

***MINUTES***  
***CITY COMMISSION MEETING***  
***TUESDAY, AUGUST 17, 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, and Mark Hatesohl 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, 9 staff, and approximately 18 interested citizens.

**PLEDGE OF ALLEGIANCE**

Mayor Everett led the Commission in the Pledge of Allegiance.

**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, August 3, 2004.

**CLAIMS REGISTER NO. 2511**

The Commission approved Claims Register No. 2511 authorizing and approving the payment of claims from July 28, 2004, to August 10, 2004, in the amount of \$899,056.79.

**LICENSE – FIREWORKS DISPLAY**

The Commission approved the fireworks display application for Western Enterprises, Inc., PO Box 60, of Carrier, Oklahoma, for the Purple Power Play on Poyntz.

## CONSENT AGENDA (CONTINUED)

### FINAL PLAT – MAA AMBA ADDITION

The Commission accepted the easements and rights-of-way, as shown on the Final Plat of MAA AMBA Addition, generally located west of the intersection of Enoch Lane and the East Poyntz Avenue Frontage Road, along the north side of the Frontage Road, and southeast of the Carlson Street cul-de-sac, based on conformance with the Manhattan Urban Area Subdivision Regulations.

### ORDINANCE NO. 6424 – ADOPT - 2005 BUDGET

The Commission approved Ordinance No. 6424 adopting the 2005 City Budget as amended.

### ORDINANCE NO. 6425 – AMEND – 2004 BOND AND INTEREST FUND BUDGET

The Commission approved Ordinance No. 6425 amending the 2004 Bond & Interest Fund budget.

### RESOLUTION NO. 081704-B – ADOPT – 2005-2010 CAPITAL IMPROVEMENTS PROGRAM

The Commission approved Resolution No. 081704-B adopting the 2005-2010 Capital Improvements Program as amended.

### RESOLUTION NO. 081701-C – ESTABLISH – UTILITY RESERVE FUND

The Commission approved Resolution No. 081704-C establishing a utility reserve fund.

### ORDINANCE NO. 6426 – AMEND OLD WAL-MART PLANNED UNIT DEVELOPMENT

The Commission approved Ordinance No. 6426 amending the Wal-Mart Planned Unit Development, 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)*

### ORDINANCE NO. 6427 – DELETE – SCHOOL ZONES

The Commission approved Ordinance No. 6427 establishing school zones within the City limits of Manhattan.

CONSENT AGENDA (CONTINUED)

- \* **RESOLUTION NO. 081704-A – TEMPORARY NOTE SERIES NO. 2004-02**  
Bernie Hayen, Director of Finance, answered questions from Commission.

The Commission approved accepting the best bid for selling the notes and approved Resolution No. 081704-A issuing Temporary Note Series No. 2004-02 in the amount of \$930,000.00 to finance the following five (5) special assessment projects to be debt financed: *Brookfield Addition, Unit 3, Sanitary Sewer (SS0405), Street (ST0405), and Water (WA0407) Improvements; and Hackberry Addition, Sanitary Sewer (SS0403) and Water (WA0404) Improvements.*

- \* **CHANGE ORDER NO. 1-FINAL – MCCALL ROAD IMPROVEMENTS (ST0211)**  
Jeff Hancock, City Engineer, answered questions from the Commission.

The Commission approved Change Order No. 1-Final for The McCall Road Improvements (ST0211) resulting in a net increase in the amount of \$87,234.65 (+9.34%) to the contract with Pavers Inc., of Salina, Kansas; and

**CHANGE ORDER NO. 1-FINAL – TUTTLE CREEK BOULEVARD, BLUEMONT AVENUE, FRONTAGE ROAD, AND THIRD STREET IMPROVEMENTS (STC212)**

The Commission approved Change Order No. 1-Final for the Tuttle Creek Boulevard, Bluemont Avenue, Frontage Road, and Third Street Improvements (STC212) resulting in net increase in the amount of \$212,015.70 (+15.48%) to the contract with Pavers Inc., of Salina, Kansas.

**AWARD CONTRACTS – HOUSING REHABILITATION PROGRAM**

The Commission accepted the bids for the Housing Rehabilitation Project, awarded the bid to the lowest responsible bidders for the base price, authorized City Administration to approve any necessary change orders; and authorized the Mayor and City Clerk to enter into an agreement with the contractor and property owners at 614 Yuma Street and 512 South 12<sup>th</sup> Street for expenditure of Housing Rehabilitation Funds.

- \* **FEDERAL GRANT OFFER – REIMBURSEMENT – AIR TRAFFIC CONTROL TOWER**  
Ron Fehr, City Manager, answered questions from the Commission.

## CONSENT AGENDA (CONTINUED)

\* **FEDERAL GRANT OFFER – REIMBURSEMENT – AIR TRAFFIC CONTROL TOWER (CONTINUED)**

The Commission authorized the Mayor and City Clerk to accept and sign Federal Grant Offer 3-20-0052-25, Reimbursement for Air Traffic Control Tower (Phase 1) in the amount of \$293,202.00.

After discussion, Commissioner Snead moved to approve the consent agenda. Commissioner Hatesohl seconded the motion. On a roll call vote, motion carried 4-0.

## GENERAL AGENDA

**ECONOMIC DEVELOPMENT APPLICATION - NATIONAL INSTITUTE FOR STRATEGIC TECHNOLOGY ACQUISITION AND COMMERCIALIZATION (NISTAC)**

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

Brice Libel, representing Nutri-Joy, spoke in favor of the proposal.

Lyle Butler, President, Manhattan Area Chamber of Commerce, presented the NISTAC (formerly the Mid-America Commercialization Corporation) expansion proposal.

Tracy Taylor, President, Kansas Technology Enterprise Corporation (KTEC); Ron Sampson, President and Chief Executive Officer (CEO), NISTAC; and Diane Stoddard, Assistant City Manager, provided additional information to the Commission.

Ron Sampson, President and CEO, NISTAC, answered questions from the Commission.

Tom Rawson, Vice President for Administration and Finance, Kansas State University, Ron Sampson, President and CEO, NISTAC, provided additional information. They then answered questions from the Commission.

Tracy Taylor, President, Kansas Technology Enterprise Corporation (KTEC), answered questions from the Commission and stated that KTEC's investment in Manhattan has been significant.

## GENERAL AGENDA

### ECONOMIC DEVELOPMENT APPLICATION - NATIONAL INSTITUTE FOR STRATEGIC TECHNOLOGY ACQUISITION AND COMMERCIALIZATION (NISTAC) (CONTINUED)

Ron Sampson, President and CEO, NISTAC, explained the patent portfolio and number of jobs previously created and maintained by NISTAC. He then answered additional questions from the Commission.

Ron Fehr, City Manager, provided additional information to the Commission.

Diane Stoddard, Assistant City Manager, provided clarification on the item and the lease agreement of the city-owned facility at 1500 Hayes Drive.

Ron Sampson, President and CEO, NISTAC, and Tracy Taylor, President, Kansas Technology Enterprise Corporation (KTEC), answered additional questions from the Commission.

Ron Fehr, City Manager, and Lyle Butler, President, Manhattan Area Chamber of Commerce, provided additional information on the proposal.

Ann Harts, 126 Longview Drive, supported the proposal.

Ron Fehr, City Manager; Tom Rawson, Vice President for Administration and Finance, Kansas State University; Ron Sampson, President and CEO, NISTAC; and Diane Stoddard, Assistant City Manager, answered additional questions from the Commission.

After discussion Commissioner Snead moved to schedule September 7, 2004, as the date for a final determination on an economic development proposal from NISTAC. Commissioner Hatesohl seconded the motion. On a roll call vote, motion carried 4-0.

The Commission took a brief recess.

### AIR MIDWEST, INC. - AIR SERVICE MINIMUM REVENUE GUARANTEE

Russ Johnson, Airport Director, presented the item and answered questions from the Commission.

Jeff Bethune, Mesa Air Group, Inc., provided additional information. He then answered questions from the Commission.

## GENERAL AGENDA

### AIR MIDWEST, INC. - AIR SERVICE MINIMUM REVENUE GUARANTEE (CONTINUED)

After discussion, Commissioner Snead moved to authorize the Mayor and City Clerk to execute the Air Midwest, Inc. Minimum Revenue Guarantee Agreement for Kansas City-Manhattan Service under the Small Community Air Service Development Pilot Program. Commissioner Hatesohl seconded the motion. On a roll call vote, motion carried 4-0.

### FIRST READING - AMEND - MANHATTAN ZONING REGULATIONS - ADDRESS ADULT BUSINESSES; FIRST READING - ESTABLISH - ADULT BUSINESS FEES

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

After discussion, Commissioner Hatesohl moved to approve first reading of an ordinance amending Articles IV and VIII of the Manhattan Zoning Regulations as proposed, to address Adult Businesses, based on the findings in the Staff Memorandum; and approve first reading of an ordinance establishing Licensing Fees for Adult Businesses, Managers, Employees and Entertainers, as proposed. Commissioner Snead seconded the motion. On a roll call vote, motion carried 4-0.

### MILLER RANCH, UNIT 3 - LANDSCAPE BENEFIT DISTRICT PETITION

Jeff Hancock, City Engineer, presented the item and answered questions from the Commission.

Bill Frost, City Attorney, provided clarification on the item.

Jeff Hancock, City Engineer, answered additional questions from the Commission.

After discussion, Commissioner Snead moved to find the petition sufficient, approve Resolution No. 081704-D making findings and authorizing the purchase of certain landscaping improvements in Miller Ranch to be funded through a benefit district. Commissioner Hatesohl seconded the motion. On a roll call vote, motion carried 4-0.

### ADJOURNMENT

At 10:40 p.m. the Commission adjourned.

  
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Gary S. Fees, CMC, City Clerk

**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 5<sup>th</sup> 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 flood proofed 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 Wal-Mart 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 Wal-Mart 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 Wal-Mart Planned Unit Development, and Ordinance No. 4630, based on the findings in the Staff Report, with the two (2) conditions recommended by City Administration.

*Attachment No. 1*

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

**DATE:** July 13, 2004

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