

***MINUTES***  
***CITY COMMISSION MEETING***  
***TUESDAY, JUNE 21, 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, City Attorney Bill Frost, City Clerk Gary S. Fees, 7 staff, and approximately 85 interested citizens.

**PLEDGE OF ALLEGIANCE**

Mayor Sherow led the Commission in the Pledge of Allegiance.

**COMMISSIONER COMMENTS**

Commissioner Jankovich reported that he attended the Manhattan Fire Fighters Academy Graduation and voiced his appreciation for the training provided and for the performance by the Color Guard.

Mayor Sherow provided an overview of items mentioned during the Discussion/Briefing Session held prior to the City Commission Legislative Meeting. The Commission updated their calendars; provided updates on various meetings attended; discussed the Riley County-Manhattan Board of Health activities and governance; discussed scheduling a future meeting with the Manhattan Public Library Board to review the current governance structure of the Library; received an update on the Wildcat Creek watershed area item that was discussed during the Joint City/Riley County/Pottawatomie County Meeting on June 16, 2011, and on the agenda to be discussed tonight; and discussed citizen concerns in building a crematorium.

**CONSENT AGENDA**

(\* denotes those items discussed)

**MINUTES**

The Commission approved the minutes of the Regular City Commission Meeting held Tuesday, June 7, 2011.

## CONSENT AGENDA (CONTINUED)

### CLAIMS REGISTER NO. 2674

The Commission approved Claims Register No. 2674 authorizing and approving the payment of claims from June 1, 2011, to June 14, 2011, in the amount of \$4,839,240.44.

### ORDINANCE NO. 6899 – REPEAL – DAYCARE HOMES REGULATION

The Commission approved Ordinance No. 6899 repealing Ordinance No. 6806 related to the regulation of family day care homes.

### ORDINANCE NO. 6900 – PUSH CART MOBILE FOOD VENDING

The Commission approved Ordinance No. 6900 relating to pushcart mobile food vending.

### FIRST READING – LEASE FINANCING – K-STATE FEED MILL AND BIOREFINERY

The Commission approved first reading of an ordinance authorizing lease financing for the KSU Foundation in an amount not to exceed \$5.5 million for the relocation of the K-State Feed Mill and Biorefinery and authorized the Mayor and City Clerk to execute the related documents.

\* **RESOLUTION NO. 062111-A – APPLICATION – 2011 HOME INVESTMENT PARTNERSHIP PROGRAM FUNDS**

The Commission approved Resolution No. 062111-A authorizing submission of an application for 2011 HOME Investment Partnerships Program funds and authorized the Mayor to execute the application and the grant agreement if funding is awarded.

\* **NEGOTIATE CONTRACT – BLUEMONT AVENUE CORRIDOR IMPROVEMENTS, NORTH MANHATTAN AVENUE TO 11<sup>TH</sup> STREET (ST1103)**

Ron Fehr, City Manager, provided information on the selection process.

Rob Ott, City Engineer, provided additional background information on the selection committee process and efforts to match the project with the best team.

The Commission approved the recommendation of the Selection Committee of Bartlett and West, Inc., Bowman Bowman Novick, and SMH team and authorized City Administration to negotiate an agreement with Bartlett and West, of Manhattan, Kansas, for Professional Engineering Services for the Bluemont Avenue Corridor Improvements from North Manhattan Avenue to 11<sup>th</sup> Street improvements (ST1103).

## CONSENT AGENDA (CONTINUED)

### AWARD CONTRACT – SCENIC MEADOWS ADDITION, UNIT THREE, WATER (WA1004) AND SANITARY SEWER (SS1004) IMPROVEMENTS

The Commission accepted the Engineer's Estimate in the amount of \$331,838.30 and awarded a construction contract in the amount of \$208,917.91 to J and K Contracting, LC, of Junction City, Kansas, for the Scenic Meadows Addition, Unit Three, Water (WA1004) and Sanitary Sewer (SS1004) Improvements

### AWARD CONTRACT – GIBBONS EXHIBIT (SZ0902)

The Commission awarded a construction contract in the amount of \$333,877.00 to Carley Construction, of Wamego, Kansas, for the Gibbons Exhibit (SZ0902).

### RESOLUTION NO. 062111-B – ISSUE TEMPORARY NOTES - GIBBONS EXHIBIT (SZ0902)

The Commission approved Resolution No. 062111-B authorizing the issuance of temporary notes to pay for the construction of the Gibbons Exhibit (SZ0902).

\* **CHANGE ORDER NO. 4 – SUNSET ZOO ENTRY AND EDUCATION BUILDING (SZ0901)**

The Commission approved Change Order No. 4 for the Sunset Zoo Entry and Education Building project (SZ0901), resulting in a net increase in the amount of \$84,500.00 (+2.26%) to the contract with National Builders Inc., of Wichita, Kansas.

\* **AIRPORT USE AGREEMENT – AMERICAN AIRLINES, INC.**

Commissioner Butler requested that the item be moved to the end of the General Agenda.

\* **RENEWAL – SOFTWARE UPGRADE, MAINTENANCE, AND SUPPORT SERVICES AGREEMENT**

Bernie Hayen, Director of Finance, responded to questions from the Commission and provided background information on the item.

The Commission authorized the City of Manhattan to renew the software upgrade, maintenance, and support services agreement for a term of July 1, 2011, to June 30, 2012, in the amount of \$72,584.60 with SunGard Public Sector, Inc., of Lake Mary, Florida.

### **BOARD APPOINTMENT – MANHATTAN URBAN AREA PLANNING BOARD**

The Commission approved the appointment of Gary Stith, 2517 Meadowood Drive, to a three-year term to the Manhattan Urban Area Planning Board. Mr. Stith's term begins immediately, and will expire April 30, 2014.

## CONSENT AGENDA (CONTINUED)

### ORDINANCE AMENDING STANDARD TRAFFIC ORDINANCE – AMENDING PROVISIONS RELATED TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUORS OR DRUGS

The Commission approved first reading of an ordinance amending the Standard Traffic Ordinance for Kansas Cities, Edition of 2010, by amending provisions relating to driving under the influence of intoxicating liquors or drugs.

After discussion, Commissioner Jankovich moved to approve the consent agenda and to move Item K, AIRPORT USE AGREEMENT – AMERICAN AIRLINES, INC., to the end of the General Agenda. Commissioner Pepperd seconded the motion. On a roll call vote, motion carried 5-0, with the exception of Item D, ORDINANCE NO. 6900 – PUSH CART MOBILE FOOD VENDING, which carried 4-1, with Commissioner Matta voting against the motion and, with the exception of Item E, FIRST READING – LEASE FINANCING – K-STATE FEED MILL AND BIOREFINERY, which carried 4-0-1 with Commissioner Jankovich abstaining from the item due to a conflict of interest.

## GENERAL AGENDA

### APPOINTMENT - WILDCAT CREEK WORKING GROUP

Mayor Sherow provided background information on the purpose and potential make-up of the proposed Wildcat Creek Working Group that was initially discussed at the Joint City/Riley County/Pottawatomie County Meeting on June 16, 2011, in response to the Wildcat Creek flooding. He informed the Commission that with the Commission's consent, he would like to appoint Commissioner Jankovich to serve as co-chair of the Wildcat Creek Working Group.

After discussion, Commissioner Matta moved to appoint Commissioner Jankovich to co-chair the Wildcat Creek Working Group. Commissioner Butler seconded the motion. On a roll call vote, motion carried 5-0.

### INTERLOCAL AGREEMENT – and - SYSTEM OPERATING PLAN - MANHATTAN AREA TRANSIT SERVICES (MATS)

Lauren Palmer, Assistant City Manager, introduced the item.

Ted Rieck, HDR Engineering, Inc., presented background information on the Manhattan Area Transit Services Interlocal Cooperation Agreement, the Operating Agreement, Flint Hills Area Transportation Agency (ATA) demand response funding, ridership data, the proposed Fixed-Route System, service cost per rider and per capita operating costs, labor and fuel costs, availability of Federal and State funding, local match funding requirements,

## GENERAL AGENDA (CONTINUED)

### INTERLOCAL AGREEMENT – and - SYSTEM OPERATING PLAN - MANHATTAN AREA TRANSIT SERVICES (MATS) (CONTINUED)

and the Manhattan Area Transit Services Business Plan. He then responded to questions from the Commission regarding the current wage rates and benefits for ATA drivers, ridership projections, local funding sources, proposed hours of operation, proposed fares, infrastructure requirements, and signage.

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

Ted Rieck, HDR Engineering, Inc., provided additional information on the System Operating Plan and Manhattan Area Transit Services. He then responded to additional questions from the Commission regarding route and ridership projections, comparisons with similar communities that have public transit systems, and advertising revenue generation opportunities and advertising policies.

Anne Smith, Director, Flint Hills Area Transportation Agency (ATA), provided background information on the Flint Hills ATA and efforts to bring transit services to the Manhattan area. She provided additional information on the operations of ATA, transportation funds and funding support received, and stressed the importance to provide affordable and reliable public transportation to assure that the workforce and community needs are met. She then responded to questions regarding eligibility requirements for demand response and fixed-route systems.

Kathryn Smith and Joe Scott Smith, 2111 Snowbird Drive, speaking on behalf of the Visually Impaired Persons Support Group, spoke in support of the transit system being proposed to meet the transportation needs of the disabled. They requested that consideration be given to extend the hours and to add an additional day of service in which to attend various meetings and events in the community. They asked the Commission to support the request for funding for the fixed-route system being proposed.

Fred Willich, Chair, Manhattan Area Chamber of Commerce Board of Directors, speaking on behalf of the Chamber Board, asked the Commission to support funding for one year of the proposed fixed-route public transportation system. He stated that after reviewing recommendations from the Chamber's Public Affairs Committee and Workforce Advisory Board, the Chamber concurred with the request to fund the two fixed-route transportation system. He recommended that the proposed transportation system be reviewed annually for ridership, cost of operation, demand, and any additional funding that local businesses and taxpayers would incur. In addition, he requested that should the current funding partners reduce their financial support or costs rise that will force additional contributions by local taxpayers, the Chamber would request that the Commission ask for an immediate public review of the transit system before any additional City funding is provided.

## GENERAL AGENDA (CONTINUED)

### INTERLOCAL AGREEMENT – and - SYSTEM OPERATING PLAN - MANHATTAN AREA TRANSIT SERVICES (MATS) (CONTINUED)

Carletta Edwards, Chair, Kansas Disability Act Committee, informed the Commission that it is currently difficult for her to attend meetings, concerts in City Park, or evening activities due to the lack of public transportation options. She asked the Commission to support the fixed-route system that is being proposed and to support the efforts of the Flint Hills ATA Bus.

Ted Rieck, HDR Engineering, Inc., responded to questions from the Commission about ADA accessibility and bus stop or flag locations.

Lauren Palmer, Assistant City Manager, provided additional information on bus stops, signage, and local match considerations for 2011 and 2012. She then responded to questions from the Commission.

Lynn Hinrichsen, Chair, Workforce Center Advisory Board, and Owner, Express Employment Professionals, 900 Hayes Drive, asked the Commission to continue their support in funding the necessary services of the Flint Hills ATA Bus. She stated that the Workforce Center Advisory Board is concerned with the development of a productive workforce and that the number one challenge is transportation. She requested that the Commission show their support to expand the transportation system and make this a reality.

Anne Smith, Director, Flint Hills ATA, responded to questions from the Commission and stated that over 90 percent of the rides originate in the city of Manhattan.

Karen McCulloh, Chair, Board of Riley County Commissioners, provided a letter to the City Commission and expressed its support for the proposed fixed-route transit system. She stated that Riley County has supported public transportation for over 20 years and provided information on Riley County's fiscal and in-kind support of the ATA bus service. She provided additional information on the item, re-iterated the need for a fixed-route system, and urged the Commission to join the Riley County Commissioners in support of public transit.

Jayne Morris-Hardeman, 1822 Laramie Street, provided additional information on the availability of state and federal grant sources for public transit. She stated that Kansas State University and Riley County have committed the necessary funding for public transit and the City of Manhattan needs to commit as well. She said that the workforce is the number one reason why people are riding the ATA Bus and urged the Commission to approve the proposed Resolution and Interlocal Agreement.

## GENERAL AGENDA (CONTINUED)

### INTERLOCAL AGREEMENT – and - SYSTEM OPERATING PLAN - MANHATTAN AREA TRANSIT SERVICES (MATS) (CONTINUED)

Gayle Spencer, Associate Dean of Student Life, Kansas State University, and Administrator, SafeRide Program, informed the Commission that public transportation is a positive move for the community and for the University. She then responded to questions from the Commission on the current SafeRide program and shuttle transportation service.

Brennan Walter, 831 Pierre Street, stated the importance of a public transit system for Manhattan and asked the Commission to provide the necessary funding being requested.

Stan Hoerman, 2021 Blue Hills Road, provided examples of transit during a recent visit to Anchorage, Alaska, and encouraged the Commission to support a bus system.

Phil Anderson, 1718 Fairchild Avenue, provided a historical perspective on public transportation in Manhattan and informed the Commission that many tenants in public housing are in need of greater public transportation opportunities. He asked the Commission to support the item and responded to questions.

Jim Perez, Public Transit Manager for the State of Kansas, informed the Commission of the advantages of a fixed-route system and stated that he was glad to see the interest demonstrated. He stated that Kansas Department of Transportation (KDOT) believes in a regional plan and have three buses for fixed-route services to be delivered. He informed the Commission that his staff and KDOT are interested in helping in any way. He then responded to questions from the Commission on fixed-route systems, service adjustments, and the proposed implementation plan.

Linda Davis, 3419 Womack Way, provided personal experiences with public transportation and examples of those that need public transportation in the community.

Nikki Marcotte, 709 North Juliette, Apartment No. 3, informed the Commission that she is in strong support of a public transit system and provided examples of those in the community that need this transportation system. She urged the Commission to join the other agencies and governments that support this and, to allow the public transit system to happen.

Jean Lee, 901 Ivy Circle, speaking for League of Women Voters of Manhattan and Riley County, stated that the League of Women Voters supports policies that assure multiple modes of transportation and strongly support implementation for a fixed-route public transit system for Manhattan. She asked the Commission to promote the growth and development of the Manhattan area and asked to vote to implement a fixed-route transit system for all citizens of Manhattan.

## GENERAL AGENDA (CONTINUED)

### INTERLOCAL AGREEMENT – and - SYSTEM OPERATING PLAN - MANHATTAN AREA TRANSIT SERVICES (MATS) (CONTINUED)

Commissioner Matta provided background information on public transit and stated that the escalation of public transit systems tends to require more and more tax dollars. He voiced concern that if the transit system is put in place, then about the time we get over the hurdles we have now with debt, this will be a fiscal concern and with the uncertainty of the congressional budget. He stated that the service needs more private sector focus and could not support the item.

Commissioner Butler stated that he could not support the item, but perhaps a public vote on the item. He said that the ATA bus on demand service and the University's SafeRide program will continue to be available and serve the needs of the community.

Commissioner Jankovich provided additional information on the item and voiced support for the proposed approach. He was also supportive of a one year review of the transit operation and Agreement.

Bernie Hayen, Director of Finance, responded to questions from the Commission on the increases projected in the City's Bond and Interest Fund.

Commissioner Pepperd provided a list of current fiscal responsibilities of the City and the community. He voiced concerns with the lack of successful transit systems in Kansas and future funding to support a transit system.

Anne Smith, Flint Hills ATA, responded to questions from the Commission on federal and state grant funds received. She said that without these grants they would not be able to operate. She stated that there is no public transit system in the country that operates revenue neutral and did not see subsidization as a valid criticism. She provided additional information on the Salina model and its success. She then responded to additional questions from the Commission on other transit systems in Kansas and on the wages and benefits provided to employees of Flint Hills ATA Bus.

Mayor Sherow voiced support for the public transit plan presented and stated that there are an increasing number of low-income individuals and university students that would benefit from fixed transit routes, allowing them to get to work and to school. He said that in order to make Kansas State University and the community flourish, this is one of the components that can help make that possible.

## GENERAL AGENDA (CONTINUED)

### INTERLOCAL AGREEMENT – and - SYSTEM OPERATING PLAN - MANHATTAN AREA TRANSIT SERVICES (MATS) (CONTINUED)

After additional discussion and comments of the Commission, Commissioner Jankovich moved to approve Resolution No. 062111-C to authorize the Mayor and City Clerk to execute the Manhattan Area Transit Services Interlocal Agreement and authorize the Mayor and City Clerk to execute the 2012 System Operating Plan Agreement. Mayor Sherow seconded the motion. On a roll call vote, motion failed 3-2, with Commissioners Pepperd, Matta, and Butler voting against the motion.

At 9:35 p.m., the Commission took a brief recess.

### FIRST READING – AMEND - PRELIMINARY DEVELOPMENT PLAN - LOT 2, NEW BOSTON COMMONS COMMERCIAL PUD

Eric Cattell, Assistant Director for Planning, presented the item. He then responded to questions from the Commission related to the zoning history of the property and conformance with the Comprehensive Plan.

Sam Malinowski, Cook, Flatt & Strobel Engineers, provided additional information on the proposal, drainage plan, and detention for the entire development. He stated that the development will have less water runoff than experienced with the prior Riley County Shops.

Rob Ott, City Engineer, stated that a structural Best Management Practices was completed by Cook, Flatt & Strobel. He presented an aerial of the one (1) percent annual flood chance, the floodway, and the flood fringe areas of the property. He then responded to questions from the Commission on the impervious area analysis and stated that the Walgreens and Sonic sites also included underground detention and water quality structural devices.

After discussion, Commissioner Pepperd moved to approve first reading of an ordinance amending the Preliminary Development Plan of Lot 2, New Boston Commons, Commercial Planned Unit Development, and Ordinance No. 6819, to be known as the Final Development Plan of New Boston Commons, Unit Two, Commercial Planned Unit Development, generally located 190 feet south of the intersection of Westport Place and Garden Place, based on the findings in the Staff Report (*See Attachment No. 1*), with the three conditions of approval recommended by the Manhattan Urban Area Planning Board. Commissioner Jankovich seconded the motion.

Ron Fehr, City Manager, responded to questions from the Commission regarding the original Commercial Planned Unit Development for New Boston Commons, Unit Two.

On a roll call vote, motion carried 5-0.

## GENERAL AGENDA (CONTINUED)

### DISCUSSION - LOT 9, DOWNTOWN ENTERTAINMENT DISTRICT

Jason Hilgers, Assistant City Manager, introduced and provided clarification of the item.

Anthony Peterman, Strategic Advisory Group (SAG), presented a summary analysis with respect to the impact in adding two new proposed hotels for Lot 9. He stated that the analysis centered on the impact the two new hotels would have on 1) the new conference center, 2) the overall Manhattan hotel market, and 3) the new Manhattan Hilton Garden Inn Hotel. He then responded to questions from the Commission.

Brad Everett, General Manager, Fairfield Inn, provided additional information on the Hilton Garden Inn facility and provided clarification on the facility's square footage.

Anthony Peterman, SAG, provided clarification on the conference center and hotel total space comparisons. He then responded to questions regarding occupancy and room rates.

Ron Fehr, City Manager, provided additional information on the funding of the conference center.

Rick Kiolbasa, Dial Realty, provided additional information on the Hilton Garden Inn Hotel and informed the Commission that the construction provides an opportunity to build additional rooms once the demand justifies the expansion.

Jason Hilgers, Assistant City Manager, and Anthony Peterman, SAG, provided additional information on the facility, number of meeting rooms and available square footage, outdoor space, and opportunities to utilize the Flint Hills Discovery Center and the Depot facility.

John Conderman, representing the Flint Hills Square Group, commented on the SAG Report and stated that the Report presents no barrier to the Commission deciding to go ahead with this development agreement. He stated that the Report did not mention that the two proposed hotels were originally planned to be built on the southwest side of Manhattan and that it is still an option. He provided additional information on the Report and expressed concerns with the Report. He informed the Commission that clustering of hotels provides a synergistic effect that would benefit every entity in the cluster and that their Group was ready to move forward with the development agreement. He then responded to questions from the Commission.

Steven Hulsing, Hulsing Hotels, Inc., Operator, Clarion Hotel Manhattan, read a prepared letter from Dennis Hulsing, Owner/Operator of the Clarion Hotel Manhattan, providing information on the Manhattan Clarion and voicing concerns with two additional hotels in the market. He then responded to questions from the Commission.

## GENERAL AGENDA (CONTINUED)

### **DISCUSSION - LOT 9, DOWNTOWN ENTERTAINMENT DISTRICT**

Jennifer Fritchen, General Manager, Clarion Hotel, provided information on the operations of the Clarion Hotel and voiced concern with the negative effect of these two proposed hotels, regardless of where they will be built. She then responded to questions from the Commission.

Gary Coates, Professor of Architecture, Kansas State University, provided additional background information on the concepts provided earlier on Lot 9. He stated that the other hotels will need to deal with competition because the hotels are going to be built on Lot 9 or in another area of the community. He stated that the proposal from Flint Hills Square Group provides synergy to strengthen the north end redevelopment, the Town Center Mall, and the Poyntz Avenue retail area.

Rick Kiolbasa, Dial Realty, informed the Commission that the City should try to find an option besides building more hotels and see what else can be done with Lot 9.

Brad Everett, General Manager, Fairfield Inn, and soon to be manager of the Hilton Garden Inn, provided additional information on the proposal and informed the Commission that more hotels in the south end will drive down occupancy and rates. He expressed concern in undercutting rates of other hotels and voiced support for the south end to be an entertainment district, as originally envisioned.

Anthony Peterman, SAG, provided additional clarification on the Report.

Berne Hayen, Director of Finance, responded to questions from the Commission on transient guest taxes received.

Karen Hibbard, Director, Manhattan Convention and Visitors Bureau, responded to questions from the Commission on conference activities and requirements.

After additional discussion and comments of the Commission, Jason Hilgers, Assistant City Manager, and Ron Fehr, City Manager, responded to questions and provided additional information on the item. They informed the Commission that additional materials detailing available options would be provided to them for their review.

At 12:30 a.m., the Commission took a brief recess.

ITEM REMOVED FROM CONSENT AGENDA

AIRPORT USE AGREEMENT – AMERICAN AIRLINES, INC.

Commissioner Butler voiced concerns in providing funds to American Eagle Airlines to bring in an additional flight.

Ron Fehr, City Manager, provided background information on the item and discussed the proposal and Airport Use Agreement with American Airlines, Inc. He then responded to questions from the Commission on the Agreement and potential use of economic development funds.

After discussion, Commissioner Jankovich moved to authorize the Mayor and City Clerk to execute the Airport Use Agreement with American Airlines, Inc., for commercial air service for the Manhattan Regional Airport with the additional proviso that the City credit the General Fund up to \$10,000.00 from Economic Development Funds once the new Agreement takes place and the waiver of lease and fuel flowage begins. Commissioner Butler seconded the motion. On a roll call vote, motion carried 5-0.

ADJOURNMENT

At 12:48 a.m., the Commission adjourned.

  
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Gary S. Fees, MMC, City Clerk

## **STAFF REPORT**

**AN AMENDMENT OF ORDINANCE NO. 6819 AND THE APPROVED PRELIMINARY DEVELOPMENT PLAN OF LOT 2, NEW BOSTON COMMONS, COMMERCIAL PLANNED UNIT DEVELOPMENT. THE AMENDMENT IS PROPOSED AS A FINAL DEVELOPMENT PLAN. A CONCURRENT FINAL PLAT IS ALSO PROPOSED (SEE SEPARATE STAFF MEMORANDUM REGARDING FINAL PLAT.)**

## **BACKGROUND**

**APPLICANT/OWNER:** Green Apple Ventures, LLC. – Dave Speaks.

**ADDRESS:** 3905 Snowy Reach, Manhattan, KS 66503.

**LOCATION:** Generally located 190 feet south of the intersection of Westport Place and Garden Place.

**AREA:** 28,239 square feet (0.64 acres).

**DATE OF PUBLIC NOTICE PUBLICATION:** May 16, 2011.

**DATE OF PUBLIC HEARING: PLANNING BOARD:** June 6, 2011.

**CITY COMMISSION:** June 21, 2011.

## **EXISTING PUD:**

### **Ordinance**

New Boston Commons Commercial Planned Unit Development and Ordinance No. 6819 dated March 23, 2010 (*attached*).

Lot 2, approved with the Preliminary Development Plan in March, 2010, was shown as having a single-story building located on it. The building would be orientated to the east towards the Westport Place travel easement. The proposed building would have approximately 4,290 square feet of gross building area. The building was proposed to be approximately twenty (20) feet tall. Forty-two (42) off-street parking spaces were proposed to be located along the north, east and south of the building (8 spaces to the north, 23 spaces to the east and 10 spaces to the south).

### **Permitted Uses**

The permitted uses in the PUD include Business and Professional Offices.

### **PROPOSED MODIFICATIONS, BUILDINGS, IMPROVEMENTS AND DESIGN GUIDELINES**

Whenever there are substantial modifications to an approved Preliminary Development Plan, the Manhattan Zoning Regulations require an Amendment of the PUD. The proposed changes are substantial modifications to the approved building and site design on Lot 2, which require an amendment of Ordinance No. 6819 and the Preliminary Development Plan.

**Proposed Lots:** The PUD amendment proposes to split existing Lot 2 into two (2) lots with the New Boston Commons, Unit Two Final Plat. Lot 1 will be approximately 14,100 square feet in area. Lot 2 will also be approximately 14,100 square feet in area. The purpose of the Final Plat is so that the future owner and tenant of Lot 2 can own the building and land outright. The lots will gain access from Westport Place, as originally designed with the New Boston Commons Final Plat. The twenty-five (25) foot wide drainage easement on the west side of the lot is proposed to be vacated with the Final Plat. The drainage easement was dedicated to accommodate stormwater runoff from the north to the south towards Wildcat Creek. A stormwater sewer pipe was installed in this area to convey stormwater to the south and also control the rate of runoff into the creek. This underground pipe eliminates the need for the drainage easement. By vacating the drainage easement, a trash enclosure and proposed landscape screening can be placed in the general area without violating Code of Ordinances for placing structures in a drainage easement. The twenty-five foot wide area will still be a utility easement to allow for access to the stormwater sewer pipe for maintenance and repair.

### **Proposed Buildings and Improvements:**

The proposed buildings on Lot 1 and 2 will be single-story, with a gross building area of 1,875 square feet for each building, a total of approximately 3,600 square feet. Visually, the structures will appear as one (1) building, but will technically be two (2) building; with a demising wall located on the adjoining property line. The southern building is to be a medical office building. The northern building will be completed to the tenant specifications. The main entrances of the buildings will be to the north and south, respectively. The exterior materials proposed for the buildings are the same as what was approved with the approved Preliminary Development Plans, with stucco and masonry and thinset stone for accents over the entry ways. The roof materials will be architectural shingles. The proposed color of the building will be earth tones that are similar to the color of the accent stones. The height of the building will be approximately nineteen (19)

*Attachment No. 1*

feet. The buildings will be setback approximately sixty-six (66) feet from the front property line along Westport Place and sixty-three (63) feet from the Garden Way front property line.

The approved Preliminary Development Plan had forty-two (42) off-street parking spaces located to the north, east and south of the building on the lot. The proposed amendment to the Preliminary Development Plan removes the parking spaces that were to be located to the east of the buildings. Eleven parking spaces are located on each of the proposed lots, for a total of twenty-two (22) off-street parking spaces. The proposed change would be a net loss of twenty (20) spaces.

**Proposed Signs:**

The approved Preliminary Development Plan showed one (1) externally lit, ground sign on the north side of the building in a landscape island. Because the lot and building are to be split, two (2) externally lit, ground signs are proposed; one (1) on each lot in a grassy area in front of the buildings.

The signs proposed in the PUD amendment are identical to the signage plan of the approved Preliminary Development Plan. The signs will be located in a grass area near the proposed buildings. Each sign will be approximately four (4) feet tall and six and one-half (6.5) feet wide with a sign area of approximately twenty-six (26) square feet. The signs will be constructed with a stone base and stucco materials similar to the proposed building. Each business will be identified by individual signs on a four (4) inch by fifty (50) inch, brushed aluminum plate.

Building address numbers will be inset into the masonry near each building entryway.

Exempt signage for such signs identified in the Manhattan Zoning Regulations as address numerals, for lease and other similar signs will also be allowed (*attachment Article VI, Section 6-104 (A)(1),(2),(4),(5),(7) and (8); and Section 6-104 (B)(1) and (2).*)

**Proposed Lighting:** Proposed lighting consists of pedestrian scale lighting at the entrances of the buildings. No light poles are proposed in the parking lots.

**MATTERS TO BE CONSIDERED WHEN AMENDING A  
PLANNED UNIT DEVELOPMENT**

**1. 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 general intent of the PUD is to provide for a business and professional office development that is an extension of the commercial uses along Anderson Avenue. The proposed amendment is to alter the site development to eliminate off-street parking spaces approved with the Preliminary Development Plan and to divide Lot 2, New Boston Commons PUD into two (2) separate lots so that proposed Lot 2, New Boston Commons, Unit Two, can be purchased and owned independently.

The proposed amendment is generally consistent with the intent and purpose of the approved Preliminary Development Plan. Approval of the proposed amendment will ensure the efficient development and preservation of the entire PUD.

**2. WHETHER THE PROPOSED AMENDMENT IS MADE NECESSARY BECAUSE OF CHANGED OR CHANGING CONDITIONS IN OR AROUND THE PUD, AND THE NATURE OF SUCH CONDITIONS:** The proposed amendment is made necessary by the desire to divide Lot 2, New Boston Commons PUD into two (2) separate lots so that Lot 2, New Boston Commons, Unit Two, can be purchased and owned independently. The application documents state the reason to remove a portion of the off-street parking is that “the developer was unsure as to the use therefore the original PUD showed a significantly greater number of parking spaces with a larger building. The proposed use requires a smaller building and subsequently less parking spaces.”

**3. 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 proposed amendment will result in a relative gain to the general public welfare by allowing the development of the approved PUD. The reduction of the off-street parking will result in an increase in green space on the lots compared to the approved Preliminary Development Plan.

The proposed amendment will not be granted as a special benefit to any one person. The proposed modifications are in response to changes in market conditions in order to make the project viable and a benefit to the general public.

## **ADDITIONAL MATTERS TO BE CONSIDERED WHEN AMENDING A PLANNED UNIT DEVELOPMENT**

**1. LANDSCAPING:** The proposed landscaping is functional with respect to the proposed professional office setting of the development. The landscape plan consists of a grass front yard area along Westport Place, two (2) deciduous trees to the west of the proposed building and a variety of bushes, shrubs and ornamental grasses in landscape beds along the foundations of the building. A row of shrubs are proposed on the west edge of the parking lots on Lots 1 & 2 to provide a landscape buffer and screening from vehicle headlights.

**2. SCREENING:** A row of shrubs are proposed on the west edge of the parking lots on Lots 1 & 2 to provide a landscape buffer and screening from the vehicle headlights. The trash enclosure on Lot 1s will be enclosed by a six (6) foot tall, sight obscuring cedar fence and gate. The proposed screening should be adequate.

**3. DRAINAGE:** The site is proposed to drain to the south to Wildcat Creek, via an underground storm water pipe. A comprehensive drainage plan was submitted and approved with the approved PUD. There are no changes to the drainage proposal.

**4. CIRCULATION:**

Public Access. The internal circulation plan provides for safe, convenient and efficient movement of motorists and pedestrians and conflicts between motorists and pedestrians are minimized. Access to the lots is from Westport Place, a travel easement which leads to Anderson Avenue to the north. The Garden Place travel easement on the north side of the New Boston Commons development provides for secondary access for both the New Boston Commons PUD and the Westport South Addition PUD. Maintenance responsibilities for the travel easements are established through a restrictive covenant, which was filed with the Final Plat of New Boston Commons Final Plat. The restrictive covenant is to be updated to reflect the new Final Plat of Lots 1 & 2, New Boston Commons, Unit Two.

Traffic.

A traffic analysis was submitted with the application documents for the approved Preliminary Development Plan. The City Engineer has previously reviewed and accepted with the rezoning of the PUD.

Off-Street Parking.

Originally, the Preliminary Development Plan showed a multiple-tenant building, with potentially four (4) or more business located in to building. The proposed amendment shows a medical office building on Lot 2 and a building left unfinished for the future

*Attachment No. 1*

tenant on Lot 1. Based on the usable interior floor area of the south building (excluding restrooms, storage, etc.), the medical office would be required to have a minimum of nine parking spaces (5.5 spaces per 1,000 square feet). Eleven (11) spaces are to be provided.

The northern building has a gross interior space of approximately 1,650 square feet. Using a similar percentage of 75% of usable floor area as the southern building, and the off-street parking requirements for a medical office building; a minimum of nine off-street parking spaces would be required. Eleven (11) off-street parking spaces are provided on Lot 1. The proposed off-street parking should be adequate for the proposed uses of the two (2) lots.

Sidewalks

The Final Development Plan shows a five (5) foot wide sidewalk on the south side of the building on Lot 2, which will connect to the sidewalk along Westport Place and Garden Way to provide pedestrian access to the development as well as to the commercial development north of the New Boston Commons PUD.

Bicycle Parking

One (1) loop style bicycle racks is proposed on the southwest side of the building on Lot 2.

- 5. OPEN SPACE/LANDSCAPED AND COMMON AREA:** The applicant has made provisions for the care and maintenance of the proposed landscaping within the development plan. Upon installation of landscaping, it will be maintained by the owner and watered by an underground sprinkling system.
- 6. CHARACTER OF THE NEIGHBORHOOD:** The site is located among a mix of commercial services, industrial uses, low density residential neighborhoods and high density residential developments. Immediately to the north of the site is Lot 1 of the PUD. On Lot 1 is a two-story business and professional office building. Further to the north is Westport South Commercial PUD which consists of a Walgreens pharmacy and a Sonic Drive-in restaurant. Further yet to the north is Anderson Avenue, a major commercial corridor where restaurants, commercial services, commercial retailers, a shopping center and drive-in banks are located. Along the east property line of the subject site is Lot 4, vacant land associated with the PUD, which has been identified as "future amendment." No uses or buildings are proposed at this time for Lot 4. Further to the east is the Washington Square neighborhood, which is a low density residential development. To the south is Lot 3 of the PUD, Wildcat Creek, Manhattan Optimist Ball Park and industrial uses, including storage units, warehouses, light manufacturing and offices. A business and professional office building is proposed for Lot 3. To the west of the proposed PUD are multi-family apartment complexes.

## **MATTERS TO BE CONSIDERED WHEN REZONING**

1. **EXISTING USE:** Lot 2, New Boston Commons PUD is subject to Ordinance No. 6819 dated March 23, 2010 (*attached*). The site is vacant. Westport Place travel easement has been constructed to the east of the site to provide access to the buildings proposed in the PUD Amendment.
2. **PHYSICAL AND ENVIRONMENTAL CHARACTERISTICS:** Generally slopes from north to south, with drainage to the south. Existing structures have been demolished and the site has been graded and is vacant. The site is located outside of any mapped floodplains and is not subject to flood plain development regulations or requirements.
3. **SURROUNDING LAND USE AND ZONING:**
  - a) **NORTH:** A two-story business and professional office, Walgreens Pharmacy and Sonic drive-in restaurant, Anderson Avenue, a 5-lane arterial, drive-in banks, retail commercial, and restaurants; PUD, Lot 1, New Boston Commons Planned Unit Development, Westport South Commercial Planned Unit Development, C-2, Neighborhood Shopping District.
  - b) **SOUTH:** vacant land proposed to be a business and professional office building, Wildcat Creek, Optimist Sports Park; PUD, Lot 3, New Boston Commons Planned Unit Development, R, Single-Family Residential District, I-2, Industrial Park District.
  - c) **EAST:** Commercial retail and services, government buildings, professional offices and single-family attached homes in the Washington Square Neighborhood; C-2 District and R-2, Two-family Residential District.
  - d) **WEST:** Garden Way, a local 2-lane street, and multiple-family apartment buildings: R-3 District.
4. **GENERAL NEIGHBORHOOD CHARACTER:** See above.
5. **SUITABILITY OF SITE FOR USES UNDER CURRENT ZONING:** The site is suitable for the Permitted Uses approved with the PUD, which is limited to Business and Professional Offices.

**6. COMPATIBILITY OF PROPOSED DISTRICT WITH NEARBY PROPERTIES AND EXTENT TO WHICH IT MAY HAVE DETRIMENTAL AFFECTS:** The proposed amendment should have minimal impacts on adjacent properties. The proposed buildings are similar in size, architectural character and design to the building approved for Lot 2 of the Preliminary Development Plan. The site design proposed with the PUD Amendment, including the landscape plan, is similar to what was approved in March, 2010. The proposed amendment does remove twenty (20) parking spaces from the two (2) lots. The approved Preliminary Development Plan showed one (1) business and professional office building that had the potential for four (4) or more business located in it. The forty-two (42) off-street parking spaces shown on the approved Preliminary Development Plan was originally planned for a proposed sit down restaurant on Lot 2. The proposed restaurant has a significantly higher parking requirement compared to the business and professional offices that was ultimately approved with the PUD. The approved off-street parking was to accommodate the mix of offices that could be used in the building.

Based on the size of the two (2) buildings of the PUD amendment and the proposed use as a medical office; seven (7) off-street parking spaces are required on each lot. The Zoning Regulations lists medical offices as having the highest minimum parking requirements of business and professional office uses because of the typical schedule practice of medical offices. Each building will have eleven (11) parking spaces, which exceeds the minimum requirements and should be adequate for the proposed uses of the building.

**7. CONFORMANCE WITH COMPREHENSIVE PLAN:** The Future Land Use Map designates the site, which is shown on both the Northwest Planning Area and Southwest Planning Area maps, as RHD, Residential High Density. The Manhattan Urban Area Planning Board recommended approval of the rezoning from R, Single-Family Residential District to PUD by finding that the PUD were **CONSISTENT WITH THE OFFICE/RESEARCH PARK (OFF/RP) CATEGORY AND THE GROWTH MANAGEMENT POLICY GM 9 OF THE COMPREHENSIVE PLAN. THE PROPOSED AMENDMENT GENERALLY CONFORMS TO THE COMPREHENSIVE PLAN.**

**8. ZONING HISTORY AND LENGTH OF TIME VACANT AS ZONED:** The site was annexed in 1962 and zoned "A", First Dwelling House District. From 1965-1969 the site was zoned A-A, Single Family Dwelling District. From 1969 to the March 19, 2010 the site has been zoned R, Single-Family Residential District. The site was zoned from R District to PUD, New Boston Commons Planned Unit Development, on March 23, 2010. The site was part of the Riley Country shops, which was reportedly established in the 1950's and remained in operation until 2007. The site has become vacant with the preparation for the development in 2007.

**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 consistent with the intent and purposes of the Zoning Regulations, subject to the conditions of approval listed under the staff recommendation.

**10. 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 to the application. The proposed amendment is to allow the developer to sale proposed Lot 2 and reduce the amount of off-street parking to that which is more consistent with a medical office.

**11. ADEQUACY OF PUBLIC FACILITIES AND SERVICES:** Adequate public facilities and services are available to serve the site.

**12. OTHER APPLICABLE FACTORS:** None

**13. STAFF COMMENTS:** City Administration recommends approval of the proposed amendment of Ordinance No. 6819 and the approved Preliminary Development Plan of Lot 2, New Boston Commons Commercial PUD, to be known as the Final Development Plan of Lots 1 and 2, New Boston Commons Unit Two Commercial Planned Unit Development, subject to the following conditions:

1. All provisions of Ordinance No. 6819 that are not in conflict with this amendment shall remain in force.
2. The landscape bushes proposed for the buffer and screening of the parking lots shall be planted at a minimum of thirty (30) inches in height and shall have a maximum separation distance of three (3) feet on center to provide adequate screening of the vehicle headlights.

*Attachment No. 1*

3. The Agreement Creating A Restrictive Covenant on Real Estate addressing the ongoing maintenance of drainage improvements and the travel easement shall be amended as needed and filed concurrently with the Final Plat of New Boston Commons, Unit Two.

**ALTERNATIVES:**

1. Recommend approval of the proposed amendment of Ordinance No. 6819 and the approved Preliminary Development Plan of Lot 2, New Boston Commons Commercial PUD to be known as the Final Development Plan of Lots 1 and 2, New Boston Commons, Unit Two, Commercial Planned Unit Development, stating the basis for such recommendation.
2. Recommend denial of the proposed amendment of Ordinance No. 6819 and the approved Preliminary Development Plan of Lot 2, New Boston Commons Commercial PUD to be known as the Final Development Plan of Lots 1 and 2, New Boston Commons, Unit Two, Commercial Planned Unit Development 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 Ordinance No. 6819 and the approved Preliminary Development Plan of Lot 2, New Boston Commons Commercial PUD, to be known as the Final Development Plan of Lots 1 and 2, New Boston Commons, Unit Two, Commercial Planned Unit Development based on the findings in the Staff Report, subject to the three (3) conditions of approval recommended by City Administration.

**PREPARED BY:** Chad Bunger, AICP, CFM, Planner II

**DATE:** May 24, 2011