments were as follows: 1) STAR Bond revenues will be used to pay for the South End land costs; 2) the City is released from any obligation to sell to

## GENERAL AGENDA (CONTINUED)

### SOUTH FINAL DEVELOPMENT AMENDMENT (CONTINUED)

Dial, Lot 9, on the South End plat; 3) the City relieves Dial of any obligations to develop Lot 9; 4) the City will assume responsibility for paying any additional land costs associated to the lawsuit currently on appeal; and, 5) authorize the City Attorney to incorporate and finalize the Development Agreement as amended above.

Commissioner Sherow then presented written advantages for his proposed amendments, which included: 1) STAR Bonds can be issued, and the City/developer and State match for STAR Bond is retained and internal loans from other City funds are reimbursed, including the Downtown Fund; 2) Dial's North End TIF bonds can be called; 3) TIF A and TIF B bonds can be issued; 4) the City can be reimbursed for its share of TIF B proceeds; 5) the City does not have to come up with \$2.5 million in cash to meet the costs beyond the \$12 million in land purchases on the South End; 6) Dial does not have to come up with \$2.5 million in cash to meet the costs beyond the \$12 million in land purchases on the South End; 7) the total land costs associated with the South End land costs will be met through STAR Bond revenues; 8) Dial can focus all of its attention on developing the North End project—where the bulk of the money generation for STAR Bond revenues occurs; 9) Dial still retains its interests in any agreement it has with HCW in building the hotel; 10) building the Discovery Center, hotel, conference center, parking garage, and public park will commence apace; 11) the City retains complete control over Lot 9 and other lots owned by the City, and; 12) the City can parcel out Lot 9 to a developer or developers—local or otherwise—who will build according to the future approved design, and adhere to design guidelines associated with development design standards, and those standards and guidelines applicable to STAR Bond funding. He stated that the Discovery Center is a very attractive development that the City has had control over and we want to ensure a stellar development in the South End. He then responded to questions from the Commission regarding his proposed amendments.

Jason Hilgers, Assistant City Manager, provided clarification on the item and responded to questions from the Commission regarding lot numbers, STAR and TIF Bonds, developer recruitment, and the ongoing lawsuit.

Bill Frost, City Attorney, responded to questions from the Commission regarding the proposed amendments and suggested changes to the document.

Bob Welstead, Dial Realty, provided an update on the North and South End areas and responded to the the proposed amendments. He informed the Commission that he was okay with the concept presented and that Dial has a vested interest and wants to continue working with the City. He then responded to questions from the Commission and stated that he was aware that there were concerns in how the commercial tract would be handled, but was not aware of the proposed amendments provided before this meeting. He stated

## GENERAL AGENDA (CONTINUED)

### SOUTH FINAL DEVELOPMENT AMENDMENT (CONTINUED)

that in an effort to keep the project going, he would consider the proposed amendments for the best interests of this project and responded to additional questions from the Commission.

Commissioner Sherow provided additional information on the amendments offered and stated that this action provides greater control for the City and makes it easier for Dial to proceed on the North End.

Mayor Strawn voiced his concern with the proposed amendments and stated that Dial would be getting out of its responsibilities and would place additional financial burden on the taxpayers of Manhattan.

Jason Hilgers, Assistant City Manager, and Bernie Hayen, Director of Finance, responded to questions from the Commission regarding the financial picture for this project; bond rating, capacity, and structure; project development; and informed the Commission that they would seek continued guidance from the City's bond and financial councils.

Ron Fehr, City Manager, responded to questions from the Commission and provided information on the STAR Bonds and development process. He then responded to additional questions from the Commission regarding the proposed changes to the amended agreement.

Bill Frost, City Attorney, responded to additional questions and informed the Commission that the proposed amendments suggested by Commissioner Sherow could be written into the agreement without a lot of difficulty.

Bob Welstead, Dial, responded to questions from the Commission and stated that they were comfortable with the proposed amendments in order to move the project forward.

Commissioner Sherow provided additional information on the item and stated that this action would not preclude Dial or any developer to develop the property within the design guidelines and, that he would be able to evaluate a proposal objectively.

Bill Frost, City Attorney, responded to additional questions from the Commission and provided clarification on Lot 9 and the Planned Unit Development (PUD) submittal process to be discussed later tonight.

Jason Hilgers, Assistant City Manager, and Ron Fehr, City Manager, provided additional information on the item and responded to questions from the Commission regarding financing and expenses, TIF B Bonds, STAR Bond revenues, and the Downtown Redevelopment Fund.

## GENERAL AGENDA (CONTINUED)

### SOUTH FINAL DEVELOPMENT AMENDMENT (CONTINUED)

Linda Weis, 215 Pine Drive, Chairman of the Board, Manhattan Area Chamber of Commerce, asked how this amendment would affect the development if there is not a development for five or seven years that meets the qualifications for the project; and, if Dial were the developer, would they be compensated. She asked if the current property tax would still be paid for and maintained by the City.

Jason Hilgers, Assistant City Manager, responded to additional questions and said the City would continue to pay property tax until the use changes or a change in ownership.

Dr. Ann Smith, 1328 Fremont Street, voiced support for Commissioner Sherow's amendments to the agreement and stated that it has a lot of benefit for Manhattan and was glad to see that Dial supported the amendments as well.

Mark Skochdopole, 310 South 17<sup>th</sup> Street, voiced concerns with the amount of potential taxpayer burden on this project and with the proposed amendments; given the lawsuit, note to Key Bank, and the loss of time to develop this tract have the potential to raise property taxes.

Rose Phillips, 814 Leavenworth Street, Apartment 4, informed the Commission that she supported the amendments provided by Commissioner Sherow and stated that she did not want to see City services cut or have greater burden on property tax payers.

After additional discussion and clarification by the Commission on the proposed amendments and lawsuit condemnation suit with Manhattan Meats, Commissioner Sherow moved to approve the Amended South Final Development Agreement with Dial Realty, as amended, with the five proposed amendments added to the South Final Development Agreement. Commissioner Morris-Hardeman seconded the motion.

Commissioner Morris-Hardeman stated that it is our responsibility to move this project forward and supported the motion and amendments proposed by Commissioner Sherow. She stated that land acquisition is our obligation and stressed the importance for the City to have greater control over the development. She asked that local developers take advantage of this and give us your proposals for something that is unique and exciting, that will keep the synergy going for the redevelopment project.

Commissioner Pepperd stated that the City is letting Dial out of this agreement, that Dial will no longer be involved in the lawsuit, that Dial will no longer be responsible for Lot 9 in the South End, and that the City is not a developer. He said developing the tract will be a challenge that the City is not ready to handle and stated that he could not support the motion.

## GENERAL AGENDA (CONTINUED)

### SOUTH FINAL DEVELOPMENT AMENDMENT (CONTINUED)

Commissioner Sherow reiterated the advantages presented earlier and stated that this will move the project ahead and ensure completion of the North End housing.

Commissioner Snead stated that he was willing to support the amended development agreement because it is in the best short- and long-term interests of the city. He stated that it is imperative to proceed with the issuance of bonds and to proceed forward with the rezoning process and would support the motion. He stated that Dial's willingness to support the proposed changes is fundamental in proceeding ahead and that any alternative course would put the City in greater financial peril.

Mayor Strawn thanked the community for its involvement and stated that there is currently a contractual arrangement between Dial and the City and, that as a business person, both parties need to live up to their agreement. He stated that it would be difficult for Dial to walk away from the project with the City and reiterated that Dial has done a better job in negotiating their way out of their prior contractual and financial obligations.

Ron Fehr, City Manager, asked for clarification and received concurrence from the Commission on provision number five of the proposed amendments, to allow City Administration to finalize and the Mayor to sign and then execute the Final Development Agreement, as amended.

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

The Commission took a brief recess.

### SOUTH REDEVELOPMENT ECONOMIC DEVELOPMENT AND INFRASTRUCTURE AGREEMENTS WITH HCW-MANHATTAN, LLC

Jason Hilgers, Assistant City Manager, presented the economic development agreement and development agreement. He responded to questions from the Commission regarding the site and proposed room numbers for the conference center. He then provided clarification on the percentage split between the City and HCW.

Bill Frost, City Attorney, responded to questions regarding the agreement and the status of an LLC company rather than making agreements with the parent company.

Jason Hilgers, Assistant City Manager; Bill Frost, City Attorney; and Ron Fehr, City Manager, responded to questions from the Commission regarding the agreement, annual appropriation pledge, and providing protection for the City's investment.

## GENERAL AGENDA (CONTINUED)

### SOUTH REDEVELOPMENT ECONOMIC DEVELOPMENT AND INFRASTRUCTURE AGREEMENTS WITH HCW-MANHATTAN, LLC (CONTINUED)

Karen Hibbard, Director, Manhattan Area Chamber of Commerce Convention and Visitors Bureau, provided the Commission with information on conferences and sizes of conferences that Manhattan currently attracts and those groups they recruit. She stated that they are anxious for the conference center to come on board.

Jason Hilgers, Assistant City Manager, provided additional information regarding conference size accommodations and stated that the Commission will see a high level of detail with the Planned Unit Development process.

Bill Frost, City Attorney, provided clarification on the agreements and informed the Commission that additional detail will be provided before the agreements are signed.

After discussion, Commissioner Snead moved to authorize City Administration to finalize and the Mayor and City Clerk to execute the South Economic Development Agreement and Infrastructure Development Agreement with HCW, LLC, of Springfield, Missouri. Commissioner Sherow seconded the motion.

After additional discussion, on a roll call vote, motion carried 5-0.

### DOWNTOWN ENTERTAINMENT DISTRICT – SOUTH ZONING SUBMITTAL

Jason Hilgers, Assistant City Manager, introduced the item.

Brad Waller, HWS Consulting Group, presented an overview of the schedule of the preliminary PUD process, schedule, map of the entire site, including: hotel, conference center, parking garage, retail, Discovery Center, mixed-use buildings, city streets right-of-way, City park, future development, and project schedule. He then responded to questions from the Commission.

Jason Hilgers, Assistant City Manager, provided clarification on the geo-thermal well site identified and responded to questions from the Commission regarding public information on the item.

Bill Frost, City Attorney, responded to questions from the Commission regarding the zoning process and clarified the roles and responsibilities of the Commission as a landowner and as the zoning authority.

## GENERAL AGENDA (CONTINUED)

### DOWNTOWN ENTERTAINMENT DISTRICT – SOUTH ZONING SUBMITTAL (CONTINUED)

Gwyn Riffel, 1117 Hilton Heights Road, provided background information on the downtown redevelopment project and his passion for redevelopment. He presented the Commission with a new site plan for the community to allow for greater density and to strengthen the core downtown area with an urban design plan.

Jason Hilgers, Assistant City Manager, responded to questions from the Commission regarding the Kansas Department of Transportation, intersection at Third Street and Pierre Street, and the pedestrian connection to the Union Pacific Depot from the site.

Ron Fehr, City Manager, and Dale Houdeshell, Director of Public Works, responded to questions from the Commission.

Patrick Schaub, Bowman Bowman Novick, informed the Commission that this is the first time that he has seen Mr. Riffel's design and stated that significant work has been completed on the design and emphasized the importance of the public park. He then responded to questions from the Commission.

Dale Houdeshell, Director of Public Works, and Brad Waller, HWS Consulting Group, responded to questions from the Commission about water, stormwater, and sanitary sewer lines that need to be considered if the City deviates from what has been planned.

Bill Frost, City Attorney, and Jason Hilgers, Assistant City Manager, provided additional information regarding the agreements and exhibits to those agreements.

Vincent Tracey, 304 Knoxberry Drive, stated that the Hilton Garden Inn and Convention Center photo displayed in the Manhattan Town Center Mall and what is on the City's web site is not the same. He asked that the City do what they say they are going to do on the South End to avoid the problems encountered with the North End project.

Jason Hilgers, Assistant City Manager, provided additional information on the process and level of detail that will be provided in the future on the project.

Ron Fehr, City Manager, responded to questions from the Commission regarding the potential to have a Parks and Recreation office in the parking area and the importance of community involvement as this project proceeds forward.

After discussion, Commissioner Morris-Hardeman moved to authorize the submittal of the preliminary PUD application for the South Downtown Entertainment District. Commissioner Snead seconded the motion.

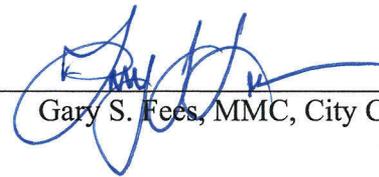
GENERAL AGENDA (CONTINUED)

DOWNTOWN ENTERTAINMENT DISTRICT – SOUTH ZONING SUBMITTAL  
(CONTINUED)

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

ADJOURNMENT

At 10:58 p.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