

MINUTES
CITY COMMISSION MEETING
TUESDAY, SEPTEMBER 6, 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, 12 staff, and approximately 45 interested citizens.

PLEDGE OF ALLEGIANCE

Mayor Sherow led the Commission in the Pledge of Allegiance.

MAYOR'S COMMUNITY SERVICE AWARDS

Mayor Sherow recognized Jean Hill and the Local 2275 of the International Association of Firefighters, recipients of the Mayor's Community Service Awards.

PROCLAMATIONS

Mayor Sherow proclaimed September 17-23, 2011, ***Constitution Week***. Nancy Williams, Regent; Linda Weis, Chairperson, Commemorative Events; and Sydney Carlin, Chairperson, Constitution Week, Daughters of the American Revolution, were present to receive the proclamation.

Mayor Sherow proclaimed September 2011, ***Recovery Month***. Robbin Cole, Executive Director, Pawnee Mental Health, and Stan Wilson, Board Member, Pawnee Mental Health, were present to receive the proclamation.

Mayor Sherow proclaimed September 11, 2011, ***National Moment of Remembrance for the 10th Anniversary of September 11th***. Jerry Snyder, Director of Fire Services; Brad Schoen, Director of Riley County Police Department; Michelle Rutherford, Assistant Director of Riley County Emergency Medical Services; Pat Collins, Director of Riley County Emergency Management; Colonel William J. Clark, Garrison Commander, Fort Riley; and Linda Hoeffner, Deputy Garrison Commander, Fort Riley, were present to receive the proclamation.

PUBLIC COMMENTS

Mayor Sherow opened the public comments.

Bruce Snead, 810 Pierre Street, provided an update on the Take Charge Challenge and ongoing competition between the City of Manhattan/Kansas State University and the City of Lawrence/University of Kansas. He encouraged the community to participate in related energy activities and invited everyone interested to attend the Take Charge Challenge Ice Cream Social on Thursday, September 8, 2011, from 6:00 p.m. to 8:00 p.m., in the Jon and Ruth Ann Wefald Pavilion/GTM Family Center.

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

COMMISSIONER COMMENTS

Mayor Sherow thanked Rob Ott, City Engineer, for the installation of Hands Free signage in the community. He then provided an overview of items mentioned during the Discussion/Briefing Session held prior to the City Commission Legislative Meeting. The Commission received an update on the Partner City Flag Plaza dedication to be held at 7:00 p.m. on Thursday, September 22, 2011, in City Park; received an update on the K-18 project; discussed a housing round table to be held sometime during November 14-18, 2011; reviewed upcoming meetings and agenda items for the Intergovernmental Meeting and Joint City/Riley County/Pottawatomie County Meeting; discussed attendance at the Association of the United States Army (AUSA) Conference and the League of Kansas Municipalities (LKM) Annual Meeting; received an update on the Downtown Redevelopment construction; and discussed the potential for artwork for the roundabout at Fourth Street and Bluemont Avenue and to have the Arts and Humanities Advisory Committee discuss the item and provide recommendations to the Commission.

Commissioner Pepperd provided an update on the selection process for the new Riley County Health Department Director and stated the three finalists for the position.

Commissioner Butler discussed travel expenses for 2011 and requested that the Commission consider curtailing some of the travel expenditures with future budgets. He requested that the Commission reduce the travel expenditure to the AUSA Conference in October to one person, or eliminate attendance to the conference.

Commissioner Jankovich provided an update on the Wildcat Creek Watershed Working Group and informed the community that the next meeting would be September 22, 2011, at 7:00 p.m., in the City Commission Room, City Hall, 1101 Poyntz Avenue.

COMMISSIONER COMMENTS (*CONTINUED*)

Mayor Sherow stated the importance of attending the AUSA Conference and informed the Commission that prior meetings have included meetings with the Congressional Delegation regarding National Bio and Agro-Defense Facility (NBAF) funding and updates, the Office of Economic Adjustment (OEA), the Department of Defense, Federal Emergency Management Agency (FEMA), and attendance at the Fort Riley Chapter of AUSA event. He said the City Manager is responsible for the day-to-day operations of the City and needs to attend this conference to build these relationships.

Commissioner Matta stated that he appreciated the importance of the AUSA Conference, but voiced concern with the budget challenges for the 2013 Budget and the increasing debt.

Commissioner Jankovich voiced support for the plans to attend the conference and the importance in meeting the congressional delegation and their respective staffs. He stated the desire to maintain a strong relationship with Fort Riley and would report back on the Conference specifics to the Commission.

Commissioner Pepperd stated that he has attended the AUSA Conference as a representative of the City, Manhattan Area Chamber of Commerce, and in other capacities. He said it is important to know the congressional delegation and their staffs and that this is a worthwhile expenditure that will provide good recommendations and suggestions.

CONSENT AGENDA

(* denotes those items discussed)

MINUTES

The Commission approved the minutes of the Regular City Commission Meeting held Tuesday, August 16, 2011.

CLAIMS REGISTER NO. 2670

The Commission approved Claims Register No. 2679 authorizing and approving the payment of claims from August 10, 2011, to August 30, 2011, in the amount of \$8,489,524.50.

* FINAL PLAT – NORTHWING ADDITION, UNIT TWO

Eric Cattell, Assistant Director for Planning, responded to questions from the Commission. He then provided clarification on the maintenance of the common areas, enforcement mechanisms, and the homeowner association.

CONSENT AGENDA (CONTINUED)

* **FINAL PLAT – NORTHWING ADDITION, UNIT TWO (CONTINUED)**

Bill Frost, City Attorney, responded to questions from the Commission. He then provided clarification on the dedication and maintenance of drainage structures and on the purpose in establishing a homeowner association, and responded to questions from the Commission.

The Commission accepted the easements and rights-of-way, as shown on the Final Plat of Northwing Addition, Unit Two, generally located 340 feet east of the intersection of Northwing Drive and Marlatt Avenue on the north side of Marlatt Avenue, based on conformance with the Manhattan Urban Area Subdivision Regulations.

RESTRICTIVE COVENANT – NORTHWING ADDITION, UNIT TWO

The Commission authorized the Mayor and City Clerk to execute the Agreement Creating a Restrictive Covenant on Real Estate regarding construction and maintenance of drainage areas.

ORDINANCE NO. 6913 – 2012 SALARIES

The Commission approved Salary Ordinance No. 6913 establishing a new range of salaries for City employees for 2012.

ORDINANCE NO. 6914 – REZONE – FIRST UNITED METHODIST CHURCH

The Commission approved Ordinance No. 6914 rezoning First United Methodist Church, consisting of 612 Poyntz Avenue, 121 N. 6th Street, and 621 Humboldt Street, from C-1, Restricted Business District, to C-4, Central Business District, based on the findings in the Staff Report (*See Attachment No. 1*).

ORDINANCE NO., 6915 – AMEND – FINAL DEVELOPMENT PLAN; REZONE – LOT 36, EUREKA ADDITION, UNIT TWO – PENNY'S CONCRETE INDUSTRIAL PUD

The Commission approved Ordinance No. 6915 amending the Final Development Plan of Penny's Concrete Industrial PUD and Ordinance No. 6730, and rezoning Lot 36, Eureka Addition, Unit Two, generally located at 2633 Eureka Terrace, from C-6, Heavy Commercial District with AO, Airport Overlay District, to PUD, Industrial Planned Unit Development District with AO, Airport Overlay District, based on the findings in the Staff Report (*See Attachment No. 2*), with the one condition of approval recommended by the Manhattan Urban Area Planning Board.

CONSENT AGENDA (CONTINUED)

FINAL PLAT – PENNY'S ADDITION, UNIT TWO

The Commission accepted the easements and rights-of-way, as shown on the Final Plat of Penny's Addition, Unit Two, an Industrial Planned Unit Development, generally located south of the intersection of Eureka Drive and Eureka Terrace, based on conformance with the Manhattan Urban Area Subdivision Regulations.

RESTRICTIVE COVENANT – PENNY'S ADDITION, UNIT TWO

The Commission authorized the Mayor and City Clerk to execute the Agreement regarding construction and maintenance of the stormwater facilities.

ORDINANCE NO. 6916 – GAME DAY PARKING RESTRICTION – HILLVIEW DRIVE

The Commission approved Ordinance No. 6916 restricting parking on game days only along Hillview Drive from St. Christopher Circle to College Avenue.

FIRST READING – MOBILE ICE CREAM VENDING OPERATIONS

The Commission approved first reading of an ordinance amending Chapter 24 relating to mobile ice cream vending operations.

FIRST READING – AMEND – EMERGENCY SNOW ROUTES

The Commission approved first reading of an ordinance amending Sections 31-201 through 31-205 of the Code of Ordinances regarding Emergency Snow Routes.

FIRST READING – ADDRESS NUMBERING SYSTEM

The Commission approved first reading of an ordinance amending Article VII of Chapter 30 of the Code of Ordinances concerning the address numbering system.

* PUBLIC HEARING - APPLICATION – KDHE LOAN - WATER METERS REPLACEMENT PROJECT

Dale Houdeshell, Director of Public Works, provided an overview of the application process and the project. He then responded to questions from the Commission on the application submittal process.

Bernie Hayen, Director of Finance, and Lauren Palmer, Assistant City Manager, responded to questions from the Commission regarding water meter analysis and potential savings; the recommendation from Trane and subsequent action; the current water meter reading procedures, number and types of meters and personnel; and the analysis requested to ensure a return on the investment.

Mayor Sherow opened the public hearing.

Hearing no comments, Mayor Sherow closed the public hearing.

CONSENT AGENDA (CONTINUED)

RESOLUTION NO. 090611-A – APPLICATION – KDHE LOAN - WATER METERS REPLACEMENT PROJECT

The Commission approved Resolution No. 090611-A, authorizing the submittal of an application to Kansas Department of Health and Environment for a loan from Kansas Public Water Supply Loan Fund.

FIRST AMENDMENT – KDHE LOAN – BLUE TOWNSHIP SEWER CONNECTION (SS1001)

The Commission authorized the Mayor and City Clerk to execute the first amendment to the loan agreement with the State of Kansas, acting by and through Kansas Department of Health and Environment, for the Blue Township Sewer Connection Project (SS1001), revising the amortization schedule.

* **CHANGE ORDER NO. 1 – CONCRETE PANEL REPLACEMENT (ST1105)**

Curt Loupe, Director of Parks and Recreation, provided additional information on the bid pricing and responded to questions from the Commission regarding the concrete roadway repairs at Anneberg Park.

The Commission approved Change Order No. 1 for the 2011 Concrete Panel Replacement (ST1105, CIP CP015P), resulting in a net increase in the amount of \$74,800.00 (+26.58%) to the contract with Carley Construction, of Wamego, Kansas.

* **CHANGE ORDER NO. 6 – WATER TREATMENT PLANT AND WELLFIELD EXPANSION AND UPGRADE (WA0611)**

Dale Houdeshell, Director of Public Works, responded to questions from the Commission and provided an overview of the item.

The Commission approved Change Order No. 6 to the Water Treatment Plant and Wellfield Expansion and Upgrade Project (WA0611), resulting in a net increase in the amount of \$147,105.00 (+0.933%) to the contract with Grimm Construction, Inc., of Gardner, Kansas.

WESTAR AGREEMENT – WATER TREATMENT PLANT AND WELLFIELD EXPANSION AND UPGRADE (WA0611)

The Commission approved and authorized the Mayor to execute an agreement in the amount of \$49,274.80 with Westar Energy, Inc., to install a new 12.47kV service and 1000kVA transformer to improve reliability and redundancy to the Water Treatment Plant.

CONSENT AGENDA (CONTINUED)

AWARD CONTRACT – KSU SANITARY SEWER IMPROVEMENTS (SS0812)

The Commission accepted the Engineer's Estimate in the amount of \$84,246.80 and awarded a construction contract in the amount of \$60,825.00 to Larson Construction, of Manhattan, Kansas, for the Kansas State University Foundation Sanitary Sewer Improvements (SS0812).

* **AWARD CONTRACT – MILLER RANCH, UNIT THREE, PHASE TWO – STREET IMPROVEMENT (ST1102)**

Bernie Hayen, Director of Finance, and Rina Neil, Operations Officer, provided additional information on the item and responded to questions from the Commission regarding special assessments and the interest rates.

The Commission accepted the Engineers Estimate in the amount of \$652,000.00 and awarded a construction contract in the amount of \$554,937.20 to Manhattan Trenching Inc., of Manhattan, Kansas, for the Miller Ranch Unit Three, Phase Two, Street Improvements (ST1102).

AMENDMENT NO. 1 – MANHATTAN EMERGENCY SHELTER - HOMELESS PREVENTION AND RAPID RE-HOUSING FUNDS

The Commission accepted an additional \$150,000.00 in 2009 Homeless Prevention and Rapid Re-Housing funds and authorized the Mayor and City Clerk to execute Amendment No. 1 to the agreement with the Manhattan Emergency Shelter, Inc.

CONTRACTS – 2011 EMERGENCY SHELTER GRANT

The Commission accepted the award of a 2011 Emergency Shelter Grant and authorized the Mayor and City Clerk to execute contracts with the Manhattan Emergency Shelter, Inc, and The Crisis Center for allocation of the funds.

BOARD APPOINTMENTS

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

Library Board

Appointment of Usha Reddi, 1801 Westbank Way, to fill the unexpired term of Tiffany Powell. Ms. Reddi's term begins immediately, and will expire April 30, 2014.

Parks and Recreation Advisory Board

Appointment of Curt Herrman, 3405 Woodduck Way, to a four-year USD 383 Board of Education term. Mr. Herrman's term begins immediately, and will expire June 30, 2015.

CONSENT AGENDA (CONTINUED)

After discussion, Commissioner Jankovich moved to approve the consent agenda. Commissioner Butler seconded the motion. On a roll call vote, motion carried 5-0, with the exception of Item C: Final Plat Northwing Addition, Unit Two, which carried 4-1, with Commissioner Pepperd voting against the item.

GENERAL AGENDA

SET PUBLIC HEARING DATE - SHUSS ROAD IMPROVEMENTS (ST1111)

Rob Ott, City Engineer, presented background information on the item, K-18 construction phasing, proposed project improvements, Shuss Road near Arbor Drive, Shuss Road near Southwind Place, improvement concept costs, Shuss Road benefit district cost share proposal, and options for the Commission to consider. He then responded to questions from the Commission.

Bill Frost, City Attorney, provided clarification on the item and informed the Commission that the actions before them were to set the date of the public hearing and to set the boundaries of the benefit district.

Rob Ott, City Engineer, responded to questions from the Commission on the maintenance of Shuss Road and proposed improvement options.

Bill Frost, City Attorney, provided additional information on the proposed groups of the benefit district. He informed the Commission that changes to the proposed grouping of the benefit district can be done during the public hearing of the item; however, the boundaries of the benefit district cannot be expanded, but can be decreased. He then responded to questions from the Commission.

Rob Ott, City Engineer, responded to additional questions from the Commission regarding the proposed grouping, number of lots, and the Shuss Road Benefit District cost share diagram.

Mike Walter, President, Arbor Heights Homeowners Association, informed the Commission that the neighborhood is divided on the issue and stated that City Staff has provided an equitable proposal. He thanked the Commission for considering the subject and stated that the matter needs to be discussed and resolved.

Charlene Brownson, 2822 Johnson Valley Drive, informed the Commission that if Shuss Road is not paved, that it be widened and improved for safety.

GENERAL AGENDA (CONTINUED)

SET PUBLIC HEARING DATE - SHUSS ROAD IMPROVEMENTS (ST1111) (CONTINUED)

After discussion of the Commission, Commissioner Butler moved to approve Resolution No. 090611-B setting a public hearing on October 4, 2011, in order to consider a resolution finding the project advisable, creating a Shuss Road Improvement (ST1111) Benefit District, and authorizing construction. Commissioner Matta seconded the motion. On a roll call vote, motion carried 5-0.

At 9:11 p.m., the Commission took a brief recess.

POCKET PARKS PLANS/STREETSCAPE DESIGNS - OSAGE STREET/THIRD STREET/LEAVENWORTH STREET BLOCK (SP1101)

Jason Hilgers, Assistant City Manager, introduced the item and Tom Hittle, Hittle Landscape Architects.

Tom Hittle, President, Hittle Landscape Architects, presented an overview of the item and provided three options for the Commission to consider. He then responded to questions from the Commission regarding the item, fencing, and the potential for future sculptures.

Jason Hilgers, Assistant City Manager, presented costs for the three options and additional information on the waterfall analysis. He then responded to questions regarding the park and streetscape budget and waterfall analysis.

Tim Davenport, 3004 Pecanwood Drive, informed the Commission that he liked the idea of pedestrian lighting for the park areas.

Jason Hilgers, Assistant City Manager, provided additional information on the components of each option and responded to questions on the project budget.

After additional discussion and comments by the Commission, Commissioner Jankovich moved to authorize Hittle Landscape Architects, of Manhattan, Kansas, to finalize Park Option B (*See Attachment No. 3*) and prepare design specifications for bid. Commissioner Pepperd seconded the motion. On a roll call vote, motion carried 4-1, with Mayor Sherow voting against the motion.

FIRST READING – ANNEX - MARLATT AVENUE, BETWEEN TUTTLE CREEK BOULEVARD AND CASEMENT ROAD

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

Ron Fehr, City Manager, provided clarification on the item and responded to questions from the Commission on the statutory requirements for annexation of roadways.

GENERAL AGENDA (CONTINUED)

FIRST READING – ANNEX - MARLATT AVENUE, BETWEEN TUTTLE CREEK BOULEVARD AND CASEMENT ROAD (CONTINUED)

Eric Cattell, Assistant Director for Planning, responded to additional questions from the Commission on areas annexed by the City of Manhattan.

After discussion, Commissioner Butler moved to approve first reading of an ordinance annexing the Marlatt Avenue right-of-way located between Tuttle Creek Boulevard and Casement Road, as requested by Board of Riley County Commissioners. Commissioner Jankovich seconded the motion. On a roll call vote, motion carried 5-0.

DISCUSSION - SPECIAL SALES TAX OPTIONS

Ron Fehr, City Manager, introduced the item and provided background information on considerations and alternatives for the renewal of the special half-cent sales tax.

Bill Frost, City Attorney, provided an overview of how the original tax was created and changes in the statutes since the question was posed to the voters in 2002. He highlighted portions of his memorandum to City Manager Ron Fehr (*See Attachment No. 4*) on the matter. He stated that he has come to the conclusion that it is not possible for Riley County to renew the existing sales tax, with a pledge for roads and bridge improvements, and share the proceeds of that tax with the City of Manhattan, as was done in 2002. Mr. Frost expressed concern with the City proceeding in the same way that the existing sales tax was implemented and stated that if desired, an Attorney General's Opinion could be sought on the matter. He stated that his concern would be a challenge to the sales tax measure, which if successful, would mean that the City could lose its portion of the sales tax proceeds. He then recommended options for the City Commission to consider and responded to questions from the Commission.

Ron Fehr, City Manager, provided additional information on the item and stated that there are questions over an automatic renewal of the current sales tax due to statute changes. He informed the Commission that if pursued, a city-wide sales tax initiative would result in additional revenues, because the current sales tax is not collected in the Pottawatomie County portion of the city. He stated that the City could commit a portion of the sales tax proceeds to Riley County from a city-wide sales tax initiative to continue improvements on roads and bridges, which would provide Riley County with revenues approximately equal to what it currently receives. He then provided background information on economic development initiatives; expanded on the potential scenario for a city-wide sales tax initiative with one-third of the proceeds to the City to continue economic development initiatives to grow jobs within the City, one-third of the proceeds to Riley County to continue road and bridge improvements, and one-third of the proceeds to the City to pay down debt service for various City projects; discussed the prior initiative passed for U.S.D. 383; and responded to questions from the Commission.

GENERAL AGENDA (CONTINUED)

DISCUSSION - SPECIAL SALES TAX OPTIONS (CONTINUED)

Bernie Hayen, Director of Finance, and Ron Fehr, City Manager, responded to questions from the Commission on the sales tax proceeds currently received by Riley County.

Bill Frost, City Attorney, provided additional information on a potential Interlocal Agreement between the City and Riley County. He then responded to questions from the Commission and provided additional information on the process that would establish the ballot question to impose a city sales tax and clarification of state statutes.

Ron Fehr, City Manager, responded to questions from the Commission regarding the importance of the ballot language and working with Riley County to avoid competing sales tax ballot questions.

Bill Frost, City Attorney, responded to questions from the Commission. He provided additional information on the item and discussed the importance of the ballot language and presentations made to the public.

Ron Fehr, City Manager, responded to comments of the Commission for desired flexibility in the ballot question that would address economic development, infrastructure improvements, and debt reduction. He informed the Commission that the Riley County Commissioners have received background information on this item and he provided clarification regarding sunset provisions.

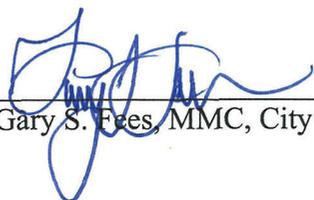
After additional discussion and comments by the Commission, Mayor Sherow voiced the consensus of the Commission to discuss a possible city sales tax initiative with the Riley County Commission.

Ron Fehr, City Manager, informed the Commission that he would prepare a transmittal for the Riley County Commission and let them know that the next step would be to discuss this item further during the September 15, 2011, Joint City/Riley County/Pottawatomie County Meeting.

As this was a discussion item, no formal action was taken.

ADJOURNMENT

At 11:02 p.m., the Commission adjourned.



Gary S. Fees, MMC, City Clerk

STAFF REPORT

ON AN APPLICATION TO REZONE PROPERTY

FROM: C-1, Restricted Business District

TO: C-4, Central Business District

OWNER/APPLICANT: The First United Methodist Church of Manhattan, Kansas, Inc.
John Lindholm, Chairperson, Board of Trustees

ADDRESS: 612 Poyntz Avenue, 121 N. 6th Street, and 621 Humboldt Street

LOCATION: Lots 421 – 425; the East 40 feet of Lot 426; Lots 429 – 433; and portions of Lots 434, 435 and 436, all in Ward 2.

AREA: 90,168 square feet (2.07 acres)

DATE OF PUBLIC NOTICE PUBLICATION: Monday, May 30, 2011

DATE OF PUBLIC HEARING: PLANNING BOARD: Monday, June 20, 2011 (Note: Public Hearing tabled on June 20, 2011, to July 7, 2011.)

CITY COMMISSION: Tuesday, August 2, 2011.

THIRTEEN MATTERS TO BE CONSIDERED WHEN REZONING

- 1. EXISTING USE:** First United Methodist Church sanctuary, education building and Alan Lee Center.
- 2. PHYSICAL AND ENVIRONMENTAL CHARACTERISTICS:** The site consists of two (2) corner lots that are separated by the alley platted in the Ward District. The northern corner lot has 300 feet of frontage along Humboldt Street and 150 feet of frontage along N. 6th Street. The southern corner lot has 290 feet of frontage along Poyntz Avenue and 150 feet of frontage along N. 6th Street. The site consists of all the First United Methodist Church's properties located west of N. 6th Street. The approximate 3,400 square foot one-story, Allen Lee Center is located along Humboldt Street at the northwest corner of the northern lot. The three-story Education Building, which has a footprint of approximately 6,550 square feet, is located at the corner of Humboldt Street and N. 6th Street. A fenced playground associated with the daycare in

Attachment No. 1

the Education Building is located at the corner of Humboldt Street and N. 6th Street. The three-story church sanctuary is located at the corner of Poyntz Avenue and S. 6th Street. The sanctuary is approximately 12,400 square feet in area. The site has existing off-street parking lots and extensive landscape beds and lawn areas. Existing ground signs associated with the church are located to the south of the sanctuary building along Poyntz Avenue and at the corner of Poyntz Avenue and N. 6th Street.

The site is relatively flat and drains to the alley between the two corner lots and towards the adjacent streets. A majority of the site is located within the Zone X, 0.2% Annual Chance Flood Plain (i.e. 500 year Flood Plain). This area is protected from the 1% annual change flood (i.e. 100 year Flood) by the City's levee system. Development within the Zone X, 0.2% Annual Chance Flood Plain is not regulated.

3. SURROUNDING LAND USE AND ZONING:

- A. NORTH:** Humboldt Street, business and professional offices, a bank with a drive-thru window, single-family, two-family and multiple-family residential uses, Woodrow Wilson Elementary School; C-4, Central Business District, C-1, Restricted Business District, R-M/TNO, Four-Family Residential District and Traditional Neighborhood Overlay District.
- B. SOUTH:** Poyntz Avenue, Manhattan Public Library and parking lot, the Episcopal Church, and the Colony Square office building ; C-1 District and C-4 District.
- C. EAST:** N. 6th Street, property and buildings owned by the First United Methodist Church, bank with drive-thru window, and business and professional offices, C-4 District.
- D. WEST:** Juliette Avenue, business and professional offices, First Congregational Church of Christ, single-family, two-family and multiple-family residential uses; C-1 District, R-M/TNO District

4. GENERAL NEIGHBORHOOD CHARACTER: The site is located along Poyntz Avenue, N. 6th Street and Humboldt Street. Business and professional offices, financial institutions, and churches characterize the neighborhood character to the east, north and west. Directly to the south, across Poyntz Avenue the neighborhood is characterized by the Manhattan Public Library, the Episcopal Church, and the Colony Square office building to the southeast. The area to the north and northwest of the site, across N. Juliette Avenue and Leavenworth Street consists of a mixture of single-family, two-family, and multiple-family dwellings units. The C-4 District is located to the north and east of the site, between Humboldt and Leavenworth Streets and extending to N. Juliette Avenue. The site is generally at the western edge of the Central Business District.

5. SUITABILITY OF SITE FOR USES UNDER CURRENT ZONING: According to the First United Methodist Church website, the sanctuary was built in 1926; the Education Building was built in 1957; and the Alan Lee Building was purchased in 2002. The C-1 District has a limited number of permitted uses that include business and professional offices, religious uses, governmental buildings, banks and financial institutions and mortuaries and funeral homes. The existing church uses are permitted in the C-1 District. The Alan Lee Center encroaches into the required twenty-five (25) foot front yard setback along Humboldt Street. The sanctuary encroaches into the minimum required eight (8) foot side yard setback of the corner lot (along the alley) and within the required 25 foot front yard setback along Poyntz Avenue (23.8 feet). These conditions were created prior to the current setback requirements of the C-1 District, and are considered a legally nonconforming condition.

6. COMPATIBILITY OF PROPOSED DISTRICT WITH NEARBY PROPERTIES AND EXTENT TO WHICH IT MAY HAVE DETRIMENTAL AFFECTS:

The site has been used as a church since 1926. The accessory uses of the Education Building were established in 1957 and Alan Lee Center in 2002. Rezoning the site from the C-1 District to the C-4, Central Business District will be compatible with the surrounding properties. The current C-4 District is located immediately to the north of the site across Humboldt Street and to the east across N. 6th Street. The area to the immediate west and south are properties zoned C-1 District, which provide a transitional area between the proposed the C-4 District and the nearby residential properties.

The applicant has proposed to replat the site into two (2) lots and request the City to vacate the alley that dissects the site and to dedicate a new north-south alley segment that would enter onto Humboldt Street, approximately 190 feet west of the N. 6th Street. The City Commission will consider a development agreement in the near future, between the Church and the City, requiring the Church to relocate the existing utilities, address drainage and construct the new rerouted alley, prior to the City vacating the existing alley. After the Agreement is completed, the replat application will be considered by the Planning Board.

The proposed rezoning to the C-4 District and the replat is in preparation for a proposed building addition that would connect the Sanctuary and the Education Building across the existing alley. The C-4 District has less restrictive setbacks, lot coverage and off-street parking requirements than the C-1 District, which will better accommodate the applicant's future development plans for the Church, compared to the current zoning district. By rezoning the site to the C-4 District, all of the church's property, including the property to the east of N. 6th Street, will be in the same zoning district.

Attachment No. 1

The subject site is within the 500-foot environs of the of Downtown Manhattan Historic District, Manhattan Carnegie Library, Riley County Courthouse, First Congregational Church, Houston & Pierre Streets Residential Historic District, Mattie M. Elliot House and E.A. & Ura Wharton House. On June 27, 2011, the Historic Resources Board (HRB) conducted its environs review and found that the proposed rezoning and the proposed replat involving vacation and rerouting of the alley, will not encroach upon, damage or destroy any listed historic property or its environs. The HRB's finding and the proposed rezoning and Final Plat have been forwarded to the State Historic Preservation Officer (SHPO) for its review, and it is anticipated that the City will receive the SHPO's determination prior to the Planning Board meeting on July 7, 2011.

7. CONFORMANCE WITH COMPREHENSIVE PLAN:

The site is shown on the Downtown Core Neighborhoods Future Land Use Map as "Public/Semi-Public", which is a reflection of the existing use as a church and its associated activities. The Comprehensive Plan recommends the Central Core District commercial classification for the properties located to the east, north and west of the site (*see Future land Use Map*). The Central Core District designation contains the community's major downtown shopping facilities, professional and governmental offices, and public buildings. The proposed C-4, Central Business District is the correct classification to implement the Central Core District designation and matches the current zoning these surrounding properties.

The Downtown Tomorrow Plan, which was adopted in April 2000 as an amendment of the Comprehensive Plan, identifies the site as the west edge of the retail/office/government core for the Poyntz Avenue Corridor. The proposed rezoning of the site to the C-4 District is in conformance with the Downtown Tomorrow Plan and the Comprehensive Plan.

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

According to the First United Methodist Church website, the sanctuary was built in 1926, with a major addition to the structure towards east was done in 1998. The Education Building was built in 1957. The Alan Lee Building was purchased in 2002.

1925-1954: B, Second Dwelling House District
1954-1969: D, Central Business District
1969-Present: C-1, Restricted Business District

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 C-4 District is the primary downtown commercial core of the community and is designed to provide for a broad range of retail shopping facilities, services, and cultural activities including churches (*C-4 District regulations attached*). The proposed rezoning is consistent with the intent and purpose of the Zoning Ordinance.

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 health, safety and welfare that denial of the request would accomplish. The applicant proposes to rezone the site so that all of their property is in the same C-4, Central Business District and to be able to construct future building additions on the site with less restrictive setbacks and parking. Denying the rezoning request might pose a hardship on the applicant.

11. ADEQUACY OF PUBLIC FACILITIES AND SERVICES:

Adequate public streets, sanitary sewer and water are available to serve the site. However, the Church's proposal to have the City vacate the eastern portion of the alley will necessitate the Church to reconfigure the alley, as proposed, and relocate the existing sanitary sewer and private utilities located in the alley, and also address storm water runoff issues caused by the reconfiguration of the block. There are existing public sidewalks along both sides of all the streets that abut the site.

12. OTHER APPLICABLE FACTORS: None

13. STAFF COMMENTS: City Administration recommends approval of the proposed rezoning of the First United Methodist Church at 612 Poyntz Avenue, 121 N. 6th Street, and 621 Humboldt Street, from C-1, Restricted Business District, to C-4, Central Business District, based on the findings in the Staff Report.

ALTERNATIVES:

1. Recommend approval of the proposed rezoning of First United Methodist Church at 612 Poyntz Avenue, 121 N. 6th Street, and 621 Humboldt Street, from C-1, Restricted Business District, to C-4, Central Business District, based on the findings in the Staff Report.

Attachment No. 1

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 First United Methodist Church at 612 Poyntz Avenue, 121 N. 6th Street, and 621 Humboldt Street, from C-1, Restricted Business District, to C-4, Central Business District, based on the findings in the Staff Report .

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

DATE: June 28, 2011

STAFF REPORT

AN AMENDMENT OF ORDINANCE NO. 6730 AND THE APPROVED FINAL DEVELOPMENT PLAN OF THE PENNY'S CONCRETE INDUSTRIAL PUD AND THE REZONING OF LOT 36, EUREKA ADDITION, UNIT TWO, FROM C-6/AO TO PUD /AO. LOT 36 WILL BE COMBINED WITH PENNY'S PUD TO EXPAND THE CONCRETE BATCH PLANT OPERATIONS. THE AMENDMENT IS PROPOSED AS A FINAL DEVELOPMENT PLAN AND FINAL PLAT.

BACKGROUND

APPLICANT: Penny's Concrete – Chris Rickard.

OWNERS: Penny's Concrete, Inc., a Kansas Corporation; and SSF Development, LLC, a Kansas Limited Liability Company.

ADDRESSES: 234000 W. 82nd Street, Shawnee, KS, 66227; 1213 Hylton Heights, Manhattan, KS, 66502.

LOCATION: Penny's Concrete is generally located 525 feet south of the intersection of Eureka Drive and Eureka Terrace, along the east side of Eureka Terrace. Lot 36 is located adjacent to and south of Penny's Concrete, and is generally located 1,050 feet south of the intersection of Eureka Drive and Eureka Terrace, along the east side of Eureka Terrace.

AREA: Total Acreage: 10.089 acres consisting of the existing Penny's PUD site (6.642 acres) and Lot 36, Eureka Addition, Unit Two, to be rezoned to PUD (3.447 acres).

PUBLICATION DATE OF PUBLIC NOTICE: Monday, July 11, 2011.

DATE OF PUBLIC HEARING, PLANNING BOARD: Monday, August 1, 2011.

CITY COMMISSION FIRST READING OF AN ORDINANCE: Tuesday, August 16, 2011.

EXISTING PUD:

Ordinance

Penny's Concrete Industrial Planned Unit Development and Ordinance No. 6730, dated October 21, 2008 (*attached*). The conditions of approval are:

Attachment No. 2

1. Permitted uses shall include a permanent Concrete Batch Plant, a portable Concrete Batch Plant, the production and storage of concrete landscaping blocks, and a vehicle and equipment maintenance shop.
2. Perimeter and front yard landscaping and screening shall be provided as proposed.
3. Landscaping and irrigation shall be provided pursuant to a Landscaping Performance Agreement between the City and the owner, which shall be entered into prior to issuance of a building permit.
4. All landscaping and irrigation shall be maintained in good condition.
5. Light poles shall be provided as described in the application documents and shall be full cutoff design. Building lighting shall not cast direct light onto public or private streets or adjacent property and shall be full cut-off design.
6. Signage shall be provided as proposed to include one ground entry sign.
7. Exempt signage shall include signage described in Article VI, Section 6-104 (A)(1),(2),(4),(5),(7) and (8); and Section 6-104 (B)(2), of the Manhattan Zoning Regulations. Temporary sales aids and portable signs, as described in Article VI, Signs, of the Manhattan Zoning Regulations, shall be prohibited.
8. All trash enclosures shall be constructed of masonry walls with gates.
9. Dust control mitigation shall be provided as proposed for material storage areas and conveyors.

Permitted Uses

Permitted Uses in the PUD are set out above under Condition 1.

Permitted and Conditional Uses of Lot 36 include: All of the Permitted and Conditional Uses of the C-6, Heavy Commercial District, This district is designed to provide for commercial uses which allow for the sale and/or service of heavy equipment or products, such as, but not limited to, large agricultural equipment, construction and heavy equipment sales, mobile homes, and other sales. The Permitted and Conditional Uses of the C-5, Highway Service Commercial District, are a Conditional Use in the C-6 District. Lot 36 is also within the AO, Airport Overlay District, and subject to the restrictions of the AO District (*attached*).

EXISTING USE

The existing use of the PUD is a permanent Concrete Batch Plant, a portable Concrete Batch Plant, the production and storage of concrete landscaping blocks for retaining walls, office, other accessory uses such as landscaping, lighting, signage, and a future shop. Both plants may operate on the site if concrete demand requires both plants to operate concurrently, or the portable plant may be relocated if demand for a remote site is needed. The site is subject to Kansas Department of Health and Environment (KDHE) air and water quality regulations. The property will be owned and maintained by Penny's Concrete Inc.

The applicant indicated with the existing PUD in 2008 that there would be ten employees initially consisting of drivers and plant operators. Hours of operation would be from 6 a.m. to 7 p.m., with other hours possible depending on concrete demand. For example, in summer months, deliveries may be made to sites at 3 a.m. due to hot weather. On an average day, from 30 to 46 trucks may be in and out of the PUD.

DESCRIPTION OF PROPOSED AMENDMENT AND REZONING

AMEND Ordinance No. 6730 and the Final Development Plan of the Penny's Concrete Industrial Planned Unit Development (PUD) for a proposed expansion of the PUD to add existing Lot 36; and, the **REZONING** of one tract of land: Lot 36, an approximate three and one-half (3.5) acre tract, generally located south of the PUD. Lot 36 will be combined with the existing PUD. The amendment is proposed as a Final Development Plan and a separate Final Plat (separate application).

The existing Penny's site will be replatted to be known as Lot 2, Penny's Addition, Unit Two. The proposed rezoning/expansion site will be known as Lot 3, Penny's Addition, Unit Two.

Present zoning district classification is: Lot 36: C-6, Heavy Commercial District with AO, Airport Overlay District.

The proposed change is to Lot 36: PUD, Industrial Planned Unit Development District with AO, Airport Overlay District.

Existing Batch Plants and Buildings and Proposed Batch Plant

The approved Final Development Plan drawings of the existing Penny's Concrete PUD are attached.

The expanded PUD will have up to three concrete batch plants, one of which is an existing fixed structure inside a shell building and is a permanent plant (Plant #1) on the site, the second plant (Plant # 2) is an existing portable plant, which may be relocated as needed off-site, or may be operational in the PUD, to meet concrete demand. The existing facilities are on proposed Lot 2. The third portable plant (Plant #3) may be located to the south on proposed Lot 3 and may be placed on the site depending on demand for concrete. For the immediate future, the area around Plant #3 will be for aggregate storage and parking with access to the existing activities on proposed lot 2.

Attached to the existing permanent batch plant is an office and shop. A separate future shop is shown to the north of the permanent batch plant.

An above ground diesel fuel station and a wash-out pit are located in the northern part of the site, with aggregate storage generally in the southeastern part of the site. The washout pit is for cleaning of concrete trucks into sedimentation basins. Landscape block production and storage is in the north central part of the site, to the east of the future shop. A majority of the existing and expanded site concrete surfaced (62% existing and 68% expanded area). To capture storm water runoff, a retention basin and drainage channels are constructed on the east side of the site with the basin extended in the expanded site area.

EXISTING LOT COVERAGE – PROPOSED LOT 2 PENNY’S PUD

<u>Use</u>	<u>Square Feet</u>	<u>Percentage</u>
Buildings and Structures	30,177	11%
Driveways/Paving	179,300	62%
Landscape Area	79,300	27%

PROPOSED LOT COVERAGE – PROPOSED LOT 3, PENNY’S PUD

<u>Use</u>	<u>Square Feet</u>	<u>Percentage</u>
Buildings and Structures	4,366	3%
Driveways/Paving	102,439	68%
Landscape Area	43,351	29%

SIGNS: No additional signage is proposed other than the existing ground sign, constructed of concrete, seven feet in length by three feet six inches in height, or 24.5 square feet in area and is externally lit and located parallel to Eureka Terrace and midway between the two access points to the site. Additionally, Exempt signage in Article VI, Section 6-104 (A)(1),(2),(4),(5), and (7); and, Section 6-104 (B)(2) and B(5), shall be permitted (*attachment*). Exempt signage requirements were amended between the time the Penny’s PUD was approved in 2008 and today.

LIGHTING: Thirty five foot light poles on a two foot six inch base and full cutoff lights on buildings.

**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 proposed amendment is consistent with the intent and purpose of approved Penny's Concrete PUD for with an existing concrete batch plant and will allow for expansion to meet demand. 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 necessary due to increased demand for concrete, a part of which is associated with the construction of the K-18 Highway project, as explained by the applicant. The applicant indicates in its written documents that, "The expansion is necessary due to growing business and volume demands. The realignment of K-18 may allow access in and out of the site onto a frontage road. Penny's will be negotiating with the appropriate authorities for access."

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 by allowing an expansion of an industry that is subject to local, state and federal requirements intended to protect the public from encroachment into FAA airspace, blowing dust and impacts on the 100 Year Flood Plain. The proposed modifications to the approved PUD maintain the character of the existing Penny's PUD.

The proposed amendment will not be granted as a special benefit to any one person. The proposed modifications are in response to market conditions in order to allow for growth of the industry and a benefit to the general public. The expansion at the existing site allows for expansion of the industrial use in an equivalent setting is consistent with the current use of the property, a concrete batch plant and aggregate storage.

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

1. LANDSCAPING: Landscaping is functional for the heavy industrial nature of the site and consists of a landscaped front yard of grass with foundation plantings along the front screening wall, facing Eureka Terrace, on proposed Lot 2, and an expansion of the same onto proposed Lot 3. The perimeter of the site will be fenced along the north, south and east lot lines and landscaped inside the same perimeter with five to six foot tall evergreen trees around the majority of those boundaries, except for the Breakout Area, see below under **DRAINAGE**, along the southeastern lot line, which will be landscaped with ornamental trees to maintain conveyance of the flood waters in the Breakout Area. The proposed evergreens have a mature height of 40 to 50 feet. A short berm is also proposed along the south lot line to elevate the evergreen trees to screen industrial operations in the southern part of the PUD. The northern and eastern boundaries of the site will include grass lined drainage ditches and the retention pond. Landscaped areas will be irrigated with underground systems and maintained by the applicant.

2. SCREENING: A six foot eight inch concrete block screening wall is along the majority of the eastern, Eureka Terrace frontage, except for four foot tall gray steel tubing entrance gates.

The remainder of the site is, and will be, screened by a six foot slatted security fence on the east and south lot lines. There is an existing screening fence on the Star Lumber property abutting the proposed PUD and the applicant added a dense row of evergreen trees to further screen the Star Lumber site. The bottom of fencing in the Breakout Area will be elevated approximately two feet to allow conveyance of flood waters in the Breakout Area. Ornamental trees will be pruned to allow conveyance of flood waters.

Trash dumpsters are intended to be behind buildings.

3. DRAINAGE: A DRAINAGE STUDY WAS SUBMITTED IN 2006 WITH THE PRELIMINARY PLAT FOR THE ENTIRE EUREKA ADDITION SUBDIVISION. THE STUDY WAS REVIEWED AND ACCEPTED BY THE CITY ENGINEER. AN UPDATE TO THE ORIGINAL STUDY WAS SUBMITTED AND ACCEPTED WITH THE PENNY'S PUD IN 2008. AS A PART OF THE PROPOSED AMENDMENT AND REZONING, KAREN L. WEATHERS, P.E., BG CONSULTANTS, SUBMITTED A STORM DRAINAGE REPORT FOR PENNY'S CONCRETE LOT 36, DATED JUNE 15, 2011. THE 2011 UPDATE WAS REVIEWED AND ACCEPTED BY THE CITY ENGINEER (ATTACHMENTS).

STORM WATER DRAINS TO AN EXISTING GRASS LINED RETENTION POND ON THE EAST SIDE OF THE PUD, WHICH WILL BE EXTENDED TO THE SOUTH ONTO PROPOSED LOT 3. THE RETENTION POND IS DESIGNED TO HOLD THE 100 YEAR STORM FROM THE EXPANDED CONCRETE SURFACE OF THE PUD. IF NEEDED A STORM WATER SMALL PUMP WILL PUMP RETAINED WATER INTO THE CITY'S STORM WATER SYSTEM, CONSISTING OF CURB AND GUTTER AND STORM WATER PIPES AND INLETS, LOCATED NEAR THE NORTHWEST CORNER OF THE SITE.

THE RETENTION POND WILL BE OWNED AND MAINTAINED BY THE APPLICANT. Provisions to insure the continued long term maintenance of private drainage facilities will be provided with a Restrictive Covenant, which will be filed with the Final Plat to ensure long term maintenance of drainage improvements by the owner and the provision to allow the City to access and assess the property if the owner fails to perform the required maintenance.

Part of the proposed PUD is in the regulated and buildable portion of the 100 Year Flood Plain, and the remainder is in the 500 Year Flood Plain, which is not regulated.

Specifically, the southeastern portion of proposed Lot 2 and Lot 3 are in the 100 Year Flood Plain and divided into the buildable portion, Floodway Fringe, with development subject to the Flood Plain Regulations. A small portion in the 100 Year Flood Plain is in a unique area identified on the Flood Insurance Rate Map and Flood Insurance Study (FIS) as a Breakout Area. The Breakout Area is treated like a Floodway. The FIS indicates the Floodways of the Eureka Valley tributary were computed based on a reduced discharge due to a split flow from the north towards Eureka Lake. Because of this, the conveyance of flood waters must be maintained at 2,000 cubic feet per second in the Breakout Area. In 2008, the applicant's consultant, Monty Prescott, P.E., BG Engineering, indicated that the proposed ornamental trees in the Breakout Area would not interfere with the flood water conveyance within the Breakout Area. In addition, the slatted fence would be elevated 2.2 feet above grade for conveyance of flood water in the breakout Area. Prescott indicated that the slatted fence posts in the Breakout Area will not interfere with the conveyance of flood waters. The same conditions will apply to the extension of the PUD onto proposed Lot 3.

Development is defined in Article X, Flood Plain Regulations, of the Manhattan Zoning Regulations and means "Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, levees, levee systems, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard." A Flood Plain Development permit will need to be applied for and approved prior to development of that

part of the site in the Breakout Area, Floodway and Floodway Fringe. Additional review by the Kansas Division of Water Resources may be needed dependent upon the extent of fill in the 100 Year Flood Plain and other factors.

In addition, HNTB, as consultant for KDOT, submitted a Conditional Letter of Map Revision related to improvements associated with the realignment of K-18 Highway. The as-built conditions may remove the 100 Year Flood Plain and Breakout Area from proposed Lot 2 and 3, at some future date either by Letter of Map Revision or updated flood plain maps.

4. CIRCULATION: Access to the PUD is safe and efficient. Access is from three existing curb cuts onto Eureka Terrace and a fourth curb cut to proposed Lot 3. Internal circulation within the industrial site is on concrete pavement. The site and Eureka Addition will be served by the future **K-18 REALIGNMENT, WHICH CURRENTLY SHOWS THE HIGHWAY NEAR THE EASTERN BOUNDARY OF THE PUD (ATTACHMENT). THE SITE PLAN SHOWS A POSSIBLE CURB CUT ONTO THE FRONTAGE ROAD, WHICH WILL HAVE TO BE APPROVED, AT THIS TIME, BY RILEY COUNTY, AND KDOT.**

Traffic Analysis

A traffic analysis of the Eureka Addition was originally submitted with the Preliminary Plat and reviewed and accepted by the City Engineer. An updated analysis was not required with the PUD application and an update was not required with the proposed amendment and rezoning.

Minimal impact to the surrounding street system was determined with the Preliminary Plat. The number of vehicle trips associated with the concrete batch plat is minimal in comparison to the total number of trips expected with the full build out of the Eureka Addition. Based on preliminary plat documents, the Eureka Addition will generate 785 vehicles per day at the east entrance (Eureka Terrace and Eureka Drive) and 2,045 vehicles per day at the west entrance (Eureka Terrace and Eureka Drive). The existing PUD generates a range of 60 to 92 trips per day, as reported with the Preliminary Development Plan, with the expanded area contributing a minimal number.

Sidewalks

A sidewalk was shown on the Preliminary Plat on the west side of the Eureka Addition, which met the requirement for sidewalks on local streets as required by the Manhattan Urban Area Subdivision Regulations.

Off-Street Parking

Off-street parking was calculated based on the floor area of the office/shop for Plant #1. A minimum of four spaces was required as a manufacturing and processing activity and seven are provided. The future shop would require 20 parking spaces based on floor area. Ten new off-street parking spaces are proposed on Lot 3. Adequate space for off-street parking is available on the site for concrete trucks and other vehicle storage.

5. OPEN SPACE AND COMMON AREA: Open landscaped space around the perimeter of the site will be owned and maintained by the property owner.

6. CHARACTER OF THE NEIGHBORHOOD: The area within the Eureka and Penny's subdivisions are characterized by the batch plant and a developing light industrial/industrial park consisting of Star Lumber & Supply, a contractor's business, a nearly constructed self-storage site and an auto related service under construction. The neighborhood to the north is Eureka Drive, Flint Hills Job Corps Center and agricultural fields. The neighborhood to the immediate south and west of the rezoning site is undeveloped light industrial and industrial park lots and agricultural fields. The dominant use to the southwest is the Manhattan Regional Airport. Residential neighborhoods are to the west of the Eureka Addition. The neighborhood to the east is the future realigned K-18 Highway Corridor. Its current use is an agricultural field. The Comprehensive Plan suggests the area to the east of the rezoning site may develop as Industrial and Community Commercial. In the future, the neighborhood will be along a major highway corridor and will be a gateway to the City.

THIRTEEN MATTERS TO BE CONSIDERED WHEN REZONING

1. EXISTING USE: Existing Lot 36, proposed Lot 3, is a vacant heavy commercial property, which is zoned and platted, and can be served by public improvements for heavy commercial land uses allowed in the C-6/AO District, as well as the permitted uses of the C-5, Highway Service Commercial District, subject to a Conditional Use Permit, which must be approved by the Manhattan Board of Zoning Appeals.

2. PHYSICAL AND ENVIRONMENTAL CHARACTERISTICS: Lot 36 is flat and covered with field grasses, and within the 100 Year and 500 Year flood Plains.

Lot 36 is entirely within the Horizontal and Conical Zones of Manhattan's Regional Airport, which requires that the AO, Airport Overlay District, be added to the site. The northwest corner of the site is also within the Approach and Transitional Zones of the airport. Future uses (structures and trees), which are within these Zones may be required to obtain, and be granted, an Airport Compatible Use Permit prior to construction, planting

or change to the structure or tree, see below under **CONSISTENCY WITH INTENT AND PURPOSE OF THE ZONING ORDINANCE** for further information concerning the AO District.

3. SURROUNDING LAND USE AND ZONING:

(a.) **NORTH:** Penny's Concrete, Star Lumber, Eureka Drive, Flint Hills Job Corps, and agricultural fields; Industrial PUD, C-6/AO Districts, U, University District, and Riley County G-1, General Agricultural District.

(b.) **SOUTH:** Undeveloped heavy commercial lots and agricultural fields; C-6/AO Districts and Riley County G-1 District.

(c.) **EAST:** Agricultural fields, Eureka Drive, Scenic Drive, and K-18 highway; Riley County G-1 District.

(d.) **WEST:** Eureka Terrace, contractor business, and undeveloped light industrial lots and undeveloped industrial park lots; I-3, Light Industrial District with AO District and I-2, Industrial Park District with AO District.

4. CHARACTER OF THE NEIGHBORHOOD: See above under number **6, CHARACTER OF THE NEIGHBORHOOD.**

5. SUITABILITY OF SITE FOR USES UNDER CURRENT ZONING: Lot 36 is suitable for the Permitted and Conditional Uses of the C-6/AO Districts.

6. COMPATIBILITY OF PROPOSED DISTRICT WITH NEARBY PROPERTIES AND EXTENT TO WHICH IT MAY HAVE DETRIMENTAL AFFECTS: Properties nearby Lot 36 are the existing Penny's batch plant site, a lumber wholesale supply, Flint Hills Job Corps and Eureka Drive, a portion of which is within the City of Manhattan and a portion, between Eureka Terrace and Scenic Drive, is in Riley County. Nearby properties to the east are undeveloped County G-1. Nearby properties to the west are undeveloped and developing light industrial and industrial park lots in the Eureka Addition. Further to the west are single-family homes in the Ady Addition; residential property lines are approximately 900 feet west of the rezoning site. Eventually, these residential neighborhoods will be separated by I-3, Light Industrial and I-2, Industrial Park development. Nearby properties to the south are undeveloped parts of the Eureka Addition, agricultural fields and the Manhattan Regional Airport.

Attachment No. 2

Current, comparable, and proposed setbacks, as well as other limitations to development and operations on the site should reduce adverse impacts on nearby properties, resulting in a use compatible to the neighborhood, which is an expansion of the existing batch plant.

Setbacks

The current C-6 District affecting Lot 36 has a minimum 25 foot front yard setback. There is no minimum side yard or rear yard setback for uses in the C-6 District when abutting commercial or other zoning districts, other than residential districts. No residential districts abut the site. Likewise, the proposed rezoning of Lot 36 to PUD implements a permitted use of the I-4 District, and minimum front, side and rear yard requirements are the same as the current C-6 District. However, the proposed site plan depicts proposed structures and other activities at setbacks that are greater than the minimum required for either zoning district.

Proposed setbacks, with the exception of the concrete wall and off-street parking, exceed the minimum requirements of either the underlying C-6 District, or the I-4 District if the site was zoned I-4.

The proposed PUD's front yard setback of the six foot eight inch concrete screening wall is 25 feet, which is consistent with the C-6 District, I-4 District and Penny's PUD. Off-street parking is located immediately behind the wall and consistent with the three zoning districts.

The proposed portable plant, Plant #3, is set back approximately 115 feet from the front lot line along Eureka Terrace and 275 feet from the front lot line along future K18 Highway frontage road. The plant's side yard setbacks are approximately 80 feet from the south side lot line and four feet from the north lot line.

The proposed aggregate storage is generally set back about 280 feet from the front lot line on Eureka Drive and 120 feet from K-18 right-of-way, five feet and 80 feet from the north and south side lot lines, respectively. Aggregate storage will be stored in movable concrete block bins. KDHE requirements and applicant practices minimize blowing dust and other matter.

Other Site Limitations

As previously described above under **SCREENING**, the site will be well screened with a combination slatted fence and evergreen trees, with the exception being the Breakout Area where ornamental trees will be used to allow conveyance of flood waters.

Storage of aggregate will be in the area noted on the plan and in movable concrete block bins to meet demand. The applicant's dust reduction process includes a sprinkler system in aggregate storage areas, as well as dust control systems with each batch plant. The concrete batch plants are subject to particulate emission standards and air quality permits, which are required by KDHE. In addition, water control pollution permits must be obtained from KDHE and a federal permit for authorization of discharge under the National Pollutant Discharge Elimination System.

Lot 36 is entirely within the Horizontal and Conical Zones of Manhattan's Regional Airport, which requires that the AO, Airport Overlay District, be added to the site. The northwest corner of the site is also within the Approach and Transitional Zones of the airport. Future uses (structures and trees), which are within these Zones may be required to obtain, and be granted, an Airport Compatible Use Permit prior to construction, planting or change to the structure or tree (see below under **CONSISTENCY WITH INTENT AND PURPOSE OF THE ZONING ORDINANCE** for further information concerning the AO District).

The proposed maximum structure height in the existing PUD is 68 feet to the top of the cement silo. The Federal Aviation Agency (FAA) previously determined there would be no hazard to air navigation, based on a height of 100 feet for the Concrete Batch Plant in the existing Penny's PUD. The FAA's determination indicated future construction requires additional notice to the FAA. The addition of Plant #3 requires additional notice to the FAA before Plant #3 is added to the site.

While the proposed rezoning of Lot 36 is not consistent with the original intent of the light industrial/industrial park/heavy commercial nature of the Eureka Addition, Plant #3 and aggregate storage, will have significant screening and operational setbacks, which should result in reduced impacts on nearby properties.

7. CONFORMANCE WITH COMPREHENSIVE PLAN: THE SOUTHWEST PLANNING AREA OF THE FUTURE LAND USE MAP OF THE MANHATTAN URBAN AREA COMPREHENSIVE PLAN DESIGNATES THE MAJORITY OF THE PROPOSED EUREKA ADDITION AS INDUSTRIAL (IND). THE SOUTHERN PART OF THE SITE IS DESIGNATED FLOOD HAZARD AREA. THE NORTHWEST CORNER OF THE SITE IS WITHIN THE APPROACH AND TRANSITIONAL ZONES OF THE MANHATTAN REGIONAL AIRPORT, AND ENTIRELY WITHIN THE HORIZONTAL AND CONICAL ZONES OF THE AIRPORT, AS SHOWN ON THE ENVIRONMENTAL VALUES AND CONSTRAINTS MAP. THE SITE IS ALSO WITHIN THE EUREKA VALLEY SPECIAL PLANNING AREA.

SPECIFIC POLICY STATEMENTS OF THE COMPREHENSIVE PLAN, AS THEY RELATE TO THE PROPOSED REZONING SITE INCLUDE:

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. (Chapter 4: Land Use and Growth Management, page 4-15)*

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. (Chapter 4: Land Use and Growth Management, page 4-15)*

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. (Chapter 4: Land Use and Growth Management, page 4-15)*

NRE 6: Natural Hazards. *Development shall be prohibited in areas where natural hazards have been identified which have the potential to endanger life, resources, and property. Within the Manhattan Urban Area, these hazards include steep slopes (20% or greater slope), floodways, and other special flood hazard areas. (Chapter 5, Natural Resources and Environment, page 5-3)*

EV 1: Manhattan Regional Airport. *The location and design of future development should be compatible and consistent with the goals and policies of the Airport Master Plan. (Chapter 13: Special Planning Area Policies, page 13-6)*

EV 7: Gateway Corridor Design. *The Fort Riley Boulevard/K-18 Corridor leading into the community from the southwest, should be enhanced through such approaches as landscape treatments, coordinated signage and lighting and development of design guidelines in order to create an attractive gateway into the community. (Chapter 13: Special Planning Area Policies, page 13-6)*

Development within the 100 Year Flood Plain is regulated according to the Flood Plain Regulations of the Manhattan Zoning Regulations. Development is defined in the Flood Plain Regulations and includes fill as well as excavation. A Flood Plain Development Permit is required for development in the 100 Year Flood Plain.

The AO District is proposed to be added to the underlying zoning district, which will control construction within the AO District.

THE COMPREHENSIVE PLAN RECOGNIZES THAT HEAVY INDUSTRIAL USE IS AN ACTIVITY WITHIN THE IND CATEGORY, WITH HEAVY INDUSTRIAL A TYPE OF ACTIVITY INVOLVING MORE INTENSIVE PROCESSES THAN OTHER INDUSTRIAL ACTIVITIES. THE PROPOSED REZONING OF LOT 36 WILL BE NEAR THE PROPOSED REALIGNMENT OF THE K-18 HIGHWAY, WHICH IS NOTED AS A GATEWAY TO THE CITY FROM THE SOUTHWEST. THE PROPOSED REZONING INCLUDES SCREENING OF THE SITE, WHICH SHOULD PROVIDE A VISUAL BARRIER FROM THE PUBLIC'S VIEW ALONG THE FUTURE HIGHWAY REALIGNMENT OF MOST INTERNAL SITE ACTIVITIES, EXCLUDING THE PLANT ITSELF. THE PROPOSED REZONING IS IN GENERAL CONFORMANCE TO THE COMPREHENSIVE PLAN.

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

February 6, 2006: Manhattan Urban Area Planning Board considers annexation of the 53-acre site and conducts the public hearings on the **PROPOSED REZONING OF THREE TRACTS OF LAND FROM COUNTY G-1, GENERAL AGRICULTURAL DISTRICT, AND N-1, AIRPORT NOISE HAZARD DISTRICT, TO I-2, Industrial Park District; C-6, Heavy Commercial District; and I-3, Light Industrial District, all with AO, Airport Overlay District. The PLANNING BOARD RECOMMENDS APPROVAL OF THE ANNEXATION ON A VOTE OF 5-1; AND RECOMMENDED APPROVAL OF THE REZONING OF THREE TRACTS OF LAND ON A VOTE OF 5-1. THE BOARD TABLED THE PRELIMINARY PLAT TO THE FEBRUARY 23, 2006, PLANNING BOARD MEETING, ON A VOTE OF 6-0.**

FEBRUARY 21, 2006 CITY COMMISSION, ON A VOTE OF 5-0, APPROVES RESOLUTION NO 022106-A, requesting that the Board of Riley County Commissioners make positive findings regarding the island annexation of the proposed Eureka Addition.

Attachment No. 2

- February 23, 2006 Manhattan Urban Area Planning Board approves Preliminary Plat 6-0, with three conditions.
- March 16, 2006 Board of Riley County Commissioners considers island annexation request, as per K.S.A. 12-520c and tables for additional information.
- March 30, 2006 Board of Riley County Commissioners continues consideration of island annexation request, as per K.S.A. 12-520c, and approves Resolution No. 03006-13, finding that the annexation will not hinder development or prevent proper growth.
- April 18, 2006 City Commission approves first reading of ordinances annexing and rezoning the proposed Eureka Addition.
- May 2, 2006 City Commission approves Ordinance Nos. 6537 and 6538 annexing and rezoning the proposed Eureka Addition.
- August 7, 2006 Manhattan Urban Area Planning Board approves Final Plat Eureka Addition.
- September 5, 2006 City Commission accepts easements and rights-of-way as shown on the Final Plat Eureka Addition.
- September 15, 2008 Manhattan Urban Area Planning Board recommends, on a vote of (5-1) rezoning Lots 12 – 15, Eureka Addition from C-6, Heavy Commercial District with AO, Airport Overlay District, to PUD, Industrial Planned Unit Development District with AO, Airport Overlay District.
- October 14, 2008 City Commission approves first reading of an ordinance rezoning Lots 12 – 15, Eureka Addition, to PUD, Industrial Planned Unit Development District with AO, Airport Overlay District.
- October 21, 2008 City Commission approves Ordinance No. 6730 rezoning Lots 12 – 15, Eureka Addition, to PUD, Industrial Planned Unit Development District with AO, Airport Overlay District.
- November 3, 2008 Manhattan Urban Area Planning Board approves Final Plat of the Penny's Addition and the Final Development Plan of Penny's Concrete Industrial PUD.

- November 18, 2008 City Commission accepts easements and rights-of-way as shown on the Final Plat of Penny's Addition.
- February 1, 2010, Manhattan Urban Area Planning Board Approves Final Plat of the Eureka Addition, Unit Two.
- February 16, 2010 City Commission Accepts Easements and Rights-Of-Way as shown on the Final Plat Eureka Addition, Unit Two.

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 proposed rezoning of Lot 36 to PUD will establish a Concrete Batch Plant and aggregate storage area, which is a permitted use of the I-4, Heavy Industrial District. The I-4 District is designed to allow industries involved with the basic manufacturing and processing of raw materials which are apt to have an extensive impact on the surrounding area. The proposed rezoning is limited to a single permitted use of the I-4 District and will provide setbacks, screening and other regulatory restrictions that mitigate the impact of the heavy industrial character of the site. In addition, the Manhattan Zoning Regulations only allow limited opportunities for Concrete Batch Plants, either in the I-4 District as a Permitted Use, or as a Conditional Use in the LM-SC, Light Manufacturing-Service Commercial District, and only for existing Concrete Batch Plants. The proposed rezoning implements a recommendation of the Comprehensive Plan to accommodate the expansion of the existing Penny's Concrete PUD.

The AO District "is intended to promote the use and development of land in a manner that is compatible with the continued operation and utility of the Manhattan Municipal Airport so as to protect the public investment in, and benefit provided by the facility to the region. The district also protects the public health, safety, convenience, and general welfare of citizens who utilize the facility or live and work in the vicinity by preventing the creation or establishment of obstructions or incompatible land uses that are hazardous to the airport's operation or the public welfare." Future uses (structures and trees, existing and proposed) in the AO District may be required to obtain an Airport Compatible Use Permit (AO District regulations attached).

Development in the 100 Year Flood Plain is subject to the requirements of the Flood Plain Regulations of the Manhattan Zoning Regulations, which are intended to protect life and property from flooding.

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 owner. The proposed rezoning is part of an expansion of the Penny's PUD. The rezoning process provides for local review and consideration of the use and its impact on the public, as well as state and federal permits for environmental impacts.

The AO District requires that future uses be reviewed in order to protect airspace. The FAA made a determination of no hazard to air navigation, based on a height of 100 feet for Plant # in the Penny's PUD. Plant #3 will require additional notice to the FAA before the plant is added to the area. Assuming approval by the FAA, no adverse impact by the proposed structure is expected that would adversely affect safe and efficient use of navigable airspace by aircraft.

11. ADEQUACY OF PUBLIC FACILITIES AND SERVICES: Adequate street, sanitary sewer and water services are available to serve the proposed rezoning site.

12. OTHER APPLICABLE FACTORS: There are no other applicable factors.

13. STAFF COMMENTS: City Administration recommends approval of the proposed amendment of Ordinance No. 6730 and the approved Final Development Plan of the Penny's Concrete Industrial PUD and the rezoning of Lot 36, Eureka Addition, Unit Two, from C-6/AO to PUD/AO, to be known as the Final Development Plan of Penny's Concrete, Unit Two, an Industrial PUD, subject to the following condition:

1. Exempt signage shall include signage described in Article VI, Section 6-104 (A)(1),(2),(4),(5),and (7); and, Section 6-104 (B)(2) and B(5).

ALTERNATIVES:

1. Recommend approval of the proposed amendment of Ordinance No. 6730 and the approved Final Development Plan of the Penny's Concrete Industrial PUD and the rezoning of Lot 36, Eureka Addition, Unit Two, from C-6/AO to PUD/AO, to be known as the Final Development Plan of Penny's Concrete, Unit Two, an Industrial PUD, stating the basis for such recommendation.
2. Recommend denial of the proposed amendment of Ordinance No. 6730 and the approved Final Development Plan of the Penny's Concrete Industrial PUD and the rezoning of Lot 36, Eureka Addition, Unit Two, from C-6/AO to PUD/AO, to be known as the Final Development Plan of Penny's Concrete, Unit Two, an Industrial PUD, stating the specific reasons for denial.

Attachment No. 2

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. 6730 and the approved Final Development Plan of the Penny's Concrete Industrial PUD and the rezoning of Lot 36, Eureka Addition, Unit Two, from C-6/AO to PUD/AO, to be known as the Final Development Plan of Penny's Concrete, Unit Two, an Industrial PUD, based on the findings in the Staff Report, subject to the one condition of approval recommended by City Administration.

PREPARED BY: Steve Zilkie, AICP, Senior Planner

DATE: July 27, 2011

11037

Third Street Plaza

Quantity / Amenity

3rd Street Plaza - Leavenworth Entry BLOW UP PLAN
 1/8" GRAPHIC SCALE

3rd Street Plaza BLOW UP PLAN
 1/8" GRAPHIC SCALE

Quantity / Amenity

- 4
- 110'
- 1/1
- 2
- 1000'

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 Phone: (816) 251-2770
 Fax: (816) 251-2770
 Email: info@hitlle.com
 Website: www.hitlle.com

POCKET PARKS & STREETS&SCAPE
 North End Redevelopment
 North End / Leeward PCD
 Manhattan, KS

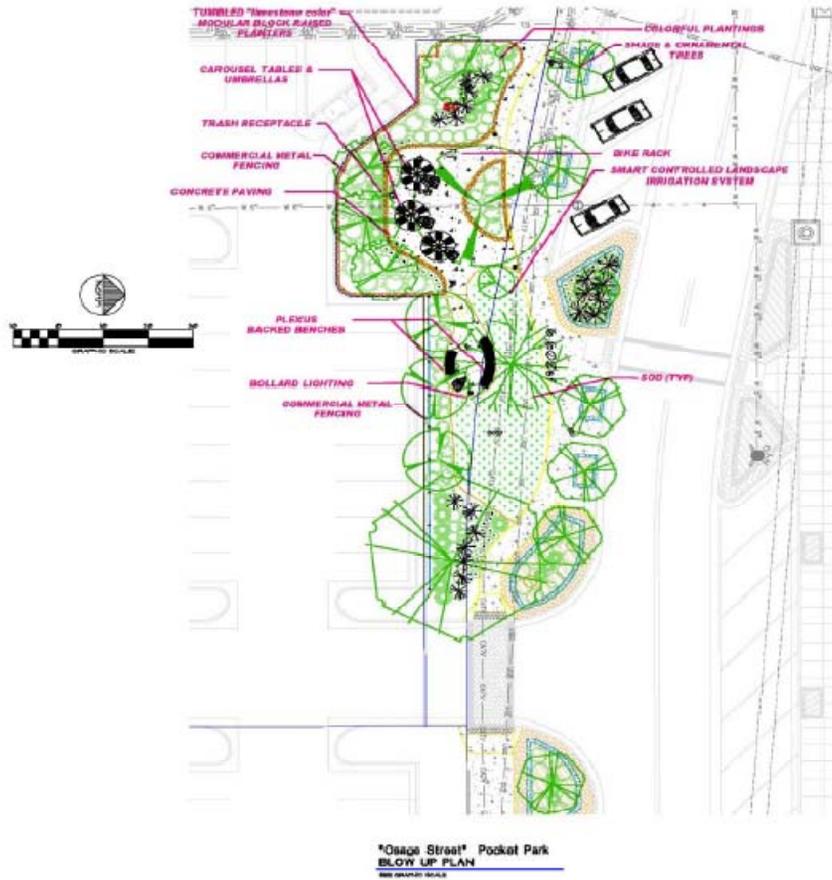
PROGRESS POINT
 NOT FOR CONSTRUCTION
 NOT FOR PERMITS

3rd Street Plaza

Item	Quantity	Unit	Notes
1	4	Tables	
2	110'	Linear Feet	
3	1/1	Item	
4	2	Items	
5	1000'	Linear Feet	

L1.2

Osage Street



Quantity / Amenity

3



72'



1/1



1



440'



3



HITTLE
 LANDSCAPE ARCHITECTS
 P.C. 1001 N. 17th St. Suite 100
 Phoenix, AZ 85018
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 Fax: (602) 258-9374

POCKET PARKS & STREETSCAPE
 North End Redevelopment
 North End Aradised P.O.
 Tempe, AZ

PROGRAM PLAN
 FOR THE CONSTRUCTION
 OF THE PROJECT

Osage St. Pocket Park

Item	Quantity	Unit	Notes
Bollard	3	Each	
Commercial Metal Fencing	72	Linear Feet	
Bicycle Rack	1	Each	
Smart Controlled Landscape Irrigation System	1	Each	
Sod (Typ)	440	Square Feet	
Carousel Tables & Umbrellas	1	Set	
Trash Receptacle	1	Each	
Concrete Paving	3	Square Feet	
Benches Backed Benches	3	Each	
Bollard Lighting	3	Each	
Commercial Metal Fencing	72	Linear Feet	
Tumbler "beachtime color" Modular Block Planters	3	Each	
Circular Planting	3	Each	
Small & Commercial Trees	3	Each	

L1.3

CITY OF MANHATTAN

MEMORANDUM

August 29, 2011

TO: Ron Fehr, City Manager
FROM: William L. Frost, City Attorney 
SUBJECT: County Sales Tax referendum

As you know there are ongoing discussions about a referendum to renew the County Sales Tax that was originally approved by the voters in 2002. Since the original tax is due to expire at the end of 2012, the discussions of exactly how to go about renewing it are becoming more and more important. In that regard, you asked me to review the applicable statutes, as well as the original process, and provide some guidance as to the legal requirements related to a renewal of the tax.

After my review of the applicable statutes, I have come to the conclusion that it is not possible for Riley County to renew the sales tax and share the proceeds of that tax with the City of Manhattan, as was done in 2002. Because of the impact of that conclusion on the City, it is important to review the history of how the original tax was created and also the changes in the statutes since that time. That is the purpose of the balance of this memo.

In 2002, Riley County placed a question before the voters as to whether or not they wished to impose a county-wide sales tax. The actual question was, as follows:

“Shall a retailers’ sales tax in the amount of one-half of one percent (.5%) (the “Sales Tax”) be levied in Riley County, Kansas (the “County”), to take effect when the County’s current one-half of one percent sales tax levied by Resolution No. 051997-15 expires in accordance with K.S.A. 12-187(b)(2), with the proceeds of the Sales Tax distributed to the County and the cities located within the County, as required by law and used: (i) by the County to pay the costs of developing, improving, and maintaining the system of roads, bridges and culverts located in the County, (ii) by the City of Manhattan for economic development initiatives that occur within Riley County, and which benefit the City of Manhattan, Kansas, as determined and authorized by the Governing Body of the City; provided, however, such revenue may be used for economic development initiatives that occur

outside of Riley County, if the Governing Body of the City determines that Riley County will benefit from such initiatives, and the Board of Riley County Commissioners agree, in writing, with such determination, and (iii) the proceeds distributed to other cities within the County will be used as those cities determine to be in their best interests, provided further that, the question of continuing the Sales Tax shall be submitted to the electors of the County at the general election held in 2012, all pursuant to K.S.A. 12-187 *et seq.*, as amended?"

In 2002, the statutory authority for the County to impose such a tax was found at K.S.A. 12-187(b)(1). That statute simply authorized counties to submit the question of a county-wide sales tax to their voters. The statute did not require the County to use the proceeds of that tax for road and bridge purposes, nor did it prevent the County from using them for that purpose. In 2002 the County voluntarily chose to pledge the use of those funds for road and bridge purposes, presumably in order to encourage the voters to vote in favor of the tax. Likewise, in 2002, there was no requirement in the statute for a "sunset" of the tax. The question could have provided that the tax was perpetual; however, the County chose to end the tax in 2012, again, presumably in order to encourage approval by the voters. In 2002 the provisions of K.S.A. 12-192 mandated that, if the tax was approved by the voters, the County share the proceeds of the tax with all cities within the County. That statute also provided a formula as to how the proceeds would be divided. The formula was based on comparisons of assessed value of property and population. This statute did not dictate how the cities should use the proceeds; however, Manhattan agreed that the County's ballot could restrict Manhattan's use of the proceeds to "economic development" initiatives, as described in the ballot. Without Manhattan's agreement, the County could not have placed that restriction in the ballot.

If the statutes were the same today as they were in 2002, the County could resubmit a similar question to the voters, as long as the City agreed to the provision restricting its use of its proceeds. However, the statutes are not the same. In 2007, presumably at Riley County's request, the legislature amended both K.S.A. 12-187 and K.S.A. 12-192. K.S.A. 12-187 was amended to add the following provision:

"The board of county commissioners of Riley county may submit the question of imposing a countywide retailers' sales tax at the rate of up to 1% and pledging the revenue received therefrom for the purpose of financing the costs of bridge and roadway construction and improvement to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire after five years from the date such tax is first collected."

K.S.A. 12-192 was amended at the same time to prevent Riley County from sharing, with cities within the county, the proceeds of any tax imposed pursuant to the above amendment. The tax can only be used for the purpose set forth in the amendment.

Attachment No. 4

In my opinion, if Riley County wants to pledge to use proceeds of a sales tax for "road and bridge purposes", they can now only do so by using the amendment. They can no longer use the general authority of the statute, as was done in 2002. Moreover, in my opinion, Riley County is prohibited from sharing the proceeds of any such tax with Manhattan. Of course, my opinion depends upon an interpretation of the entire statute because the amendment does not specifically state that Riley County's previous general authority is eliminated. However, using the generally accepted standards for statutory interpretation, I do not believe you can come to any other conclusion. In making such an interpretation, courts would generally follow the following standard: "General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment. Specific reference or specific language takes precedence over language which more generally deals with the particular subject in the same or other statute which otherwise might be controlling." Following this standard, the general authority of the statute would no longer be applicable to Riley County if it wants to pledge its proceeds for "road and bridge purposes". It must use the specific language of the amendment. Once it does so, it is prevented from sharing those proceeds with Manhattan.

I have spoken with County Counselor, Clancy Holeman, and he disagrees with my opinion, although, in fairness to him he has not really had time to completely formulate an opinion. If I understand it correctly, the main reason for his position is that he believes it was never the County's, nor the legislature's, intent to remove the option for the County to use its general authority to impose such a tax with the same pledge. However, in my opinion, the intent to retain that option has to be clearly set forth in the legislation, and, in my view, it simply is not.

I cannot recommend that the City agree to participate in a ballot question which is worded the same as what was done in 2002. The risk for the City is that the question would pass and then some court determines that the provision providing proceeds to Manhattan is void, but the tax remains in effect solely for County purposes.

Although an Attorney General's Opinion would not have any greater legal effect than either Clancy's or my opinion, if the AG were to express an opinion contrary to my conclusion, at least we would have some comfort in going forward. If you, or the Commission, would like to obtain such an opinion, I would be happy to request one.

I remain open to further discussions as to where you want to go from here.