



**MINUTES**  
**CITY COMMISSION MEETING**  
**TUESDAY, MAY 3, 2011**  
**7:00 P.M.**

The Regular Meeting of the City Commission was held at 7:00 p.m. in the City Commission Room. Mayor James E. Sherow and Commissioners Loren J. Pepperd, John Matta, Wynn Butler, and Richard B. Jankovich were present. Also present were the City Manager Ron R. Fehr, Assistant City Manager Jason Hilgers, Assistant City Manager Lauren Palmer, Assistant City Attorney Katharine Jackson, City Clerk Gary S. Fees, 9 staff, and approximately 230 interested citizens.

**PLEDGE OF ALLEGIANCE**

Mayor Sherow led the Commission in the Pledge of Allegiance.

**MAYOR'S COMMUNITY SERVICE AWARDS**

Mayor Sherow recognized Janice Hill and Lauren Palmer, recipients of the Mayor's Community Service Award.

**PROCLAMATIONS**

Mayor Sherow proclaimed May 9-13, 2011, ***Manhattan Association of Realtors Appreciation Week***. Sarah Blair, President, Manhattan Association of REALTORS, was present to receive the proclamation.

Mayor Sherow proclaimed May 14, 2011, ***Letter Carrier Food Drive Day***. Fred Stork, Food Drive Coordinator, and co-workers, National Letter Carriers Association, were present to receive the proclamation.

Mayor Sherow proclaimed May 14, 2011, ***Poppy Day***. Madison Gaume, Poppy Princess, and Karen Sisk, Poppy Committee, American Legion Auxilliary Post 17, were present to receive the proclamation.

## PROCLAMATIONS (CONTINUED)

Mayor Sherow proclaimed May 15-21, 2011, *National Public Works Week*. Sam Malinowsky, Cook, Flat and Strobel Engineers; Matthew Kohls, BG Consultants; Greg Fief, Schwab-Eaton; Jeff Hancock, SMH Consultants; Buck Driggs, Alfred Benesch and Company; Nathan Bergman, Bartlett and West; Robert Ott, City Engineer; Nick Arena, Public Works Management Assistant; Jeff Walters, Street Superintendent; Robert Pugh, Assistant Director of Public Works-Utilities; and Dale Houdeshell, Director of Public Works, were present to receive the proclamation.

Mayor Sherow proclaimed May 2011, *National Preservation Month*. Kathy Dzewaltowski, President, Manhattan/Riley County Preservation Alliance; Sara Fisher, Vice President, Manhattan/Riley County Preservation Alliance; and Gina Riffel, Mary Ann Fleming, and Marina Pecar-Krstic, Manhattan/Riley County Preservation Alliance members, were present to receive the proclamation.

## PUBLIC COMMENTS

Mayor Sherow opened the public comments.

Jason, Topeka, Kansas, asked the Commission if there would be public comment allowed on the non-discrimination ordinance item.

Mayor Sherow stated that there would be public comment on the item.

Hearing no other comments, Mayor Sherow closed the public comments.

## COMMISSIONER COMMENTS

Mayor Sherow announced that Saturday, May 7, 2011, is an opportunity to come ride your bicycle with the Mayor. He said that riders will leave City Hall at 10:00 a.m. and encouraged the community to participate in this fun event.

## CONSENT AGENDA

(\* denotes those items discussed)

## MINUTES

The Commission approved the minutes of the Regular City Commission Meeting held Tuesday, April 19, 2011.

## CONSENT AGENDA (CONTINUED)

### CLAIMS REGISTER NO. 2671

The Commission approved Claims Register No. 2671 authorizing and approving the payment of claims from April 13, 2011, to April 26, 2011, in the amount of \$7,459,677.33.

### LICENSE

The Commission approved an annual Cereal Malt Beverage Off-Premises License for Short Stop #12, 2010 N. Tuttle Creek Boulevard.

### FINAL PLAT – 2216 CLAFLIN TOWNHOMES PUD

The Commission accepted the easements and rights-of-way, as shown on the Final Plat of 2216 Claflin Townhomes Addition, a Residential PUD, generally located at 2216 Claflin Road, based on conformance with the Manhattan Urban Area Subdivision Regulations.

### RESTRICTIVE COVENANT - 2216 CLAFLIN TOWNHOMES

The Commission authorized the Mayor and City Clerk to execute the Agreement Creating a Restrictive Covenant on Real Estate regarding construction and maintenance of a drainage area and drainage improvements for 2216 Claflin Townhomes.

### ORDINANCE NO. 6892 – REZONE – 480 MCCALL ROAD

The Commission approved Ordinance No. 6892 rezoning Lot 2, Carlson Addition, generally located at 480 McCall Road, from I-2, Industrial Park District, to C-5, Highway Service Commercial District, based on the findings in the Staff Report (*See Attachment No. 1*).

### \* FIRST READING – REPEAL – MOBILE FOOD VENDING

Lauren Palmer, Assistant City Manager, responded to questions from the Commission and provided additional information on the item.

Ralph DeZago, City Prosecutor, Junction City, informed the Commission that he is the only person the ordinance is affecting at this time and the only mobile food vendor in Manhattan. He provided background information on the ordinance and asked the Commission to reconsider the item and remove the item off the consent agenda for additional public debate.

The Commission approved first reading of an ordinance repealing Ordinance No. 3916 relating to mobile food vending.

## **CONSENT AGENDA (CONTINUED)**

### **FIRST READING – AMEND – PEDDLERS AND SOLICITORS PERMIT**

The Commission approved first reading of an ordinance amending Chapter 24 relating to canvassers, peddlers, and solicitors.

### **FIRST READING – NO PARKING EXCEPT SUNDAYS**

The Commission approved first reading of an ordinance altering the existing “No Parking Anytime” area on the east side of Browning Avenue, from Claflin Road to Dickens Avenue, to a “No Parking Except Sundays” area on the east side of Browning Avenue from 150 feet north of Claflin Road to 200 feet south of Dickens Avenue.

### **AWARD CONTRACT – OSAGE STREET STREETScape (SW1102)**

The Commission accepted the Engineer’s Estimate in the amount of \$109,860.00 and awarded a construction contract in the amount of \$74,272.50 to the low bidder Carley Construction Company, of Wamego, Kansas, for the Osage Street Streetscape (SW1102).

### **CHANGE ORDER NO. 15 – RUNWAY 3/21 SAFETY AREA IMPROVEMENTS (AIP 37/38)**

The Commission approved Change Order No. 15 for the Runway 3/21 Safety Area Improvements project (AIP 37/38) resulting in a net increase in the amount of \$20,315.55 (+0.57%) to the contract with Smoky Hill, LLC, of Salina, Kansas.

### **\* SUBMIT - 2011 CDBG SECOND PROGRAM YEAR ANNUAL ACTION PLAN**

Gary Olds, 3308 Frontier Circle, asked for clarification on the Community Development Block Grant Action Plan.

Karen Davis, Director of Community Development, provided an overview on the item and responded to questions.

Ron Fehr, City Manager, responded to questions from the Commission and provided additional information on the item.

The Commission authorized the submission of the City of Manhattan Community Development Block Grant 2011 Second Program Year Annual Action Plan.

### **BOARD APPOINTMENTS**

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

## CONSENT AGENDA (CONTINUED)

### BOARD APPOINTMENTS (CONTINUED)

#### Arts and Humanities Advisory Board

Appointment of Joleen Hill, 2909 Amherst Avenue, to a three-year term. Ms. Hill's term begins immediately, and will expire March 31, 2014.

Appointment of Todd Holmberg, 3621 Hawthorne Woods Terrace, to a three-year term. Mr. Holmberg's term begins immediately, and will expire March 31, 2014.

Appointment of Jay Nelson, 406 Poyntz Avenue, to a three-year term. Mr. Nelson's term begins immediately, and will expire March 31, 2014.

Appointment of Jan Danenberg, 2901 Nevada Street, to a two-year term. Ms. Danenberg's term begins immediately, and will expire March 31, 2013.

Appointment of Don Hedrick, 1736 Fairview Avenue, to a two-year term. Mr. Hedrick's term begins immediately, and will expire March 31, 2013.

Appointment of Steve Lee, 121 North 8<sup>th</sup> Street, to a two-year term. Mr. Lee's term begins immediately, and will expire March 31, 2013.

Appointment of Penny Senften, 3348 Newbury Street, to a one-year term. Ms. Senften's term begins immediately, and will expire March 31, 2012.

Appointment of Frank Tracz, 145 Bethany Drive, to a one-year term. Mr. Tracz's term begins immediately, and will expire March 31, 2012.

Appointment of Derek Hoff, 613 Houston Street, to a one-year term. Mr. Hoff's term begins immediately, and will expire March 31, 2012.

#### Historic Resources Board

Re-appointment of Patrick Schaub, 1400 Westwind Drive, to a three-year Architect term. Mr. Schaub's term begins immediately, and will expire April 30, 2014.

Appointment of Dixie West, 1014 Houston Street, to a three-year Historic Preservation term. Ms. West's term begins immediately, and will expire April 30, 2014.

## CONSENT AGENDA (CONTINUED)

### BOARD APPOINTMENTS (CONTINUED)

#### Housing Authority Board of Commissioners

Appointment of Richard B. Jankovich, 2021 Somerset Square, to fill the unexpired Commissioner term of Bob Strawn. Commissioner Jankovich's term begins immediately, and will expire March 3, 2013.

#### Library Board

Re-appointment of Tom Giller, 529 Houston Street, to a four-year term. Mr. Giller's term begins immediately, and will expire April 30, 2015.

Re-appointment of Bill Lansdowne, 1617 Baltimore Terrace, to a four-year term. Mr. Lansdowne's term begins immediately, and will expire April 30, 2015.

#### Riley County Law Enforcement Board

Appointment of Wynn Butler, 3600 Windsong Court, to fill the unexpired City-At-Large term of Jayme Morris-Hardeman. Mr. Butler's term begins immediately, and will expire December 31, 2012.

Appointment of John E. Matta, 1213 Greystone Place, to fill the unexpired City-At-Large term of Bruce Snead. Mr. Matta's term begins immediately, and will expire December 31, 2012.

#### Municipal Audit Committee

Appointment of Richard B. Jankovich, 2021 Somerset Square, to fill the unexpired Commissioner term of Bob Strawn. Commissioner Jankovich's term begins immediately, and will expire March 31, 2012.

After discussion, Commissioner Jankovich moved to approve the consent agenda. Commissioner Pepperd seconded the motion.

After additional discussion of the Commission, on a roll call vote, motion carried 5-0, with the exception of Item F, FIRST READING – REPEAL – MOBILE FOOD VENDING, which carried 3-2, with Commissioners Pepperd and Butler voting against the item; and Item D, FINAL PLAT – 2216 CLAFLIN TOWNHOMES PUD, which carried 4-0-1, with Commissioner Jankovich abstaining from the item.

## GENERAL AGENDA

### PUBLIC HEARING - RESOLUTION OF INTENT – LEASE FINANCING - K-STATE FEED MILL AND BIO-REFINERY FACILITY RELOCATION

Commissioner Jankovich announced that he had a conflict of interest on the item and would recuse himself.

Lauren Palmer, Assistant City Manager, provided an overview of the item.

David Weaver, Vice President of Real Estate and Investments/Chief Investment Officer (CIO), Kansas State University Foundation, provided additional information on the financing of the facility relocation.

Bernie Hayen, Director of Finance, responded to questions from the Commission.

Mayor Sherow opened the public hearing.

Hearing no comments, Mayor Sherow closed the public hearing.

### RESOLUTION NO. 050311-A – RESOLUTION OF INTENT – LEASE FINANCING - K-STATE FEED MILL AND BIO-REFINERY FACILITY RELOCATION

After discussion, Commissioner Pepperd moved to approve Resolution No. 050311-A indicating the Commission's intent to issue up to \$5.3 million in conduit lease financing for the relocation of the K-State Feed Mill and Bio-refinery facility. Commissioner Butler seconded the motion. On a roll call vote, motion carried 4-0 with Commissioner Jankovich recusing himself from the item.

### FIRST READING – ADOPT - UPDATED GATEWAY TO MANHATTAN PLAN

Eric Cattell, Assistant Director for Planning, presented the item and responded to questions from the Commission.

After discussion, Commissioner Jankovich moved to approve first reading of an ordinance amending the Manhattan Urban Area Comprehensive Plan by adopting and incorporating by reference the Updated Gateway to Manhattan Plan, dated April 2011, and incorporating the necessary citation in Chapter 4 as proposed; and by adding a cross-reference to Vision 2025: A Comprehensive Plan for Riley County, Kansas, in Chapter 4 as proposed. Commissioner Pepperd seconded the motion.

After discussion of the Commission, motion carried 5-0.

## GENERAL AGENDA (CONTINUED)

### AWARD CONSTRUCTION CONTRACT - WILSON FIELD RENOVATION (CP1101); RESOLUTION NO. 050311-B – ISSUE – TEMPORARY NOTES

Curt Loupe, Director of Parks and Recreation, presented the item. He then responded to questions from the Commission regarding the proposal, bid process, project alternates, and use of temporary notes supported from the Special Parks and Recreation Fund.

Jason Hilgers, Assistant City Manager, provided additional information on the item and clarified the use of temporary notes and the financing costs associated with the project.

Curt Loupe, Director of Parks and Recreation, responded to questions from the Commission regarding the base price information, use and cost for the proposed facility, process for public donations, and the process used for the Wefald Pavilion.

Vern Henricks, 3508 Vanesta Drive, Founder and Director of the Youth Leadership Foundation, responded to questions from the Commission on the proposed project and associated costs. He provided additional information on the Youth Leadership Foundation activities and funds that would support this project.

Ron Fehr, City Manager, provided clarification on the total City contribution.

Jason Hilgers, Assistant City Manager, provided additional information on the proposed renovated ballfield, associated costs, and the need to adjust the ballfield to provide appropriate drainage for competitive and community use.

Curt Loupe, Director of Parks and Recreation, responded to questions from the Commission and provided information with other ballfield sites and associated costs.

Vern Henricks, 3508 Vanesta Drive, Founder and Director of the Youth Leadership Foundation, informed the Commission that he was trying to hold costs down and provided items that were associated with the project. He then responded to questions from the Commission on the current and future fundraising activities that would provide the necessary funds to support this project. He stated that the commitment of funds being proposed through the Foundation was not a problem.

Curt Loupe, Director of Parks and Recreation, responded to questions from the Commission about where this item would fall in relation to the priorities of the Parks and Recreation Department. He stated that this project would be in the top ten, but not near the top of the list of priorities. He then provided a list of priority items that need to be replaced and facilities that needed improvements.

Gary Olds, 3308 Frontier Circle, asked about the use and priority of scheduling activities on Wilson Field.

## GENERAL AGENDA (CONTINUED)

### AWARD CONSTRUCTION CONTRACT - WILSON FIELD RENOVATION (CP1101); RESOLUTION NO. 050311-B – ISSUE – TEMPORARY NOTES (CONTINUED)

Curt Loupe, Director of Parks and Recreation, and Jason Hilgers, Assistant City Manager, responded to questions on the use and priority of the Manhattan Christian College baseball team, the Manhattan High School C team, the opportunity to entertain additional uses and activities for the public.

Ron Fehr, City Manager, provided clarification on the Memorandum of Understanding between the City and the Youth Leadership Foundation that was approved during the April 5, 2011, City Commission meeting.

After discussion, Commissioner Pepperd moved to approve and authorize the Mayor and City Clerk to execute the Contract between the City and ATG Sports, of Andover, Kansas, for the Wilson Field Renovation (CP1101) and approve Resolution No. 050311-B authorizing the issuance of temporary notes for \$575,000.00. Commissioner Jankovich seconded the motion.

After additional discussion of the Commission, on a roll call vote, motion failed 3-2, with Mayor Sherow and Commissioners Matta and Butler voting against the motion.

### NEGOTIATE CONTRACT - GIBBONS EXHIBIT (SZ0902)

Commissioner Jankovich announced that he had a conflict of interest on the item and would recuse himself.

Curt Loupe, Director of Parks and Recreation, presented the item. He then responded to questions about financing the project and the Woodard Trust.

Scott Shoemaker, Director, Sunset Zoo, provided additional information on the item and reported the amount of annual Zoo fees received.

John Ball, 3107 Harahey Ridge, Board Member, Friends of Sunset Zoo, spoke in support of the project and informed the Commission that adequate funds are available to cover this project. He also stated that the Board is prepared to do additional fundraisers to ensure that obligations are met.

Thad Carley, Carley Construction Company, voiced concerns with the selection process that was used and with the proposed recommendation. He requested that the recommendation not be accepted. He stated that he considers his firm to be local and that his firm was the low bidder. He also informed the Commission that his firm is very interested in doing this project.

## GENERAL AGENDA (CONTINUED)

### NEGOTIATE CONTRACT - GIBBONS EXHIBIT (SZ0902) (CONTINUED)

Lee Hecke, Construction Manager, Carley Construction Company, informed the Commission that there were many questions associated with the project and asked to get the bid date moved back. He stated their firm was \$1,300.00 lower than the competing bidder, worked with the same specifications as the other bidder, and considered their company a local bidder being in the city of Wamego.

Thad Carley, Carley Construction Company, reiterated that the bid documents did not state a preference for a local contractor or a preference given to contractors having prior experience with Parks and Recreation Department. He informed the Commission that it takes time to put together a competitive bid and that the company can do a wonderful job for the City of Manhattan. He then responded to questions from the Commission regarding the Architect's Estimate and value engineering.

Ron Fehr, City Manager, provided additional information and clarification on the item. He then responded to questions from the Commission and stated that the contract would come back to the Commission for approval.

Thad Carley, Carley Construction Company, provided additional information on the item and informed the Commission that his company wants to work on this project.

Nick Arena, Management Assistant, responded to questions from the Commission regarding the process and discussions with the two contractors.

Curt Loupe, Director of Parks and Recreation, provided additional information on the item and stated that the goal is to lower the cost for this project with value engineering.

After discussion, Mayor Sherow moved to reject both bids for the Gibbons Exhibit (SZ0902), and direct the City staff to enter into negotiations with R.M. Baril, of Manhattan, Kansas. Commissioner Pepperd seconded the motion. On a roll call vote, motion failed 3-1, with Commissioners Pepperd, Matta, and Butler voting against the motion and Commissioner Jankovich recusing himself from the item.

After discussion, Commissioner Pepperd moved to reject both bids for the Gibbons Exhibit (SZ0902), and direct the City staff to enter into negotiations with Carley Construction, of Wamego, Kansas. Commissioner Butler seconded the motion. On a roll call vote, motion carried 4-0 with Commissioner Jankovich recusing himself from the item.

The Commission took a brief recess.

## GENERAL AGENDA (CONTINUED)

### FIRST READING - NON-DISCRIMINATION ORDINANCE (CONTINUED)

Mayor Sherow provided an overview of the process for the item and the procedure to accommodate public comment, which would be limited to three minutes per person.

Jason Hilgers, Assistant City Manager, presented background information on the item and provided clarification of the ordinance.

Katharine Jackson, Assistant City Attorney, responded to questions from the Commission and provided clarification of Sections 10-15 and 10-16.

Susan Gerth, 2213 Alta Drive, President, Flint Hills Parents, Families, and Friends of Lesbians and Gays, and member of the Board of Directors for the Kansas Statewide Transgender Project, voiced support to keep the current ordinance to protect the same rights that everyone else has. She provided additional information and concerns about the transgender members of the community and concerns for her daughter.

Carl Doud, 720 Dehoff Drive, informed the Commission that he was in favor of repealing the ordinance. He stated that he was opposed in having a board with judicial powers to issue fines, financial obligations associated with the ordinance, and that he did not see a discrimination problem in the community.

Phil Anderson, 1718 Fairchild Avenue, read a portion of the ordinance and asked the Commission to allow the ordinance to be successful and give it time for implementation. He stated that it is imperative that the City of Manhattan maintain the non-discrimination ordinance and provide equal treatment to everyone. He said Manhattan wants to be a welcoming community and if the ordinance is repealed, Manhattan Commissioners have decided that it may be a welcoming community for some, but not for all.

Bob Reader, 6560 North 52<sup>nd</sup> Street, informed the Commission that the petition committee with Awaken Manhattan has garnered sufficient signatures of 1,686 to revoke the discrimination ordinance. He stated that on April 5, 2011, the people of Manhattan voted in a new Commission who had campaigned in opposition of this ordinance, and that it is now appropriate to act based on the already expressed will of the people and to revoke the current ordinance.

Jonathan Mertz, 34107 Highway K-18, President, Flint Hills Human Rights Project, asked those to stand that are or know people that are gay, lesbian, bisexual, or transgender. He stated that there is no evidence to support the claims that the ordinance will affect businesses or bring lawsuits. He informed the Commission that they did their research and presented the Commission with statements from cities and states across the nation that

## GENERAL AGENDA (CONTINUED)

### FIRST READING - NON-DISCRIMINATION ORDINANCE (CONTINUED)

have said this has not been an issue or burden on businesses in their community. He begged the Commission to provide evidence contrary to what has been presented and to support the current ordinance.

Stan Hoerman, 2021 Bluehills Road, stated that there are consequences to elections and this is a referendum on this ordinance.

Elain Denel Korroch, 1708 Winne Drive, informed the Commission that she was not able to attend prior Commission meetings on this item due to an illness. She asked to consider the importance of being able to go to a restaurant with her partner and enjoy a meal without being worried about being kicked out. She stated that it is not okay to be considered as second-class citizens.

Darryl Martin, Pastor, Manhattan Christian Fellowship Church, 2229 Stone Post Road, informed the Commission that his members are not a hate group and their message is love. He stated that he believes relationships should be between a man and a woman, and that this is Gods design.

David McFarland, 2030 Hunting Avenue, asked the Commission to consider growth and stated that a few years ago, Manhattan was named as one of the best places to retire, but now the implied message is that the community does not want you to think about being here unless you are heterosexual. He asked that Manhattan not consider going backward with the repeal of this anti-discrimination ordinance. He then provided additional information on the item and asked that the anti-discrimination ordinance stand as it has already been approved.

Tracy Schmidt, 700 Brierwood Drive, asked legal questions regarding the Board and if they would be granted the same powers as civil court.

Katie Jackson, Assistant City Attorney, and Jason Hilgers, Assistant City Manager, responded to questions regarding fines, remedies, process, and powers and duties of the administrative agency.

Samuel Brinton, Smith Scholarship House, 331 North 17<sup>th</sup> Street, informed the Commission that he was representing students at Kansas State University and stated the need to keep the current ordinance. He provided personal stories of students on the verge of committing suicide. He stated that the ordinance is not perfect, nothing ever is, but asked that citizens of Manhattan be treated with respect, be protected on or off campus, and asked the Commission to hold the ordinance in-place.

## GENERAL AGENDA (CONTINUED)

### FIRST READING - NON-DISCRIMINATION ORDINANCE (CONTINUED)

Betty Banner, 618 Osage Street, encouraged the Commission to withhold the current ordinance. She voiced support of the current ordinance and provided examples of past discrimination practices. She informed the Commission that it is understandable that there may not be complaints because there was nobody to complain to. She asked the Commission to support the ordinance and ensure equal treatment for everyone.

Larry Limbocker, 2108 Snowbird Drive, asked the Commission to repeal the ordinance and stated that it was not necessary, is overreaching and heavy handed with penalties, and stated that the current State law is fine. He said that respect goes both ways and the election was about differences of opinion and those opinions should be respected.

Maria Snyder, 1413 Pierre Street, with friend Mercedes Palmer, voiced concern with the proposal to repeal the ordinance and stated that she was a concerned parent of two children in the school district as well as a gay woman and student at Kansas State University. She provided examples of bullying, discrimination, and alienation that her friend Mercedes has experienced, causing self-hatred and suicidal thoughts.

Kevin Ingram, 9061 Tonya Terrace, President, Manhattan Christian College, informed the Commission that he still believes that the ordinance as written is problematic on many levels for religious organizations in town. He stated that religious rights are protected by the Constitution of the United States under God and encouraged the Commission to repeal the ordinance.

Jason, Topeka, Kansas, stated that City of Topeka employees are protected against discrimination, as are the employees of Shawnee County. He asked the Commission to consider that this ordinance is good for business as 80 percent of the top 500 companies have these same type of policies and that it would be bad for business if the ordinance is repealed.

Nate Spriggs, Student Body President, Kansas State University, 1100 Fremont Street, informed the Commission that the Kansas State Student Governing Association passed a resolution to reinstate the previous support of the ordinance. He strongly encouraged the Commission to support continuance of the existing ordinance.

Frank Siegle, 1013 Houston Street, thanked Commissioner Matta and Butler for responding to his emails. He informed the Commission that the history of this country has taken a long time to be inclusive of all people. He stated the ordinance is necessary because people do things to other people that are not right or part of the American dream.

## GENERAL AGENDA (CONTINUED)

### FIRST READING - NON-DISCRIMINATION ORDINANCE (CONTINUED)

Lee Hildebrecht, 800 Fremont Street, referred to a letter that appeared in *The Manhattan Mercury* by Debbie Nuss and stated that he provided a response letter to the director of the Senior Center. He then voiced additional concerns.

Richard Hill, 3513 Stagecoach Circle, representing the landlords of Manhattan, stated that he was opposed to discrimination. He said that every citizen has rights and so do business owners and landlords. He stated that the ordinance infringes on his ability to conduct business and we are against the fact that our rights are being taken away.

Marolyn Caldwell, 325 Fordham Road, stated that the damage has already been done and she will be moving. She stated that her son is so angry, that he would not come to the meeting. If this is what the community wants, then they will not be staying in Manhattan.

Will Neely, 404 South 18<sup>th</sup> Street, informed the Commission on the trend of public opinion for acceptance and capitalism. He stated that this ordinance defends a capitalism society that makes this nation great.

Lora Boyer, 211 North 15<sup>th</sup> Street, asked the Commission to keep the ordinance and not repeal the ordinance. She stated that everyone should be provided the same expectations and treatment she has received. She stated this ordinance provides protections to gay, lesbian, bisexual, transgender, and also protects her rights.

Joshua McGinn, 724 Poyntz Avenue, stated that the most recent election did not have a referendum on the ballot and stated that it would be inappropriate to vote on human rights. He voiced his support to maintain the ordinance. He stated that it is not a special right to have access to justice and that no one is entitled to discriminate.

Tara Clark, 2451 Big Horn Lane, provided her experience in moving to Kansas from New Jersey. She stated that if the ordinance is repealed, it will confirm to many others that Kansas is a backwards state. She said we all deserve the same rights as others and asked the Commission to keep the ordinance and protect everyone.

Chris McCurry, 712 Ridgewood Drive, informed the Commission that he retired from the military and moved to Manhattan because it was a great place to raise a family with traditional family values and beliefs. He stated that this legislation is not needed and asked that the ordinance be repealed.

## GENERAL AGENDA (CONTINUED)

### FIRST READING - NON-DISCRIMINATION ORDINANCE (CONTINUED)

Stephanie Mott, 119 Southeast 14<sup>th</sup> Street, Topeka, Kansas, Executive Director, Kansas Statewide Transgender Education Project, Vice Chair Kansas Equality Coalition, and Vice Moderator on Board of Directors for the Metropolitan Community Church of Topeka, Kansas, provided background information on her life being transgender. She asked for the Commission to support transgender people and to become educated.

Jayne Morris-Hardeman, 1822 Laramie Street, talked about the poor voter turnout in the last election and stated that this election was not decided based on this issue. She voiced disagreement that the newly elected officials had a mandate to repeal the ordinance and that they did not receive a majority of the votes. She asked the Commission to support the ordinance, support the City of Manhattan's mission statement, and to make the right decision to protect everyone in our community to fulfill that mission.

Lukus Ebert, 1100 Pomeroy Street, President-Elect, Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ), Kansas State University, informed the Commission that everyone has a right to safe housing, employment, and public accommodations. He asked the Commission to not take his rights away and to support the ordinance.

Laura Bonella, 331 North 14<sup>th</sup> Street, informed the Commission that as a nursing mother, she was asked to leave a restaurant and was able to say no. She stated that if you feel that you are not being discriminatory, then you have no reason to repeal this ordinance because it will never affect you.

Daniel Ireton, 1504 Colorado Street, Kansas State University Librarian, asked to consider discriminatory practices in our history and urged the Commission to fall on the more heroic side of history and support the LGBT community.

Tom Witt, State Chair, Kansas Equality Coalition, expressed concerns and accusations with discrimination. He stated that we need to establish and hold onto legal protections to prevent hurtful discrimination and abuse of children.

Stephen Henderson, Pastor, Harvest Baptist Church, 3217 Ella Lane, thanked the Commission for their service and informed them that their church members prays for each of them as city leaders. He stated that he comes from a standpoint that he cannot dismiss the fact that he is a pastor and believes in the Bible. He encouraged the Commission to repeal the ordinance.

Brandon Katt, 807 Haymaker Hall, Kansas State University student, provided clarification that discrimination exists and does happen in Manhattan, Kansas.

## GENERAL AGENDA (CONTINUED)

### FIRST READING - NON-DISCRIMINATION ORDINANCE (CONTINUED)

Mike Herman, 446 Edgerton Avenue, informed the Commission that there is a need for an anti-discrimination ordinance and asked to oppose repealing the ordinance. He asked what the vision is for Manhattan. If it is to recruit high-tech businesses with cutting-edge research, then Manhattan needs to be inclusive without discrimination.

Nicolas Burns, 428 North 6<sup>th</sup> Street, informed the Commission that this ordinance will affect businesses and LGBT are business owners too.

Bruce Snead, 810 Pierre Street, expressed his appreciation to Katie Jackson, Assistant City Attorney, and to City staff in working to produce an ordinance that will serve Manhattan well. He stated that he would hate to see the ordinance repealed and asked that if something is done with the ordinance, to keep some aspects of the ordinance for equal rights and justice. He urged the Commission to not repeal the ordinance.

Christy Espinosa, 2320 Raspberry Drive, reflected on the Pledge of Allegiance conducted at the beginning of the meeting. She stated that the discrimination being exposed is by those that would decide we are not one nation under God, and those seeking discrimination are actually discriminating against our Judean Christian principles that this nation under God was founded on.

Commissioner Matta stated there are many arguments for repeal of this ordinance and questioned the need and appropriateness for City government to use its police powers of force and coercion against its citizens as the only solution to this perceived problem. He stated that mutual respect and understanding do not come about by the use of force. He voiced concerns with the consequences and enforcement issues associated with the discrimination ordinance. He also expressed additional concerns with the discrimination ordinance and the right to the free exercise of religion. He said that he did not believe in a system to keep perpetuating and adding protected classes and that the use of force is just a trade-off between one group and another. He stated that he would vote to repeal the ordinance.

Commissioner Pepperd said that elected officials must support the views of the community and the LGBT community has done an outstanding job in providing guidance, direction, and education to the City, City Commission, and Kansas State University. However, they have not provided the same education and guidance to the business people in this community. He stated that USD 383 and the Manhattan Area Chamber of Commerce have voiced concerns with being able to handle this ordinance. He stated his standards of practice as a professional real estate agent. He stated that the community as a whole does not support this ordinance and that he would vote to repeal the ordinance.

## GENERAL AGENDA (CONTINUED)

### FIRST READING - NON-DISCRIMINATION ORDINANCE (CONTINUED)

Commissioner Butler stated that he does not oppose the ordinance on religious grounds, but that he disagreed with giving an appointed board enforcement power. He voiced concern with mixing of legislative and judicial powers and the potential damage to reputations and opportunities for serious abuse. He stated that he would prefer to see city ordinances in line with Kansas law and federal law. He said education would help further the cause and this matter needs to be pursued at the state level; City government has other priorities to deal with.

Commissioner Jankovich stated the civility was greatly appreciated and the passion from both sides was very similar from the experience of walking through neighborhoods during the election. He voiced concerns with the belief there may be an implied discrimination and with the enforcement aspect of a quasi-judicial board. However, he said that he has witnessed first-hand discrimination and it is wrong. He stated that he would support keeping the ordinance with the goal of compromise to make this work for our city to meet the expectations and representation of our population.

Commissioner Sherow stated that he would vote to keep the ordinance. He said that religion has been invoked throughout the discussion of this ordinance, but stated that this ordinance is not about religious beliefs, but practice. He stated that you are all welcome to practice and to hold your religious beliefs, but you do not have the right to force them on anybody else. He responded to concerns about the use of quasi-judicial powers, voiced his concerns if this ordinance is repealed, and reiterated his oath of office as a public servant and the City of Manhattan's mission statement. He said that this ordinance has both economic and civil rights overtones. He stated that being an open and welcoming community demonstrates our desire to be a community that individuals and companies want to move to, citing examples of companies and employees considering relocating to Manhattan. He reiterated that he is proud to have supported this ordinance and would be saddened if this ordinance is repealed tonight.

After discussion, Commissioner Butler moved to approve first reading of an ordinance repealing Ordinance No. 6880 and reinstating the prior provisions of Chapter 10 relating to civil rights. Commissioner Matta seconded the motion.

After additional discussion of the Commission, on a roll call vote, motion carried 3-2, with Mayor Sherow and Commissioner Jankovich voting against the motion.

**ADJOURNMENT**

At 11:55 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

**STAFF REPORT**

**ON AN APPLICATION TO REZONE PROPERTY**

**FROM:** I-2, Industrial Park District.

**TO:** C-5, Highway Service Commercial District.

**APPLICANT:** Tom Abbott.

**ADDRESS:** 425 McCall Road, Manhattan, KS 66502.

**OWNER:** McCall Inc. – Tom Abbott.

**ADDRESS:** 425 McCall Road, Manhattan, KS 66502.

**LEGAL DESCRIPTION:** The legal description of the proposed rezoning site is Lot 2, Carlson Addition, to the City of Manhattan.

**LOCATION:** Lot 2, the proposed rezoning site, is generally located at 480 McCall Road, which is on the south side of McCall Road approximately 335 feet west of the intersection of Carlson Street and McCall Road.

**AREA:** The area of Lot 2 is 4.4 acres or 191,644 square feet.

**DATE OF PUBLIC NOTICE PUBLICATION:** Monday, March 14, 2011.

**DATE OF PUBLIC HEARING: PLANNING BOARD:** Monday, April 4, 2011.

**CITY COMMISSION:** Tuesday, April, 19, 2011.

**EXISTING USE:** The existing uses on Lot 2 are Willie's Car Wash, which is in the northern part of Lot 2, and four self storage unit buildings in the southern part of Lot 2. The balance of Lot 2 is asphalt driving aisles with a landscape area in the northern part of Lot 2.

**PHYSICAL AND ENVIRONMENTAL CHARACTERISTICS:** The physical and environmental conditions of Lot 2 are that it is a generally flat site, which is located in the 100 Year Flood Plain, Zone AH. New construction and substantial improvements of commercial or industrial uses are required to elevate the lowest enclosed floor to one foot above the Base Flood Elevation (BFE) or flood proof the lowest enclosed floor to one foot above the BFE, which is 1008 feet. The site drains to the north.

Access to Lot 2 is from two curb cuts off McCall Road.

**SURROUNDING LAND USE AND ZONING:**

- (1) **NORTH:** McCall Road, self-storage units, commercial and future undeveloped commercial; I-2 District and Commercial Planned Unit Development District.
- (2) **SOUTH:** Manufacturing; I-2 District.
- (3) **EAST:** Research and manufacturing; I-2 District.
- (4) **WEST:** Manufacturing, health and fitness club, commercial retail and commercial services; I-2 District and C-5 District.

**GENERAL NEIGHBORHOOD CHARACTER:** The general character of the neighborhood is a nearly fully developed mixed use corridor along McCall Road, an arterial street. Land uses along McCall Road consist of highway service commercial and industrial activities. Commercial uses are at the eastern end of the street on both sides of the street, and at the western end on the south side of the street. Industrial uses are generally midway between Hayes Drive and US Highway 24, with industrial uses also on the north side of the street at its eastern end.

**SUITABILITY OF SITE FOR USES UNDER CURRENT ZONING:** Lot 2 is suitable for the uses allowed in the I-2 District, which is developed as a car wash and self storage units for the general public. The car wash is subject to an approved Conditional Use Permit, and the self storage units are a Permitted Use in the I-2 District.

**COMPATIBILITY OF PROPOSED DISTRICT WITH NEARBY PROPERTIES AND EXTENT TO WHICH IT MAY HAVE DETRIMENTAL AFFECTS:** The proposed rezoning to C-5 District is compatible with the mixed use nature of the nearly fully developed commercial and industrial neighborhood along McCall Road. The proposed rezoning should not result in any detrimental effects related to traffic, light, or noise. McCall Road is under construction and being expanded to a five lane arterial street with two through lanes in both directions and a center turn lane. The applicant's intent is to allow a drive-in coffee kiosk to be developed on Lot 2; however, any of the permitted or conditional uses of the proposed C-5 District would be allowed. The effects of traffic, light, and noise should be similar to the mixed use nature of the commercial and industrial character of the McCall Road corridor.

**CONFORMANCE WITH COMPREHENSIVE PLAN:** Lot 2 is in the Northeast Planning Area of the Future Land Use Map of the Comprehensive Plan and is shown as Industrial (IND). However, the proposed rezoning would allow a development generally consistent with the policies applicable to all commercial development, as well as policies applicable to Community Commercial (CC). In addition, the Plan suggests that there are a range of general policies applicable to all commercial development.

The IND, COMMERCIAL-ALL CATEGORIES, and CC policies are set out below in *italics* and **bold italics**.

Policies of the IND category include:

***Employment: Industrial and Office***

**BACKGROUND AND INTENT**

*Employment uses within the Urban Area are intended to provide concentrated areas of high quality employment facilities for uses such as office headquarters, research and development facilities, and educational facilities, as well as locations for light and heavy manufacturing, warehousing and distribution, indoor and screened outdoor storage, and a wide range of other industrial services and operations.*

**INDUSTRIAL (IND)**

***I 1: Characteristics***

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

***I 2: Location***

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

**I 3: Screening**

*Storage, loading and work operations should be screened from view along all industrial area boundaries (when adjacent to non-industrial uses) and along all public streets.*

Policies of the COMMERCIAL-ALL CATEGORIES include:

**Commercial**

**BACKGROUND AND INTENT**

*The City contains numerous commercial areas that provide the necessary goods and services for residents of the community and region as well as visitors. Commercial developments must be located and designed to balance market opportunities with access and location. In addition, the location and design of commercial areas must be incorporated into surrounding areas, rather than altering the character of surrounding neighborhoods. While the Downtown, or Central Core District, will remain the primary focus of regional commercial activity for the community and region, a variety of other community and neighborhood scale commercial centers will be distributed throughout the community to provide for the day-to-day needs of residents.*

**COMMERCIAL- ALL CATEGORIES**

**C 1: Designate Commercial Areas According to Their Role and Function in the Region**

*To provide a variety of commercial services to the community, three commercial designations are provided, depending on the center's scale, purpose, location, and intensity of use. These include the Central Core District, Community Commercial, and Neighborhood Commercial.*

**C 2: Distribution of Commercial Services**

*Commercial centers should be distributed throughout the community to provide ease of access for all residents and minimize the need for cross-town vehicle trips.*

**C 3: Locate All Commercial Uses in Activity Centers**

*Commercial services should be concentrated and contained within planned activity centers, or nodes, throughout the community. Development of distinct commercial nodes will help preserve the residential character of many of the major street corridors throughout the community and help prevent the negative impacts caused by multiple access points along a corridor. Commercial activities, when grouped in cohesive centers or nodes, result in more viable areas compared to scattered or isolated single use commercial sites. Activity centers, or nodes, provide a variety of services in a concentrated location to promote "one-stop shopping" and minimize the need for multiple*

*Attachment No. 1*

*vehicle trips. Each center has a limited number of vehicle access points to minimize impacts on surrounding uses and maintain an efficient traffic flow to and from the site. Uses are typically clustered on larger sites near the intersection of two major streets rather than being developed in linear, “strip” configurations along major street corridors. Linear development patterns, particularly when parcels provide a single use and are developed independently, can require multiple access points and lead to disruption of traffic flow on adjacent streets. Although lot sizes and/or configurations in some areas may warrant the use of a more linear development pattern, it is generally discouraged.*

***C4: Include a Mix of Uses in New and Redeveloped Commercial Areas***

*New development and redevelopment should include a mix of uses of different types and sizes, creating a diversity of activity and avoiding large, single-use buildings and dominating parking areas.*

***C5: Promote a High Quality Urban Environment***

*The physical design of commercial development areas shall promote a high quality urban environment, as expressed by site layout, building materials and design, landscaping, parking area design, and pedestrian-oriented facilities, such as through use of design guidelines.*

Policies of the CC category 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-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....*

The McCall Road corridor has evolved from a largely industrial neighborhood to a commercial neighborhood. Many of the factors under the CC policies do not apply because the policies envision shopping centers. Regardless of the Plan's designation of the rezoning site as IND, the site has developed with highway service activities oriented to serve the motoring public. There are other C-5 District zoning sites, and larger commercial PUDs, along the McCall Road corridor to the east and west of the site, all of which are oriented to the motoring public.

The proposed C-5 District is in general conformance to the Comprehensive Plan.

**ZONING HISTORY AND LENGTH OF TIME VACANT AS ZONED:**

April 2, 1969	Annexation and rezoning to E, Light Industrial.
June 3, 1969-Present	E, Light Industrial to I-2 District.
January 6, 1986	Manhattan Urban Area Planning Board approves Preliminary and Final Plat of the Carlson Addition.
January 7, 1986	City Commission accepts the easements and rights-of-way as shown on Final Plat of the Carlson Addition.
January 9, 2002	Manhattan Board of Zoning Appeals approves Conditional Use Permit for a car wash and accessory uses.

The self storage units and car wash were built in 2002.

**CONSISTENCY WITH INTENT AND PURPOSE OF THE ZONING ORDINANCE:** The intent and purpose of the Manhattan 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 C-5, Highway Service Commercial District, is designed to provide for businesses offering accommodations, supplies, or services to motorists, and for certain specialized activities which require access to major streets and highways. The C-5 District's minimum lot size is 10,000 square feet; minimum lot width is 75 feet; and, minimum lot depth is 100 feet. Lot 2, Carlson Addition is 4.4 acres in area, 280 feet in width, and 690 feet in depth. Minimum C-5 District requirements are met and exceeded.

Lot 2 adjoins McCall Road, a major arterial street, and currently provides business and services oriented to the motoring public. The proposed rezoning is consistent with the intent and purpose of the C-5 District, as well as the current service commercial character of the site.

The proposed rezoning is consistent with the Manhattan Zoning Regulations.

**RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE THAT DENIAL OF THE REQUEST WOULD ACCOMPLISH, COMPARED WITH THE HARDSHIP IMPOSED UPON THE APPLICANT:** There appears to be no relative gain to the public that denial would accomplish compared to the hardship of denial upon the applicant. Lot 2 has essentially developed as a highway business site, which serves the motoring public. The car wash and self-storage units are permitted uses in the proposed C-5 District and Lot 2 is located along a major street. The proposed rezoning will allow, as a permitted use, the existing car wash and self-storage units, as well as the proposed drive-in coffee kiosk. It would be a hardship upon the applicant to deny the proposed rezoning in a neighborhood, which is nearly developing as a mixed use commercial and industrial neighborhood.

**ADEQUACY OF PUBLIC FACILITIES AND SERVICES:** There are adequate public facilities and services to serve Lot 2.

**OTHER APPLICABLE FACTORS:** None.

**STAFF COMMENTS:** City Administration recommends approval of the proposed rezoning of Lot 2, Carlson Addition, from I-2, Industrial Park District, to C-5, Highway Service Commercial District.

**ALTERNATIVES:**

1. Recommend approval of the proposed rezoning of Lot 2, Carlson Addition, from I-2, Industrial Park District, to C-5, Highway Service Commercial District, stating the basis for such recommendation.
2. 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 Lot 2, Carlson Addition, from I-2, Industrial Park District, to C-5, Highway Service Commercial District, based on the findings in the Staff Report.

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

**DATE:** March 28, 2011