

MINUTES
CITY COMMISSION MEETING
TUESDAY, AUGUST 3, 2004
7:00 P.M.

The Regular Meeting of the City Commission was held at 7:00 p.m. in the City Commission Room. Mayor Brad Everett and Commissioners Ed Klimek, Bruce Snead, Mark Hatesohl, and Mark Taussig were present. Also present were the City Manager Ron R. Fehr, Assistant City Manager Diane Stoddard, Assistant to the City Manager Jason Hilgers, City Attorney Bill Frost, City Clerk Gary S. Fees, 11 staff, and approximately 25 interested citizens.

PLEDGE OF ALLEGIANCE

Mayor Everett led the Commission in the Pledge of Allegiance.

PUBLIC COMMENTS

Mayor Everett opened the public comments.

Hearing no comments, Mayor Everett closed the public comments.

COMMISSIONER COMMENTS

There were no Commissioner comments.

CONSENT AGENDA

(* denotes those items discussed)

MINUTES

The Commission approved the minutes of the Regular City Commission Meeting held Tuesday, July 20, 2004.

CLAIMS REGISTER NO. 2510

The Commission approved Claims Register No. 2510 authorizing and approving the payment of claims from July 14, 2004, to July 27, 2004, in the amount of \$1,626,906.36.

CONSENT AGENDA (CONTINUED)

BOARD APPOINTMENTS

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

Joint Corrections Advisory Board

Re-appointment of Phyl Yau, 1831 Plymouth Road, to a two-year Adult term and a three-year Juvenile term. Mr. Yau's terms begin immediately and will expire June 30, 2006, and June 30, 2007, respectively.

Re-appointment of Linda Teener, 1221 Thurston Street, to a two-year Adult term and a three-year Juvenile term. Ms. Teener's terms begin immediately and will expire June 30, 2006, and June 30, 2007, respectively.

LICENSE – CEREAL MALT BEVERAGE

The Commission approved the Cereal Malt Beverage application for Leo's Hillside Cafe, 2307 Stagg Hill Road.

FINAL PLAT – TTAC ADDITION

The Commission accepted the easements and rights-of-way, as shown on the Final Plat of TTAC Addition, located generally east of the intersection of Leavenworth Street and the Tuttle Creek Boulevard Frontage Road, based on conformance with the Manhattan Urban Area Subdivision Regulations.

ORDINANCE NO. 6423 – REMOVE PARKING/ESTABLISH TOW ZONES – GAME DAY PARKING

The Commission approved Ordinance No. 6423 authorizing the removal of parking on one side of the street and establishment of tow zones along Hobbs Drive, Vaughn Drive, Cassell Road, Ranser Road, Kenmar Drive, Winne Drive, Parkway Drive, Sunny Circle, and Meade Circle on home football game days.

RESOLUTION NO. 080304-A – ESTABLISH – SISTER CITY ADVISORY COMMITTEE

The Commission approved Resolution 080304-A establishing a Sister City Advisory Committee for the City of Manhattan.

RESOLUTION NO. 080304-B – CONVEYANCE OF LAND – STONEYBROOK ASSISTED LIVING FACILITY, INC.

The Commission approved Resolution No. 080304-B authorizing the sale and conveyance of certain land by the City of Manhattan, Kansas, to Stoneybrook Assisted Living Facility, Inc., successor to Midwest Health Services, Inc.

CONSENT AGENDA (CONTINUED)

* **GRANT APPLICATIONS – KANSAS DEPARTMENT OF TRANSPORTATION PROJECTS**

Chuck Williams, Director of Public Works, answered questions from the Commission.

The Commission authorized City Administration to submit grant applications for a Klink Resurfacing Project, Geometric Improvement Project, and an Economic Development Project.

AWARD CONTRACT – DESIGN AND CONSTRUCTION PHASE SERVICES – WATER TREATMENT PLAN PROCESS ANALYZERS AND CONTROL SYSTEM UPGRADE

The Commission authorized the Mayor to enter into a contract with Black and Veatch, of Kansas City, Missouri, for design and construction phase services for Process Analyzers and Control System Upgrade for the City's Water Treatment Plant.

* **KANSAS LEASEHOLD MORTGAGE – AIRPORT HANGAR – JSG PROPERTIES, LLC**

Bill Frost, City Attorney, answered questions from the Commission and provided clarification.

The Commission authorized the Mayor and City Clerk to approve the written consent to Kansas Leasehold Mortgage with JSG Properties, LLC and Kansas State Bank.

CHANGE ORDER NO. 1-FINAL – THE BROWNING PROJECT – STORM WATER IMPROVEMENT (SM0201)

The Commission approved Change Order No. 1-Final for the Browning Project, 2002 Storm Water Improvements (SM0201) resulting in a net decrease in the amount of \$24,986.75 (-20.33%) to the contract with Bayer Construction Company, Inc., of Manhattan, Kansas.

CHANGE ORDER NO. 1-FINAL – THE BROWNING PROJECT – STREET IMPROVEMENTS (ST0206)

The Commission approved Change Order No. 1-Final for the Browning Project, 2002 Street Improvements (ST0206) resulting in net increase in the amount of \$30,855.55 (+8.11%) to the contract with Bayer Construction Company, Inc., of Manhattan, Kansas.

CONSENT AGENDA (CONTINUED)

After discussion, Commissioner Hatesohl moved to approve the consent agenda. Commissioner Taussig seconded the motion. On a roll call vote, motion carried 5-0, with the following exceptions: Item F-Game Day Parking, carried 3-2 with Mayor Everett and Commissioner Snead voting against the item; Item G-Establishing a Sister City Advisory Committee, carried 4-1 with Mayor Everett voting against the item; and Item K-Leasehold Mortgage with JSG Properties, LLC and Kansas State Bank, carried 4-0 with Commissioner Klimek not participating on the item.

GENERAL AGENDA

PUBLIC HEARING - PROPOSED 2005 CITY BUDGET – AMENDED 2004 BUDGET

Ron Fehr, City Manager, provided an overview of the 2005 Budget.

Bernie Hayen, Director of Finance, presented the 2005 Budget revenues, expenditures, and highlights. He then answered questions from the Commission.

Ron Fehr, City Manager, answered questions from the Commission.

Mayor Everett opened the public hearing.

Bill Yanek, Director of Governmental Relations, BRL Coalition, voiced concern with the proposed creation of a Utility Reserve Fund.

Hearing no further comments, Mayor Everett closed the public hearing.

Bernie Hayen, Director of Finance, provided clarification on the item and answered questions from the Commission.

Jai Johnson, Director, Manhattan Housing Authority, explained the program that is to be funded by the Social Services Advisory Board and answered questions from the Commission.

Bill Muir, representing, Kansas State University and the City/University Fund, updated the Commission on the Safe Ride program and answered questions from the Commission.

Ron Fehr, City Manager, provided clarification on the item and answered questions from the Commission.

GENERAL AGENDA (CONTINUED)

PUBLIC HEARING - PROPOSED 2005 CITY BUDGET – AMENDED 2004 BUDGET (CONTINUED)

Ron Fehr, City Manager, and Bernie Hayen, Director of Finance, provided clarification on the personnel and Capital Improvements Programs funding items.

Ron Fehr, City Manager, answered questions from the Commission.

After discussion, Commissioner Snead moved to approve first reading of an ordinance adopting the 2005 City Budget and approve first reading of an ordinance amending the Bond & Interest Fund of the 2004 City Budget. Commissioner Hatesohl seconded the motion.

After further discussion, Commissioner Klimek made a friendly amendment to reduce the Industrial Promotion Fund to \$450,000.00 versus \$510,027.00. The friendly amendment was accepted. The motion now reads, *“approve first reading of an ordinance adopting the 2005 City Budget and approve first reading of an ordinance amending the Bond & Interest Fund of the 2004 City Budget; and reduce the Industrial Promotion Fund to \$450,000.00 versus \$510,027.00.”*

After additional discussion, on a roll call vote, motion failed 2-3 with Mayor Everett and Commissioners Klimek and Taussig voting against the motion.

Ron Fehr, City Manager, answered questions from the Commission.

After additional discussion, Commissioner Snead moved to approve first reading of an ordinance adopting the 2005 City Budget and approve first reading of an ordinance amending the Bond & Interest Fund of the 2004 City Budget, with the following changes: reduce the tax mill levy by one-half mill in the Industrial Promotion Fund and reduce the total budget from \$510,027.00 to \$450,000.00, making up the Fund difference by using expected sales tax surpluses; eliminate funding request to the Ogden Youth Center; and reduce funding to Downtown Manhattan, Inc., to \$5,000. Commissioner Hatesohl seconded the motion.

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

The City Commission took a brief recess.

FIRST READING – AMEND - WAL-MART PLANNED UNIT DEVELOPMENT (OLD WAL-MART PUD) AND ORDINANCE NO. 4630

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

GENERAL AGENDA (CONTINUED)

FIRST READING – AMEND - WAL-MART PLANNED UNIT DEVELOPMENT (OLD WAL-MART PUD) AND ORDINANCE NO. 4630 (CONTINUED)

Commissioner Hatesohl moved to approve first reading of an ordinance amending the Wal-Mart Planned Unit Development (i.e. the old Wal-Mart site), generally located east of the Tuttle Creek Boulevard Frontage Road and north of Sarber Lane, and Ordinance No. 4630, based on the findings in the Staff Report, with the two (2) conditions of approval recommended by the Manhattan Urban Area Planning Board. *(See Attachment No. 1)* Commissioner Snead seconded the motion. On a roll call vote, motion carried 5-0.

FIRST READING - MODIFY - SCHOOL ZONES

Chuck Williams, Director of Public Works, presented the item and answered questions from the Commission.

After discussion, Commissioner Hatesohl moved to approve first reading of an ordinance amending school zones within the City limits of Manhattan. Commissioner Snead seconded the motion. On a roll call vote, motion carried 5-0.

2004 UPDATE - CHAMBER OF COMMERCE, CONVENTION AND VISITORS BUREAU, AND ECONOMIC DEVELOPMENT – 2005 LEGISLATIVE ISSUES

Lyle Butler, President, Manhattan Area Chamber of Commerce, introduced the item.

John Armbrust, Vice President Public/Military Affairs, presented an overview of the Manhattan Area Chamber of Commerce 2004 Legislative Policies and Positions. He also updated the Commission on Fort Riley.

Becky Blake, Director, Manhattan Convention and Visitors Bureau, updated the Commission on accomplishments, events, publications, and promotions. She then answered questions from the Commission.

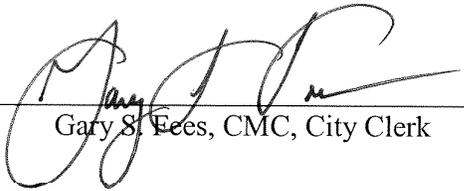
Ron Fehr, City Manager, answered questions from the Commission.

Lyle Butler, Director, Manhattan Area Chamber of Commerce, presented the Commission with an update on economic development activity for the City of Manhattan. He then answered questions from the Commission.

No formal action was taken on the item.

ADJOURNMENT

At 11:05 p.m. the Commission adjourned.



Gary S. Fees, CMC, City Clerk

Attachment No. 1

STAFF REPORT

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

BACKGROUND

APPLICANT: Tad Gellender

ADDRESS: 616 Bently Drive, Lawrence KS 66049

OWNER: Devinki Developers/Sam Devinki

ADDRESS: 4901 Wornall Rd, Kansas city MO 64112

LOCATION: generally the southern portion of Lot 1, in the Walmart PUD, more specifically east of the intersection of the Tuttle Creek Boulevard Frontage Road and Sarber Lane, along the north side of Sarber Lane.

AREA: Lease space is approximately 40 feet by 30 feet within Lot 1, Walmart Addition, Unit 2, an 11.11 acre lot.

DATE OF PUBLIC NOTICE PUBLICATION: Monday, June 28, 2004

DATE OF PUBLIC HEARING: PLANNING BOARD: Monday, July 19, 2004

CITY COMMISSION: Tuesday, August 3, 2004

DESCRIPTION OF PROPOSED AMENDMENT: Relocation of the existing "Tad's tropical sno" business, a seasonal restaurant, from its current location on the northwest corner of Ft. Riley Boulevard and 5th Street, to the southern part of Lot 1 (*see site plan*).

The construction will consist of moving the existing building, constructing a new ramp, and the utilization of the existing signs.

The building is 12-feet in height, measuring 24-feet by 12-feet, constructed with board siding and asphalt roof shingles. Interior space is for a snow cone business. The building will be encircled by the ramp for ADA access.

Attachment No. 1

Four (4) existing signs are proposed. On the front elevation are two (2) wood non-illuminated menu board signs and an internally illuminated roof sign. One (1) small non-illuminated wood business sign is on the side of the building.

Seven (7) off-street parking spaces will be removed for the building.

The building will be located in the 100-Year Flood Plain. The lowest enclosed floor must be at least one (1) foot above the flood elevation. The existing grade is approximately 1005-feet above sea level. The 100-Year Flood elevation is 1008-feet. The building's lowest floor must be at 1009-feet and either elevated on fill or flood proofed to 1009-feet. It is likely the building will need to be constructed on an engineered permanent pier foundation, which must be designed to reflect the flood conditions at the proposed location. Utilities, electrical, and similar services such as air conditioning components, that are exposed below the 100-Year Flood elevation, must be designed to prohibit water from entering the service or accumulating in the service.

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

WHETHER THE PROPOSED AMENDMENT IS CONSISTENT WITH THE INTENT AND PURPOSE OF THE APPROVED PUD, AND WILL PROMOTE THE EFFICIENT DEVELOPMENT AND PRESERVATION OF THE ENTIRE PUD: The amendment is necessary because the Final Plan did not envision outbuildings, only the existing principal building shopping center building (*see attached 1997 Final Development Plan for Staples Expansion, which is the most current approved Final Development Plan*). Second, roof signs are not permitted in the PUD.

Condition No. 1, Ordinance No. 4630, dated February 20, 1990, indicates all permitted uses of the C-2, Neighborhood Shopping District, are permitted in the PUD. Restaurants are a permitted use in the C-2 District. The proposed use is a restaurant and will be located in the southern part of the parking lot. Customers will park and walk to the window for service. There is no drive-in window associated with the business. (*Note: drive-in establishments are those that accommodate the occupants of an automobile.*) (*A Restaurant is defined in the Manhattan Zoning Regulations as: "A public eating or drinking establishment, including but not limited to the types of business establishments customarily referred to as cafeterias, coffee shops, dairy bars, restaurants and soda fountains, but not including any such establishment which has more than thirty-five (35) percent of its on premises sales, on an annual basis, devoted to alcoholic liquor or cereal malt beverage or a combination thereof."*)

Attachment No. 1

Condition No. 5, Ordinance No. 4630, indicates only signage shown on the Preliminary plan is allowed and any new wall signs shall comply with the C-2 District sign regulations. One of the signs is a roof sign, which is not a permitted sign in the C-2 District. The roof sign for the business is a small three (3) foot by six (6) foot internally illuminated business identification sign. While not consistent with the PUD, the scale of the sign is a minimal in scale within the scope of the PUD.

The amendment is generally consistent with the intent of the PUD.

WHETHER THE PROPOSED AMENDMENT IS MADE NECESSARY BECAUSE OF CHANGED OR CHANGING CONDITIONS IN OR AROUND THE PUD, AND THE NATURE OF SUCH CONDITIONS: The business must relocate from its current location and the PUD site is available. Interior space in the existing building may not be available. Outbuildings are common in large shopping centers and would otherwise be allowed if the site were not a PUD and was zoned C-2 District, for example. No other conditions appear to cause the need for the amendment.

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: The amendment is not granted solely for a special benefit, but is made necessary due to the approved Final Plan and Condition No. 5 described above.

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

- 1. LANDSCAPING:** The amendment does not require landscaping.
- 2. SCREENING:** The amendment does not require screening.
- 3. DRAINAGE:** The site drains to the southwest corner of the parking lot. The amendment does not require additional drainage improvements.
- 4. CIRCULATION:** Driving aisles and curb cuts remain as is. The proposed use is separated from the curb cuts and will not affect vehicular entrance and exiting movements to the shopping center.

Attachment No. 1

Seven (7) parking spaces will be removed along the southern boundary of the parking lot. The parking lot currently has 650 parking spaces and will be reduced to 643 after construction. The reduction is minimal and the parking ratio maintains approximately 5.5 spaces per 1,000 square feet of net floor area for the commercial shopping center.

If other outbuildings are proposed, the impact on parking will need to be reconsidered and may require an amendment dependent upon the nature, intensity, or size of the use.

5. OPEN SPACE AND COMMON AREA: No change.

6. CHARACTER OF THE NEIGHBORHOOD: The neighborhood is characterized as a commercial/industrial area, with commercial retail and service/commercial activities dominating the area to the south and north of the site between Hayes Drive and the Frontage Road and industrial and commercial services to the east of Hayes Drive.

EXISTING USE: A commercial shopping center recently vacated by the main tenant Wal-Mart. Existing businesses include Staples, H&R Block, Midwest Medical and a future Hastings and Hobby Lobby. All businesses are within an enclosed structure located on the eastern part of the site. The western part of the site is dominated by the off-street parking lot. The shopping center is accessed from two curb cuts along Sarber Lane, on the south, three curb cuts off the Frontage Road, on the east, a single curb cut off Hayes Drive.

PHYSICAL AND ENVIRONMENTAL CHARACTERISTICS: A developed shopping center with off-street parking.

The site is located in the 100 Year Flood Plain, and the 100 Year Flood elevation is 1008 feet above sea level. The lowest enclosed floor must be at least one-foot above the flood elevation or at 1009 feet, or one-foot above the flood elevation. The existing grade is approximately 1005 feet. The floor will be elevated approximately four feet above the parking lot or the building must be floodproofed to four feet above the 100 Year Flood elevation..

SURROUNDING LAND USE AND ZONING:

(1) NORTH: Super Wal-Mart and proposed retail center; PUD.

(2) SOUTH: Sarber Lane, retail, grocery and restaurants; C-5, Highway Service Commercial District.

(3) EAST: Shopping center building; H&R Block, Midland Medical, Hayes Drive, commercial services; C-5 District.

Attachment No. 1

(4) **WEST:** Frontage Road and Tuttle Creek Boulevard; C-5 District.

GENERAL NEIGHBORHOOD CHARACTER: See above.

SUITABILITY OF SITE FOR USES UNDER CURRENT ZONING: The PUD allows the permitted uses of the C-2, Neighborhood Shopping District. Restaurants are a permitted use in the C-2 District. The business would be considered a restaurant.

COMPATIBILITY OF PROPOSED DISTRICT WITH NEARBY PROPERTIES AND EXTENT TO WHICH IT MAY HAVE DETRIMENTAL AFFECTS: The proposed use is a permitted use within the PUD. Restaurants are permitted in the surrounding neighborhood. The use is a spring/summer seasonal activity. Adjacent properties should not be adversely affected by the proposed use.

CONFORMANCE WITH COMPREHENSIVE PLAN: The site is designated as CC, Community Commercial, a designation intended to provide for a mix of retail and commercial services in a concentrated and unified setting. The proposed amendment conforms with the Comprehensive Plan.

ZONING HISTORY AND LENGTH OF TIME VACANT AS ZONED: The site was annexed in 1969 and zoned C-5, Service Commercial District, and I-2, Industrial Park District. The site was rezoned to the Wal-Mart PUD in 1971. Original construction was in 1971. The current Wal-Mart PUD was established in 1990 and the building was expanded. The PUD was amended in 1993 and 1996, with both amendments related to sign changes. An amendment in 1997 allowed an expansion for Staples. In 2000, Wal-Mart amended the PUD to allow outdoor storage of seasonal sales for landscaping related materials.

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 amendment is consistent with the intent and purpose of Ordinance No. 4630, the Zoning Regulations, and the intent of the PUD Regulations.

Attachment No. 1

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 adverse affects on the public and no relative gain would be accomplished by denial; however, it may be a hardship on the applicant/owner if the amendment is denied.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES: Adequate public sewer and water are available to serve the business. As a permanent structure, the use, a restaurant, must connect to existing sanitary sewer and water.

OTHER APPLICABLE FACTORS:

STAFF COMMENTS:

City Administration recommends approval of the proposed Amendment to Final Development Plan of the Walmart PUD, and Ordinance No. 4630, for a proposed outbuilding for Tad's tropical sno, with the following conditions:

1. All permits shall be obtained prior to construction.
2. Signs for the outbuilding shall be allowed, as proposed.

ALTERNATIVES:

1. Recommend approval of the proposed Amendment of the Final Development Plan of the Walmart Planned Unit Development, and Ordinance No. 4630, stating the basis for such recommendation.
2. Recommend denial of the proposed Amendment, and Ordinance No. 4630, stating the specific reasons for denial.
3. Table the proposed Amendment(s) to a specific date, for specifically stated reasons.

POSSIBLE MOTION:

The Manhattan Urban Area Planning Board recommends approval of the proposed Amendment of the Final Development Plan of the Walmart Planned Unit Development, and Ordinance No. 4630, based on the findings in the Staff Report, with the two (2) conditions recommended by City Administration.

PREPARED BY: Steve Zilkie, ZICP, Senior Planner

DATE: July 13, 2004

04011}SR}PUDAmendmentTadsTropSno