

MINUTES
CITY COMMISSION MEETING
TUESDAY, NOVEMBER 16, 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, 10 staff, and approximately 24 interested citizens.

PLEDGE OF ALLEGIANCE

Mayor Everett led the Commission in the Pledge of Allegiance.

PROCLAMATIONS

Mayor Everett proclaimed November 29, 2004, *Random Acts of Kindness Day*. Ms. Chris Robinson, Random Acts of Kindness Committee Member, was present to receive the proclamation.

Mayor Everett proclaimed November 14 – 20, 2004, *American Education Week*. Beth Bergsten, NEA representative, was present to receive the proclamation.

COMMISSIONER COMMENTS

Commissioner Snead asked for a moment of silence for the passing of Enid Stover, past and long-time observer for the League of Women Voters.

Mayor Everett informed the community that he was pleased with City Administration and with his fellow Commissioners in its diligent efforts to keep property taxes down.

CONSENT AGENDA

(* denotes those items discussed)

MINUTES

The Commission approved the minutes of the Regular City Commission Meeting held Tuesday, November 2, 2004.

CONSENT AGENDA (CONTINUED)

CLAIMS REGISTER NO. 2517

The Commission approved Claims Register No. 2517 authorizing and approving the payment of claims from October 27, 2004, to November 9, 2004, in the amount of \$820,854.61

RENEWAL LICENSES

The Commission approved renewal applications for Cereal Malt Beverage and Tree Maintenance licenses for calendar year 2005. *(See Attachment No. 1)*

ORDINANCE NO. 6441 – REZONE – LOT 1, ENOCH ADDITION, UNIT 3 (925 ENOCH LANE)

The Commission approved Ordinance No. 6441 rezoning Lot 1, Enoch Addition, Unit 3, from C-5, Highway Service Commercial District, to C-6, Heavy Commercial District, based on the findings in the Staff Report. *(See Attachment No. 2)*

ORDINANCE NO. 6442 – ANNEX – LEE MILL HEIGHTS ADDITION

The Commission approved Ordinance No. 6442 annexing the 79-acre site of the proposed Lee Mill Heights Addition, located generally west of Miller Ranch, based on conformance with the Comprehensive Plan, the Growth Vision, and the Capital Improvements Program.

ORDINANCE NO. 6443 – REZONE – LEE MILL HEIGHTS ADDITION

The Commission approved Ordinance No. 6443 rezoning the 75.5-acre portion of the proposed Lee Mill Heights Addition from County G-1, General Agricultural District, to R, Single-Family Residential District with AO, Airport Overlay District, and rezoning the 3.6-acre portion from County G-1, General Agricultural District, to R-2, Two-Family Residential District with AO, Airport Overlay District, based on the findings in the Staff Reports. *(See Attachment No. 3 & 4)*

ORDINANCE NO. 6444 – VACATE UTILITY EASEMENT – 608 NORTH 12TH STREET

The Commission approved Ordinance No. 6444 vacating a portion of the utility easement consisting of a small portion of the Hibachi Hut Restaurant, 608 North 12th Street, which encroaches the City of Manhattan alley.

CONSENT AGENDA (CONTINUED)

AWARD CONTRACT – THERMAL IMAGING CAMERA AND TRUCK MOUNT CHARGER

The Commission accepted the low bid and awarded the contract in the amount of \$7,720.00 to Debbie Laughlin, Fire and Rescue Services, of Lawrence, Kansas, for a thermal imaging camera and truck mount charger and authorized City Administration to enter into a purchase agreement with this company.

AWARD CONTRACT – BREATHING APPARATUS

The Commission authorized Fire Department Administration to negotiate with MES, of Snyder, Nebraska, to purchase the escape packs, hoses, gauges, pack alerts and fit test stand as listed for a price not to exceed \$20,050.00.

AIRPORT LEASE AGREEMENT – HERTZ RENT-A-CAR

The Commission authorized the Mayor and City Clerk to execute the Airport Agreement with Hertz Corporation d/b/a Hertz Rent-a-Car.

2004 CONTRACT – AMEND – SALVATION ARMY

The Commission approved the request of the Social Services Advisory Board to increase the 2004 funding of the Salvation Army to \$28,250.00 and authorized the Mayor to execute an amended contract for 2004.

REQUEST FOR FUNDING – K-18 RESTUDY

The Commission approved the request by the Riley County Commission for the City to fund 60% of the local match required for the K-18 restudy or approximately \$20,100.00.

After discussion, Commissioner Hatesohl moved to approve the consent agenda. Commissioner Snead seconded the motion. On a roll call vote, motion carried 5-0.

GENERAL AGENDA

FIRST READING - ELIMINATE PARKING - MCCAIN LANE

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

GENERAL AGENDA (CONTINUED)

FIRST READING - ELIMINATE PARKING - MCCAIN LANE

After discussion, Commissioner Snead moved to approve first reading of an ordinance establishing a "No Parking Anytime" zone on north side of McCain Lane for 210 feet east of the centerline of North Manhattan Avenue. Commissioner Hatesohl seconded the motion. On a roll call vote, motion carried 5-0.

FIRST READING - AMEND MANHATTAN ZONING REGULATIONS - TELECOM STRUCTURES

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

Katie Jackson, Assistant City Attorney, provided additional information on The Telecommunications Act.

Eric Cattell, Assistant Director for Planning, provided an overview of the item. He then answered questions from the Commission.

Bill Frost, City Attorney, and Ron Fehr, City Manager, answered questions from the Commission.

Bernd Foerster, 920 Ratone Street, requested that the agreement include a provision for demolition of the tower by the owner when it is no longer in use.

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

Helen Roser, P.O. Box 1814, Manhattan, informed the Commission that the general public is not aware of the potential intrusiveness and offensiveness of these towers. She was concerned that the item had not been addressed earlier.

Ron Fehr, City Manager; Eric Cattell, Assistant Director for Planning; and Katie Jackson, Assistant City Attorney, answered questions from the Commission.

After discussion, Commissioner Snead moved to approve first reading of an ordinance amending the Manhattan Zoning Regulations as proposed, to address the regulation of Telecom Structures, based on the findings in the Staff Memorandum. *(See Attachment No. 5)* Commissioner Taussig seconded the motion. On a roll call vote, motion carried 5-0.

GENERAL AGENDA (CONTINUED)

FIRST READING – ESTABLISH - 2005 SALARY RANGES FOR CITY EMPLOYEES

Cathy Harmes, Director of Human Resources, presented the item. She then answered questions from the Commission.

After discussion, Commissioner Hatesohl moved to approve first reading of an ordinance establishing the revised 2005 salary ranges for City employees. Commissioner Snead seconded the motion. On a roll call vote, motion carried 5-0.

ADJOURNMENT

At 9:25 p.m. the Commission adjourned.



Gary S. Fees, CMC, City Clerk

Attachment No. 1

2004 License Renewals

Cereal Malt Beverage	Dillon Store #15	130 Sarber Ln
Cereal Malt Beverage	Dillon Store #46	1000 Westloop Pl
Cereal Malt Beverage	Falley's Inc (Food 4 Less #28)	222 N 6th St
Cereal Malt Beverage	K-State Corporation	K-State Student Union
Cereal Malt Beverage	My Place Tavern	601 N 3rd St
Cereal Malt Beverage	Pizza Hut of Manhattan	1121 Moro
Cereal Malt Beverage	Pizza Hut of Westloop Inc	2931 Claflin Rd
Cereal Malt Beverage	Shop Quik Stores #11	3108 Anderson
Cereal Malt Beverage	Shop Quik Stores #12	430 Ft Riley Blvd
Cereal Malt Beverage	Shop Quik Stores #14	529 Richards Dr
Cereal Malt Beverage	Shop Quik Stores #15	2028 Tuttle Creek Blvd
Cereal Malt Beverage	Shop Quik Stores #16	1127 Bluemont
Cereal Malt Beverage	Short Stop #7	720 N 3 rd
Tree Maintenance	Blueville Nursery Inc	4539 Anderson Ave
Tree Maintenance	Brinker Tree Care Inc	2907 Jacque Circle
Tree Maintenance	Kanscapes, Inc	8455 River Valley Dr
Tree Maintenance	Mugler Tree Care	2400 West 60 th
Tree Maintenance	Salina Tree Inc	2681 W State Street Rd
Tree Maintenance	Wassenberg Stump Removal	108 2 nd st

STAFF REPORT

ON AN APPLICATION TO REZONE PROPERTY

FROM: C-5, Highway Service Commercial District

TO: C-6, Heavy Commercial District

APPLICANT: Dave Dreiling

ADDRESS: 520 McCall Road, Manhattan, KS 66502

OWNER: Same

ADDRESS: Same

LOCATION: 925 Enoch Lane, which is approximately 300-feet south of the intersection of McCall Road and Enoch Lane, along the west side of Enoch Lane.

The site is Lot 1, Enoch Addition, Unit Three (115-feet by 435-feet)

AREA: 50,076 square feet (1.14-acres)

DATE OF PUBLIC NOTICE PUBLICATION: Monday, September 27, 2004

DATE OF PUBLIC HEARING: PLANNING BOARD: Monday, October 18, 2004
CITY COMMISSION: Tuesday, November 2, 2004

EXISTING USE: There is an existing one-story, 4,500 square foot, vacant service commercial building is accessed from a single 24-foot wide curb cut off Enoch Lane on the site. The driveway provides access to the front of the building and 23-off-street parking spaces on an approximate 6,800 square foot concrete pad. The rear yard is an unimproved storage area of the site, which is enclosed by an eight (8) to ten (10) foot chain link fence, which is 140-feet by 115-feet. The fenced storage area is approximately 16,100-square feet in area. The fence previously was at the western property line and has been recently relocated approximately 72-feet to the east and a gravel surface added to the unenclosed ground area. Willie's Rides Auto Sales and Wildcat Wrecker Service recently occupied the building and site.

Attachment No. 2

PHYSICAL AND ENVIRONMENTAL CHARACTERISTICS: The site is developed with a building on an elevated pad site, due its location in the 100 year Flood Plain. The front portion of the site drains to Enoch Lane and an existing drainage swale on the west side of Enoch lane. The rear appears to drain to the north to a parking lot owned by the applicant.

SURROUNDING LAND USE AND ZONING:

- (1) **NORTH:** Off-street parking lot for GTM Sportswear, retail and farm equipment sales, and McCall Road; I-2, Industrial Park District, and C-5 District.
- (2) **SOUTH:** Construction equipment sales and rental, nonconforming single-family dwelling, auction house, under construction future hotel site in a recently platted service commercial subdivision (MAA AMBA Addition); C-5 District.
- (3) **EAST:** Enoch Lane and auto dealership; C-5 District.
- (4) **WEST:** Manufacturing, Carlson Street, research and testing; I-2 District.

GENERAL NEIGHBORHOOD CHARACTER: The neighborhood is developed as a combination of industrial manufacturing, industrial services and retail service commercial activities consisting of auto sales, farm equipment sales, and small construction sales and equipment rental, but not including large equipment, such as proposed.

SUITABILITY OF SITE FOR USES UNDER CURRENT ZONING: the site can be used for the permitted uses of the C-5 District. Minimum lot area in the C-5 district is 10,000 square feet. The site contains 1.14-acres, which is sufficient for the C-5 District. A limiting factor affecting the site is the 100 Year Flood Plain, which requires elevation of buildings to at least one (1)-foot above the base flood elevation of 1008-feet above sea level. The current site is unoccupied and in an industrial, equipment sales and service neighborhood.

COMPATIBILITY OF PROPOSED DISTRICT WITH NEARBY PROPERTIES AND EXTENT TO WHICH IT MAY HAVE DETRIMENTAL AFFECTS: The site is in a neighborhood bounded by service commercial and industrial activities. The proposed C-6 District is similar to the existing construction equipment and sales lot to the south and the farm equipment sales use to the north, although the proposed type of equipment, sales and repair will be larger in scale than the two nearby service commercial uses. However, no adverse impacts are expected on the service commercial and industrial neighborhood, since the site is not likely to accommodate very large equipment. In addition, the site can be accessed from McCall Road, to the north, and US 24 Highway, to the south.

Attachment No. 2

CONFORMANCE WITH COMPREHENSIVE PLAN: The site is shown on the Southeast Planning Area Future Land Use Map (*attachment*) as CC, Community Commercial. The designation is intended to provide for a unified mix of retail and commercial services in a community center. Small single-use sites, such as the rezoning site, also fit within the designation. The Plan does not specifically address C-6 District commercial activities.

Given the limited size of the site and the character of the area, the proposed rezoning generally conforms to the Comprehensive Plan.

ZONING HISTORY AND LENGTH OF TIME VACANT AS ZONED: The site was annexed and zoned C-5 District in July 1969. The existing building and site were constructed in 1994-1995.

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-6 District is designed to provide for commercial uses, which allow for the sale and/or service of heavy equipment or products.

Permitted Uses include: agricultural implement sales and services; automobile, truck sales and rental, including accessory repair and painting operations and facilities; boat sales and rental; commercial instructional institutions for training involving the use and operation of equipment sold or rented in this district; construction and heavy equipment sales, rental, and service; manufactured home sales; recreational vehicle sales and rental; and, trailer sales and rental.

Conditional Uses include: all uses listed as either a permitted or a conditional use in the C-5 District, except drive-in establishments.

The sales lots of motor vehicles and boats may be located as close as twelve (12) feet to the front lot line. Any outdoor storage or display, with the exception of sales lots for agricultural implements, automobiles, boats, manufactured homes, recreational vehicles, and trucks, shall be enclosed by sight obscuring screening of not less than six (6) feet in height.

Attachment No. 2

The site is intended for relocation of Martin Tractor, which is currently located at the intersection of Ft. Riley Boulevard and Delaware Avenue. The business, as described in attachments, requires a more flexible service commercial district, than the less intensive C-5 District. The proposed C-6 District accommodates a range of sales and services for larger vehicles consistent with the tenant needs.

There is limited C-6 District space available in the City. The only other C-6 District is on the northwest corner of McCall Road and Hayes Drive intersection.

The site exceeds the minimum lot requirements of the C-6 District. The proposed rezoning is consistent with the intent of the Zoning Regulations.

RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE THAT DENIAL OF THE REQUEST WOULD ACCOMPLISH, COMPARED WITH THE HARDSHIP IMPOSED UPON THE APPLICANT: The site is intended for commercial or service commercial use. The intended heavy commercial activity is not unlike typical service commercial uses that may be found on and in close proximity to the site. Denial of the request may be a hardship upon the applicant, since there do not appear to be any adverse affects on the public.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES: Adequate street, sanitary sewer and water available to serve property.

OTHER APPLICABLE FACTORS: None.

STAFF COMMENTS:

City Administration recommends approval of the proposed rezoning of Lot 1, Enoch Addition, Unit Three, from C-5, Highway Service Commercial District, to C-6, Heavy Commercial District.

ALTERNATIVES:

1. Recommend approval of the proposed rezoning of Lot 1, Enoch Addition, Unit Three, from C-5, Highway Service Commercial District, to C-6, Heavy Commercial District, stating the basis for such recommendation.
2. Recommend denial of the proposed rezoning, stating the specific reasons for denial.
3. Table the proposed rezoning to a specific date, for specifically stated reasons.

Attachment No. 2

POSSIBLE MOTION:

The Manhattan Urban Area Planning Board recommends approval of the proposed rezoning of Lot 1, Enoch Addition, Unit Three, from C-5, Highway Service Commercial District, to C-6, Heavy Commercial District, based on the findings in the Staff Report.

PREPARED BY: Steve Zilkie, AICP, Senior Planner

DATE: October 11, 2004

04015

STAFF REPORT

ON AN APPLICATION TO REZONE PROPERTY

FROM: County G-1, General Agricultural District

TO: R, Single-Family Residential District, and AO, Airport Overlay District

APPLICANT: SSF Development LLC (Roger Schultz)

ADDRESS: 1213 Hylton Heights Road, Manhattan, KS 66502

OWNERS: Same

ADDRESSES: Same

LOCATION: generally west of the Miller Ranch Water Tower and the western dead-end of Miller Parkway.

AREA: Approximately 75.5 acres

DATE OF PUBLIC NOTICE PUBLICATION: Monday, September 27, 2004

DATE OF PUBLIC HEARING: PLANNING BOARD: Monday, October 18, 2004
CITY COMMISSION: Tuesday, November 2, 2004

EXISTING USE: Undeveloped rangeland used for grazing.

PHYSICAL AND ENVIRONMENTAL CHARACTERISTICS: The site is covered with native grasses, scattered evergreen trees and dense deciduous tree coverage in natural drainage ravines. The approximate upper one-third slopes and drains to the north. The lower two-thirds slopes and drains to the south. The entire site is entirely within the Conical Zone of Manhattan's Regional Airport, which requires that the AO, Airport Overlay District, be added to site. Future uses (structures and trees), which are within the limits of the Conical Zone 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*).

SURROUNDING LAND USE AND ZONING:

- (1) NORTH:** Rangeland: G-1 District.
- (2) SOUTH:** Rangeland and Eureka Valley farmland: G-1 District.
- (3) EAST:** Miller Ranch Parkway, Miller Ranch single-family residential development, two-family townhomes, Miller Ranch Water Tower, undeveloped rangeland, and undeveloped office park; Residential Planned Unit Development, I-5, Business Park District, G-1 District, and R District.
- (4) WEST:** Rangeland; G-1 District.

GENERAL NEIGHBORHOOD CHARACTER: The site is adjacent to Miller Ranch low density residential neighborhood and an undeveloped office park.

SUITABILITY OF SITE FOR USES UNDER CURRENT ZONING: The G-1 District permits agricultural uses, single-family homes, mobile homes, oil and gas drilling, home occupations, public utility uses, and other activities. The range of G-1 uses is inconsistent with the proposed R District and the future Lee Mill Heights subdivision, which the applicant/owner has requested.

COMPATIBILITY OF PROPOSED DISTRICT WITH NEARBY PROPERTIES AND EXTENT TO WHICH IT MAY HAVE DETRIMENTAL AFFECTS: The site is consistent with the low-density character of existing Miller Ranch residential development to the east. No adverse impact on nearby properties is expected with development that is consistent with the neighborhood and conforms to the Comprehensive Plan.

CONFORMANCE WITH COMPREHENSIVE PLAN:

Land Use Policies

The Future Land Use Map of the Manhattan Urban Area Comprehensive Plan designates the 79-acre tract as Residential Low/Medium density (RLM) (*Southwest Planning Area Future land Use Map attached*). Appropriate density range for development in the RLM designation is one-dwelling unit up to 11-dwelling units per net acre. The RLM category is intended to incorporate a range of housing types, from single-family and two-family to town homes.

Page 4-6, Policy RLM 2: Appropriate Density Range

“Densities in the Residential Low/Medium designation range from less than one dwelling unit/acre up to 11 dwelling units per net acre.”

The site is a single-family housing development and the proposed density is 2.18 dwelling units per net acre.

Mobility and Transportation Options

Page 8-1, Goal #1 is to “Ensure that new development patterns facilitate safety, connectivity, and mobility for all modes of transportation in established and developing areas of the community”.

Page 8-2, Policy MTO 3: Establish Interconnected Neighborhood Street and Sidewalk Patterns

“Neighborhood streets and sidewalks in both new and existing areas shall form an interconnected network, including vehicular, bicycle, and pedestrian routes within and between neighborhoods, in order to connect neighborhoods together and with other parts of the community and region. In particular, direct walkway and bicycle routes to schools and parks, employment and service centers, and other community facilities should be provided”.

The Bicycle Master Plan for KSU and City of Manhattan provides policy guidance for bike facilities and routes. Miller Parkway is designated as a bike route in the Bicycle Plan. Street paving widths in the Lee Mill Heights Addition, as shown on the proposed Preliminary Plat, will provide for bike route lanes on both sides of Miller Parkway consistent with the recommendations of the Bicycle Master Plan.

Page 8-2, Policy MTO 4: Accessible, Pedestrian-friendly Development

“Future commercial and residential projects in the Urban Service Area Boundary shall be planned to ensure that sites and land uses are readily accessible to all modes—pedestrians, bicycles, autos, and future public transit.”

The proposed Preliminary Plat provides for streets, sidewalks and bike routes, which connect to adjoining neighborhoods and to Warner Park. The Parks and Recreation Advisory Board met with the applicant (*attachment*) on October 4, 2004, and reviewed and unanimously approved the pedestrian circulation plan for access to Warner Park.

Miller Ranch

Miller Ranch is identified as a Special Planning Area in which development should be focused around open space areas, provision for bike and pedestrian traffic to connect to Warner Park and housing and airspace issues. With respect to the annexation, relevant policy issues in Miller Ranch include: providing for a mixture of housing types and densities, preservation of drainage ways, future street extensions to the north, and airspace regulations.

The rezoning and proposed Preliminary Plat will implement the policy recommendations of the Miller Ranch area.

Page 13-5, Policy MR 1: Mixture of Housing Types

“Residential neighborhoods within Miller ranch should include a mix of housing types and densities.”

The rezoning will provide for a range of at least two housing types.

Page 13-5, Policy MR 2: Preservation of Drainage Areas

“Drainage ways, wetlands, and other sensitive natural features shall be preserved and incorporated into the overall design of neighborhoods as buffers and open space amenities.”

The proposed Preliminary Plat preserves drainage ways and ravines in conservation and drainage easements.

Page 13-5, Policy MR 3: Future ROW Preservation

“Right-of-way for the future extension of Miller Parkway and Wreath Avenue shall be identified on development proposals and preserved, through platting and other tools.”

An extension of Wreath Avenue is shown on the Preliminary Plat.

Page 13-5, Policy MR 7: Airport Airspace Regulations

“Development shall be consistent with established airspace regulations for the Manhattan Regional Airport and Airport Master Plan.”

Attachment No. 3

The proposed site is within the Conical Zone of the Manhattan Regional Airport (*Environmental Values and Constraints map attached*). The proposed Preliminary Plat notes the need for review of construction plans, prior to issuance of a building permit. The AO District will be added as an overlay district to the Lee Mill Heights Addition.

The rezoning conforms to the Comprehensive Plan.

ZONING HISTORY AND LENGTH OF TIME VACANT AS ZONED: The site has remained undeveloped to date and zoned County G-1 District.

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 R District (*R District regulations attached*) is designed to provide a single-family dwelling zone at a density no greater than one dwelling unit per 10,000 square feet. Lots shown on the R District portion of the proposed Preliminary Plat of the Lee Mill Heights Addition, exceed 10,000 square feet in area.

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.”

The site is within the Conical Zone, which is, in general terms, established as an airspace that extends outward and upward in relationship to the Airport and is an approach zone height limitation on the underlying land. Future uses (structures and trees, existing and proposed) in the AO District may be required to obtain an Airport Compatible Use Permit, unless circumstances indicate that the structure or tree has less than 75 vertical feet of height above the ground and does not extend above the height limits prescribed for the Conical Zone (*pages 6-9 of the AO District regulations attached*).

A letter from HNTB (*attached*) references a review of elevations depicted on the Preliminary Plat of the proposed Lee Mill Heights Preliminary Plat. Based on the plat elevations, roof elevations may encroach into the conical surface. HNTB recommends that actual roof elevations within the site be determined.

Attachment No. 3

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 gain to the public that denial would accomplish. The AO District requires that future uses be reviewed in order to protect airspace. The proposed Preliminary Plat conforms to the Manhattan Urban Area Subdivision Regulations. It may be a hardship to the applicant if the rezoning is denied.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES: Adequate street, sanitary sewer and water services are available to serve the 75.5-acre tract of land. The proposed Preliminary Plat shows an extension of Wreath Avenue, which is consistent with the "Connection to the Miller Ranch Development from Anderson Ave." document (*map attached*) reviewed and approved by the City Commission in 2002.

OTHER APPLICABLE FACTORS: None.

STAFF COMMENTS:

City Administration recommends approval of the proposed rezoning of a 75.5-acre tract of land in the proposed Lee Mill Heights Addition, from County G-1, General Agricultural District, to R, Single-Family Residential District, and AO, Airport Overlay District.

ALTERNATIVES:

1. Recommend approval of the proposed rezoning of a 75.5-acre tract of land in the proposed Lee Mill Heights Addition, from County G-1, General Agricultural District, to R, Single-Family Residential District, and AO, Airport Overlay District, stating the basis for such recommendation.
2. Recommend denial of the proposed rezoning, stating the specific reasons for denial.
3. Table the proposed rezoning to a specific date, for specifically stated reasons.

POSSIBLE MOTION:

The Manhattan Urban Area Planning Board recommends approval of the rezoning of 75.5-acre tract of land in the proposed Lee Mill Heights Addition, from County G-1, General Agricultural District, to R, Single-Family Residential District, and AO, Airport Overlay District, based on the findings in the Staff Report.

PREPARED BY: Steve Zilkie, AICP, Senior Planner
DATE: October 11, 2004
04016

STAFF REPORT

ON AN APPLICATION TO REZONE PROPERTY

FROM: County G-1, General Agricultural District

TO: R-2, Two-Family Residential District, and AO, Airport Overlay District

APPLICANT: SSF Development LLC (Roger Schultz)

ADDRESS: 1213 Hylton Heights Road, Manhattan, KS 66502

OWNERS: Same

ADDRESSES: Same

LOCATION: Generally west of the Miller Ranch Water Tower and the western dead-end of Miller Parkway.

AREA: Approximately 3.6-acres

DATE OF PUBLIC NOTICE PUBLICATION: Monday, September 27, 2004

DATE OF PUBLIC HEARING: PLANNING BOARD: Monday, October 18, 2004
CITY COMMISSION: Tuesday, November 2, 2004

EXISTING USE: Undeveloped rangeland used for grazing.

PHYSICAL AND ENVIRONMENTAL CHARACTERISTICS: The site is covered with native grasses, scattered evergreen trees and dense deciduous trees coverage in natural drainage ravines. The site slopes and drains to the north. The site is entirely within the Conical Zone of Manhattan's Regional Airport, which requires that the AO, Airport Overlay District, be added to site. Future uses (structures and trees), which are within the limits of the Conical Zone 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*).

Attachment No. 4

SURROUNDING LAND USE AND ZONING:

- (1) NORTH:** Rangeland: G-1 District.
- (2) SOUTH:** Miller Parkway, Miller Ranch Water Tower, rangeland, and undeveloped office park: G-1 District, and I-5, Business Park District.
- (3) EAST:** Miller Ranch single-family residential development, single-family and two-family townhomes, and rangeland; Residential Planned Unit Development, G-1 District, and R District.
- (4) WEST:** Rangeland; G-1 District.

GENERAL NEIGHBORHOOD CHARACTER: The site is adjacent to Miller Ranch low density residential neighborhood and an undeveloped office park.

SUITABILITY OF SITE FOR USES UNDER CURRENT ZONING: The G-1 District permits agricultural uses, single-family homes, mobile homes, oil and gas drilling, home occupations, public utility uses, and other activities. The range of G-1 uses is inconsistent with the proposed R-2 District and the future Lee Mill Heights subdivision, which the applicant/owner has requested.

COMPATIBILITY OF PROPOSED DISTRICT WITH NEARBY PROPERTIES AND EXTENT TO WHICH IT MAY HAVE DETRIMENTAL AFFECTS: The site is consistent with the low density character of existing Miller Ranch residential development to the east. No adverse impact on nearby properties is expected with development that is consistent with the neighborhood and conforms to the Comprehensive Plan.

CONFORMANCE WITH COMPREHENSIVE PLAN:

Land Use Policies

The Future Land Use Map of the Manhattan Urban Area Comprehensive Plan designates the 79-acre tract as Residential Low/Medium density (RLM) (*Southwest Planning Area Future land Use Map attached*). Appropriate density range for development in the RLM designation is one-dwelling unit up to 11-dwelling units per net acre. The RLM category is intended to incorporate a range of housing types, from single-family and two-family to town homes.

Attachment No. 4

Page 4-6, Policy RLM 2: Appropriate Density Range

“Densities in the Residential Low/Medium designation range from less than one dwelling unit/acre up to 11 dwelling units per net acre.”

The site may consist of two-family dwellings, single-family attached, or a Planned Unit Development (PUD), similar to the Townhomes at Miller Ranch PUD, which is located to the immediate east. The proposed R-2 District would allow density range of less than one (1) dwelling unit per net acre up to eleven (11) dwelling units per net acre, which is consistent with the Comprehensive Plan.

Mobility and Transportation Options

Page 8-1, Goal #1 is to “Ensure that new development patterns facilitate safety, connectivity, and mobility for all modes of transportation in established and developing areas of the community”.

Page 8-2, Policy MTO 3: Establish Interconnected Neighborhood Street and Sidewalk Patterns

“Neighborhood streets and sidewalks in both new and existing areas shall form an interconnected network, including vehicular, bicycle, and pedestrian routes within and between neighborhoods, in order to connect neighborhoods together and with other parts of the community and region. In particular, direct walkway and bicycle routes to schools and parks, employment and service centers, and other community facilities should be provided”.

The Bicycle Master Plan for KSU and City of Manhattan provides policy guidance for bike facilities and routes. Miller Parkway is designated as a bike route in the Bicycle Plan. Street paving widths in the Lee Mill Heights Addition, as shown on the proposed Preliminary Plat, will provide for bike route lanes on both sides of Miller Parkway consistent with the recommendations of the Bicycle Master Plan.

Page 8-2, Policy MTO 4: Accessible, Pedestrian-friendly Development

“Future commercial and residential projects in the Urban Service Area Boundary shall be planned to ensure that sites and land uses are readily accessible to all modes—pedestrians, bicycles, autos, and future public transit.”

Attachment No. 4

The proposed Preliminary Plat provides for streets, sidewalks and bike routes, which connect to adjoining neighborhoods and to Warner Park. The Parks and Recreation Advisory Board met with the applicant (*attachment*) on October 4, 2004, and reviewed and unanimously approved the pedestrian circulation plan for access to Warner Park.

Miller Ranch

Miller Ranch is identified as a Special Planning Area in which development should be focused around open space areas, provision for bike and pedestrian traffic to connect to Warner Park and housing and airspace issues. With respect to the annexation, relevant policy issues in Miller Ranch include: providing for a mixture of housing types and densities, preservation of drainage ways, future street extensions to the north, and airspace regulations.

The rezoning and proposed Preliminary Plat will implement the policy recommendations of the Miller Ranch area.

Page 13-5, Policy MR 1: Mixture of Housing Types

“Residential neighborhoods within Miller ranch should include a mix of housing types and densities.”

The rezoning will provide for a range of at least two housing types.

Page 13-5, Policy MR 2: Preservation of Drainage Areas

“Drainage ways, wetlands, and other sensitive natural features shall be preserved and incorporated into the overall design of neighborhoods as buffers and open space amenities.”

The proposed Preliminary Plat preserves drainage ways and ravines in conservation and drainage easements.

Page 13-5, Policy MR 3: Future ROW Preservation

“Right of way for the future extension of Miller Parkway and Wreath Avenue shall be identified on development proposals and preserved, through platting and other tools.”

An extension of Wreath Avenue is shown on the Preliminary Plat.

Page 13-5, Policy MR 7: Airport Airspace Regulations

“Development shall be consistent with established airspace regulations for the Manhattan Regional Airport and Airport Master Plan.”

The proposed site is within the Conical Zone of the Manhattan Regional Airport (*Environmental Values and Constraints map attached*). The proposed Preliminary Plat notes the need for review of construction plans, prior to issuance of a building permit. The AO District will be added as an overlay district to the Lee Mill Heights Addition.

The rezoning conforms to the Comprehensive Plan.

ZONING HISTORY AND LENGTH OF TIME VACANT AS ZONED: The site has remained undeveloped to date and zoned County G-1 District.

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 R-2 District (*R-2 District regulations attached*) is designed to provide a dwelling zone at a density no greater than two (2) attached dwelling units per 7,500 square feet. The site contains 3.6-acres and is sufficient in area to be consistent with the requirements of the R-2 District. The proposed preliminary Plat indicates the site may be rezoned to Planned Unit Development at a later date for two-family townhome development similar to the Townhomes at Miller Ranch PUD, which is located to the east of the site.

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.”

The site is within the Conical Zone, which is, in general terms, established as an airspace that extends outward and upward in relationship to the Airport and is an approach zone height limitation on the underlying land. Future uses (structures and trees, existing and proposed) in the AO District may be required to obtain an Airport Compatible Use Permit, unless circumstances indicate that the structure or tree has less than 75 vertical feet of height above the ground and does not extend above the height limits prescribed for the Conical Zone (*AO District regulations attached*).

Attachment No. 4

A letter from HNTB (*attached*) references a review of elevations depicted on the Preliminary Plat of the proposed Lee Mill Heights Preliminary Plat. Based on the plat elevations, roof elevations may encroach into the conical surface. HNTB recommends that actual roof elevations within the site be determined.

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 gain to the public that denial would accomplish. The AO District requires that future uses be reviewed in order to protect airspace. The proposed Preliminary Plat conforms to the Manhattan Urban Area Subdivision Regulations. It may be a hardship to the applicant if the rezoning is denied.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES: Adequate street, sanitary sewer and water services are available to serve the 3.6-acre tract of land.

OTHER APPLICABLE FACTORS: None.

STAFF COMMENTS: City Administration recommends approval of the rezoning of a 3.6-acre tract of land in the proposed Lee Mill Heights Addition, from County G-1, General Agricultural District, to R-2, Two-Family Residential District, and AO, Airport Overlay District.

ALTERNATIVES:

1. Recommend approval of the rezoning of a 3.6-acre tract of land in the proposed Lee Mill Heights Addition, from County G-1, General Agricultural District, to R-2, Two-Family Residential District, and AO, Airport Overlay District, stating the basis for such recommendation.
2. Recommend denial of the proposed rezoning, stating the specific reasons for denial.
3. Table the proposed rezoning to a specific date, for specifically stated reasons.

POSSIBLE MOTION:

The Manhattan Urban Area Planning Board recommends approval of the rezoning of 3.6-acre tract of land in the proposed Lee Mill Heights Addition, from County G-1, General Agricultural District, to R-2, Single-Family Residential District, and AO, Airport Overlay District, based on the findings in the Staff Report.

PREPARED BY: Steve Zilkie, AICP, Senior Planner

DATE: October 11, 2004

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INTER-OFFICE MEMORANDUM

DATE: October 26, 2004

TO: Manhattan Urban Area Planning Board

FROM: Steve Zilkie, AICP, Senior Planner, and Katie Jackson, Assistant City Attorney

RE: Amendments of the Manhattan Zoning Regulations to Address Telecom Structures (Towers, Stealth Monopoles and Telecommunication Facilities)

BACKGROUND

Attached are the proposed amendments to the Manhattan Zoning Regulations regulating Telecom Structures, which is the infrastructure, associated with cellular phone and other personal wireless communications services. The proposed regulations identify and address three categories of telecom structures, consisting of towers, stealth monopoles, and telecommunication facilities. Towers, more commonly referred to as cell towers, are the taller structures with antenna arrays on the upper parts of the tower. These towers are typically 80-150 feet tall. Stealth towers are a proposed shorter monopole structure, 50-foot or less in height, which will have to incorporate design techniques that help to camouflage the structure, such as, but not limited to, a tree, light pole, or flag pole. Telecommunication Facilities are the antenna, cables, wires, sheds and other necessary support equipment, which aid in the transmission of the cellular communications.

The proposed amendments will add a new Article XII, Telecom Structures, as well as modifications to existing Article III General Provisions, Article VIII Nonconformities, Article IX Planned Unit Development Districts, Article XIV Administration, and Article XVI Construction and Definitions. The latter articles are proposed to be amended for cross-reference purposes, in order to properly administer new Article XII. The applicant is the City of Manhattan.

Existing Towers, Antennae and Regulations

There are three (3) existing cell towers in the City of Manhattan: a 150-foot monopole tower at the north end of the Manhattan Country Club Golf Course in a wooded area; a 150-foot monopole tower generally located several hundred feet west of N. Manhattan Avenue and the American Institute of Baking; and, a 150-foot monopole tower, under construction at 1125 Westport Drive, at the rear of the property. *(Note: There is a fourth 120-foot monopole tower located just north of the City's CICO Water Tank west of the Candlewood and Western Hills Additions on a small tract that is not annexed. This tower is included due its proximity to the City. The Riley County Board of Zoning Appeals approved the monopole in 1995.)* All of the towers allow for co-location of more than one cell phone provider, with telecommunication facilities (sheds, wires etc.) located at the base of the towers.

Antennas and support equipment have also been placed on the roof of the Ramada Inn. Antennas are on the Zoo, Miller Ranch and Bluemont Water Towers, with telecommunication facilities (sheds, wires etc.) located at the base of the towers.

In addition, there is a 45-foot cellular flagpole located at the Phi Delta Theta fraternity house at 1545 Denison Avenue, and a 65-foot cellular light pole at the Sigma Phi Epsilon fraternity house at 1015 N. Sunset Avenue, which was approved by the Board of Zoning Appeals (BZA) on October 13, 2004. Both the flag and light pole towers have screened telecommunication facilities, which provide power and other support to the tower.

The current Manhattan Zoning Regulations do not specifically address telecom structures. To date, towers and telecommunication facilities have been considered an "above ground public utility that is not owned or operated by a municipality", which is a Conditional Use in the majority of zoning districts. A Conditional Use requires notice to surrounding property owners, placement of a public hearing sign on the property as notification to the general public, a public hearing, findings of fact, and approval by the BZA, prior to construction. The BZA's decisions are final and may be appealed to District Court. All of the 150-foot cell towers, and two shorter monopoles, were considered and approved by the BZA.

Antenna and related telecommunication facilities on the Ramada Inn required an amendment of the ordinance, which controls the PUD. A public hearing was conducted to add the use to the PUD, which the Planning Board recommended approval of and was approved by the City Commission. Based on the approved ordinance, any new antenna on the Ramada Inn PUD, are subject to review as a Final Development Plan, and approval or denial by the Planning Board.

Telecommunications Act

The Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.*, was amended by the Telecommunications Act of 1996. With the 1996 amendment, the federal government adopted the first comprehensive regulation of personal wireless telecommunication services, such as cell phone services. The Act imposes certain requirements on cities regarding the location of telecom structures and equipment.

The Act specifically states that no city may “prohibit or have the effect of prohibiting the ability of any entity” to provide telecommunications services. This rule under the Act has two applications to cities. First, the City cannot ban telecom structures and related equipment, because such structures and equipment are *essential* for a cellular company to provide its service.

Second, the City cannot impose regulations on telecom structures and related equipment that make it impossible for them to provide adequate service to customers. For example, if the City were to impose separation requirements on telecom structures, such as one mile between structures, the separation requirements could have “the effect of prohibiting” telecommunications services, in violation of the Act. Telecom structures are specifically located on sites to accommodate a service need – either to provide coverage or to increase capacity. Separation requirements could result in arbitrary location of telecom structures on sites that do not meet these service needs, which indirectly prohibit the ability of an entity to provide telecom services. Furthermore, given the land area of Manhattan, it is conceivable that once several telecom structures were in place, the separation requirements would make it so that there are no remaining sites for telecom structures. Again, separation requirements would be unlawfully, albeit indirectly, banning the provision of telecom services.

The City may not regulate telecom structures on the basis of the environmental effects of radio frequency emissions, so long as the facilities comply with the FCC regulations concerning such emissions.

However, the Act gives cities control over the aesthetics and site layout requirements of telecom structures. For example, it is permissible to set height limits for all telecom structures; to impose setback and lot size requirements; to require co-location; to require the location of antenna on existing telecom structures or antenna support structures; to regulate the type of tower; and to require stealth design. Any such regulation is permissible, so long as it does not have “the effect of prohibiting services” based on the land area and characteristics of the city. Furthermore, although a city cannot completely ban telecom structures, it can ban such structures from certain areas, but only if the ban does not have “the effect of prohibiting services.”

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The Act also imposes procedural requirements on cities, such as the requirement that if the City denies an application, the denial must be “in writing and supported by substantial evidence contained in a written record.” Furthermore, the City must act upon applications within a “reasonable period of time.” These procedural requirements, along with the permitted regulations discussed above, have been incorporated into the proposed ordinance.

Telecommunications

As described above, the Telecommunications Act protects personal wireless telecommunications services, which are defined in proposed Article XII as “Any personal wireless service as defined in the act, including FCC-licensed commercial wireless telecommunications services such as cellular, personal communications services, specialized mobile radio, enhanced specialized mobile radio, paging and unlicensed wireless services and common carrier wireless exchange access services.”

These services are a technology-based industry, which are advertised in all forms of media. The demand for services is increasing on a yearly basis. For example, at the October 13, 2004, BZA meeting, the consultant representing the provider T-Mobile, indicated that average daily calls for the provider in Manhattan were 25,372 in 2002, 38,444 in 2003, 68,360 in 2004, and are projected to be 87,046 in September 2005.

Personal wireless service allows for anytime connections from any location. To be functional, telecom structures, the fixed infrastructure, are needed by providers to provide their customers with phone service. It is difficult to second-guess demand in a technology driven market and determine locations for telecom structures.

Because of Manhattan’s topography, wireless providers have typically located their infrastructure on hilltops to provide the necessary coverage of the community. In an effort to reduce the overall number of cellular towers being constructed in town, City Administration has over the past few years promoted co-location of antennas on existing City water towers. Most of the existing water towers now have antennas on them. However, due to the rapid increase in demand by residents and visitors who utilize wireless communication devices, it has become necessary to develop additional physical infrastructure within the community to address the need for increased capacity, particularly in the central portions of the community where large numbers of people congregate, such as in and around the K-State Campus and within commercial areas. To increase capacity on the finite number of available cellular frequencies requires the construction of additional antennae between the existing towers, so as to break the “cells” into smaller areas.

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The proposed zoning amendments are intended to provide alternatives and opportunities, which balance market demand and the mandate of the Telecommunications Act to allow wireless services, with legitimate zoning interests to protect the public health, safety, and general welfare.

Philosophy Behind Proposed Regulations

City Administration is concerned about the impact of additional large wireless telecommunication towers within the community. The proposed regulations have been designed to encourage providers to use less intrusive alternatives, to co-locate antennae and associated equipment on, or within, existing buildings, water towers or other structures including existing cellular towers, by making such co-location a permitted use in most commercial and industrial areas. The use of stealth design techniques is also promoted to either hide or camouflage telecommunication infrastructure, so that it is either invisible or less noticeable. If a tower is unavoidable, shorter stealth towers are encouraged as permitted uses in commercial and industrial areas, however all types of towers remain a Conditional Use in any residential district. Finally, the large towers remain a Conditional Use in all areas of the community. The regulations also promote public safety by requiring certification by the manufacturer that a tower is designed to collapse on itself and not fall over in the event of a failure.

Proposed Amendments To The Manhattan Zoning Regulations

Proposed Article XII will provide a comprehensive approach to regulate cellular towers, stealth monopoles, and telecommunication facilities. The following provisions are contained in the proposed article: Purpose and Objectives; Definitions; Applicability; Zoning Requirements; Pre-Application Conference; Administrative Permits, Conditional use permits, and PUD Amendments; Approval or denial; Pre-existing Structures; Lot Size Requirements; Bulk Regulations; Structural Requirements; Use Limitations; Signs; Stealth Design Principles for Telecom Structures; Exceptions; Modification and Replacement; Building Permits, Inspections and Certifications; Maintenance; and, Abandonment.

In addition, the amendments propose modifications to the Table of Contents and the following Articles: Article III, General Provisions; Article VIII, Nonconformities; Article IX, Planned Unit Development Districts; Article XIV, Administration; and, Article XVI, Construction and Definitions.

Overview of Proposed Article XII, Telecom Structures

Policy and Purposes. This section sets out the objectives of Article XII regarding placement, construction and modification of telecom structures to protect the public health, safety and welfare.

Definitions. defines the terms, words and phrases used in Article XII.

Applicability. Indicates that telecom structures and antenna support structures are subject to Article XII, except that the following are exempt from Article XII: amateur radio operators, residential antennas, utility poles, and broadcast systems and facilities.

Zoning Requirements. Towers will be a Conditional Use in all residential and non-residential districts, except PUD's. Telecom structures, which are proposed in PUD's are subject to the requirements of Article IX, Planned Unit Development Districts, and may require an amendment of the ordinance, which created the PUD. Telecommunication facilities are a permitted use on municipal facilities. Stealth monopoles are a permitted use in non-residential districts, except if the stealth monopole is located within 200-feet of a residential district, or within 500-feet of a designated historic property or district in which case a stealth monopole is a Conditional Use. Stealth monopoles will be a Conditional Use in all residential districts. In addition, an application for an administrative permit must be made for all telecom structures, and must be approved, by the City.

Towers. Towers may be self-supporting lattice, guyed, or monopole structures at a maximum height of 150-feet, not including a lightning rod, which may be up to 20-feet in height. Monopole towers are preferred over self-supporting lattice or guyed towers. Towers must be setback from property lines a distance equal to the height of the tower. Towers must be designed to collapse on themselves to minimize impact on surrounding properties.

Alternatives To Towers: Stealth Monopoles and Co-locating Antenna on Antenna Support Structures. Total height of a stealth monopoles shall not exceed 50-feet in height, measured from the ground. Antenna located on structures other than a monopole will have varying maximum heights, dependent upon the height of the structure (see Sec. 12-110(A)(4) (a-d).

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Pre-Application Conference and Administrative Permits, Conditional Use Permits and PUD Amendments. Prior to submitting any application for any permit, Exception, Variance, Conditional use, or PUD amendment, the applicant must have a pre-application conference with the City to review the applicant's plans and discuss procedures, regulations and submittal requirements.

An administrative permit is a review and approval process by the Zoning Administrator, supported by documentation provided by the applicant. No telecom structures may be constructed until an administrative permit and any other necessary Conditional Use Permit, PUD amendment, and building permit is approved. Administrative permits will require an extensive amount of site plan drawings, photographic simulations, written document statements, and affidavits from the applicant and their engineer, (see Sec. 12-106 for a complete listing and explanation.). In addition, applications for a Conditional Use Permit must provide additional information. PUD amendments must include the information required for a PUD plus that required for an Administrative Permit.

Structural Requirements. Towers and stealth monopoles must be designed to collapse on themselves and must allow for co-location of other providers. The number of providers that must be accommodated is dependent upon the height of the structure.

Use Limitations. The City, BZA and/or Planning Board and City Commission can require the use of stealth design principles depending upon the character of the proposed location and type of tower or telecommunication facility proposed. Additional use limitations address lighting, fencing screening, landscaping and access.

Stealth Design Principles for Telecom Structures. Telecom Structures that are of a stealth design are those which are designed to blend with the character and environment of the area in which they will be located. Design principles are proposed (see proposed Section 12-114 A-H) to minimize the impact of any stealth telecom structure in order to preserve the pre-existing character of the area. Flagpoles, clock towers, bell towers, steeples, or other appropriate structures may be utilized to ensure a stealth design.

Conditional Uses/Exceptions. As described above, towers, stealth towers and telecommunications equipment will be a Conditional Use in all residential districts, except residential PUD's. A Conditional Use will require additional information, which must be provided by the applicant in the form of technical evidence and affidavits (see proposed Section 12-106 (C)). The BZA will be required to consider additional standards (see proposed Section 12-107 (B)) along with the normal standards for a Conditional Use set out in Article XIV, Administration, PART 7, Conditional Uses.

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Exceptions related to Telecom Structures regarding lot size, bulk regulations, and use limitation, may be granted by the BZA, which shall consider the standards set out in Article XIV, PART 6, as well as proposed standards specific to Telecom Structures (see proposed Section 12-115 (2) (a-b)).

Pre-existing Structures, Modification and Replacement. These are Telecom Structures that existed prior to the effective date of proposed Article XII, either within or outside the City and are annexed at a later date. Pre-existing Structures will be regulated by proposed Section 12-116, Modifications and Replacements, which will allow these structures to be replaced if damaged or destroyed, provided the replacement is the same as the original in type, location, height, and character, and the replacement complies with the requirements of Article XII. Any “modification”, a defined term meaning “Any physical change to any element of a telecom structure or pre-existing structure that involves a Bulk Regulation, Section 12-110, or a Use Limitation, Section 12-112”, of a pre-existing structure will require the pre-existing structure to conform with Article XII. The term modification does not include the circumstance in which a pre-existing structure is modified to facilitate co-location or to increase the number of providers, provided that the height of the pre-existing structure is not increased. This will allow the providers network to be maintained, unless they choose to modify the pre-existing structure.

Additional provisions within proposed Article XII address signs, building permits, inspection and certifications, maintenance and abandonment.

Proposed Amendments To Other Articles of the Zoning Regulations (proposed text in bold)

Table of Contents. New Article XII, Telecom Structures, will be added to the Table of Contents.

Article III, General Provisions. Sections 3-102, 3-406 and 3-410 will be modified to indicate that the infrastructure associated with Telecom Structures are not exempt from general structural exemptions for utility equipment, and height, lot and bulk regulations. In addition, Section 3-401 (A), Number of Structures on a Zoning Lot, will be modified to read “Not more than one principal structure shall be located on a residential zoning lot, except as may be permitted by Article IX, of these regulations relating to Planned Unit Development Districts, or by Article XII relating to Telecom Structures.

Article VIII, Nonconformities. A new paragraph (D) will be added to Section 8-101, Nonconformities: (D) Notwithstanding sections (A) and (B) above, this Article shall not apply to Telecom Structures, as defined by Article XII. Nonconforming Telecom Structures shall comply with the provisions of Article XII, Section 12-116.

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The effect of this amendment is that nonconforming telecom structures will be allowed to be modified and/or replaced as per Article XII.

Article IX, Planned Unit Development Districts. A new paragraph (11) will be added to Section 9-108. Amendments and Modifications. (11) Construction of telecom structures, as defined by Article XII, except when the ordinance(s) that establishes and controls the PUD expressly permits telecom structures in its text, rather than by reference to another zoning district in these regulations.

Article XIV, Administration. Add a new paragraph (H) to Section 14-604. Authorized Exceptions. The Board of Zoning Appeals is hereby authorized to grant exceptions from the following requirements of these regulations: (H) Any of the following requirements in Article XII Telecom Structures: Section 12-109, Lot Size Requirements; Section 12-110 Bulk Regulations; Section 12-111 (C) pertaining to co-location; and Section 12-112 Use Limitations; add a new paragraph (E) to Section 14-605, Standards for Exceptions. (E) Any other standards for exceptions that are specifically identified in these regulations; and add new paragraph (G) to Section 14-704, Standards for Conditional Use Permits. (G) Any other standards for conditional uses that are specifically identified in these regulations.

Article XVI, Construction and Definitions. A new definition is added to PART 2. DEFINITIONS Section 16-201, PERSONAL WIRELESS TELECOMMUNICATIONS SERVICES: Any personal wireless service (as defined in the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.*, as amended, including the amendment known as the Telecommunications Act of 1996, and all future amendments), including FCC-licensed commercial wireless telecommunications services such as cellular, personal communications services, specialized mobile radio, enhanced specialized mobile radio, paging and unlicensed wireless services and common carrier wireless exchange access services. (see Article XII).

AMENDMENTS TO THE TEXT OF THE ZONING REGULATIONS

When a proposed amendment results in a change to the text of the Zoning Regulations, the report from the Planning Staff shall contain a statement as to the nature and effect of the proposed amendment, and determinations as to the following:

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WHETHER SUCH CHANGE IS CONSISTENT WITH THE INTENT AND PURPOSE OF THE ZONING REGULATIONS

The intent and purpose of the Manhattan Zoning Regulations is to protect and promote the public health, safety, morals and general welfare; regulate the use of land and buildings within zoning districts to assure compatibility; and to protect property values.

The proposed amendments are intended to regulate the location of telecom structures by providing a comprehensive zoning process. The proposed amendments offer and promote alternatives in terms of process and structure, to enable the telecommunications industry to provide personal wireless services in a reasonably efficient manner, while balancing the need to protect the public health, safety and welfare and the interests of the community. The proposed amendments provide for written findings for decisions by the City, which explain the reasons for approval or denial of a telecom structure. The proposed zoning amendments are consistent with the intent and purpose of the Manhattan Zoning Regulations.

AREAS WHICH ARE MOST LIKELY TO BE DIRECTLY AFFECTED BY SUCH CHANGE AND IN WHAT WAY THEY WILL BE AFFECTED

All areas of the City are affected by the proposed amendments. All telecom structures are subject to a pre-application conference and an administrative permit.

Towers will be a Conditional Use in all districts, except PUD's. Telecom structures, which are proposed in PUD's are subject to the requirements of Article IX, Planned Unit Development Districts and may require an amendment of the PUD, unless telecom structures are already specifically permitted in the PUD. Telecommunication facilities are a permitted use on municipal facilities, such as city water towers. Stealth monopoles are a permitted use in non-residential districts, except if the stealth monopole is located within 200-feet of a residential district, or within 500-feet of a designated historic property or district. Stealth monopoles will be a Conditional Use in all residential districts.

The effect of the regulations is to protect the interests of the community, while facilitating less intrusive infrastructure alternatives so that telecom providers can be able to serve their customers.

WHETHER THE PROPOSED AMENDMENT IS MADE NECESSARY BECAUSE OF CHANGED OR CHANGING CONDITIONS IN THE AREAS AND ZONING DISTRICTS AFFECTED, OR IN THE CITY PLANNING AREA, GENERALLY, AND IF SO, THE NATURE OF SUCH CHANGED OR CHANGING CONDITIONS

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The wireless cellular industry is a presence in almost all communities. The growing demand for personal wireless telecommunications service includes the need to accommodate additional infrastructure to support cellular phone and other wireless services and the need for increased capacity. As noted above, all zoning districts, residential and non-residential, as well as planned unit developments are affected. The changing conditions are a rapidly growing wireless industry of providers that serve a rapidly increasing number of consumers. The construction of towers and alternative telecommunication facilities, such as antennae on structures other than towers, or utilizing less intrusive stealth towers, requires a review process, which balances the needs of the industry to provide its service with the need to protect the public health, safety and welfare and the interests of the community.

WHETHER SUCH CHANGE IS CONSISTENT WITH THE INTENT AND PURPOSE OF THE POLICY AND GOALS AS OUTLINED IN THE ADOPTED COMPREHENSIVE PLAN OF THE CITY

The Zoning Regulations implement the Comprehensive Plan, which does not specifically address telecom structures; however, there are several policy statements in the Plan, which are generally applicable.

Under “Land Use and Growth Management” Goal 1 states, “Promote land use and development practices that consider current and future economic, social and environmental impacts . . .”

Under “Regional Coordination” one of the Guiding Principles states, “Coordinate land use goals, objectives and policies of the City of Manhattan and other governmental agencies within the region.”

Under “Housing and Neighborhoods” one of the Guiding Principles states, “Identify and foster initiatives to maintain or enhance the quality of life in existing neighborhoods throughout the community.”

Under “Community Design” Goal 1 states, “Guide the appearance, scale and location of urban development to enhance community character . . .”

The proposed amendments will provide a comprehensive process for the review, consideration and approval, or disapproval, of telecom structures, both proposed and pre-existing, in a consistent manner. Options in the form of antenna and stealth designed monopoles, as an alternative to large towers, are set out in the proposed amendments. The proposed regulations attempt to strike a balance between the need to protect the public

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health, safety and general welfare, and accommodate the wireless industry. In general, the proposed amendments are consistent with Goals of the Comprehensive Plan.

ALTERNATIVES

It appears the Manhattan Urban Area Planning Board has the following alternatives concerning the issue at hand. The Board may:

1. Recommend approval of the proposed amendments to the City Commission.
2. Recommend denial of the proposed amendments to the City Commission.
3. Modify the proposed amendments and forward the modifications, along with an explanation, to the City Commission.
4. Table the public hearing to a specific date, and provide further direction to City Administration.

RECOMMENDATION

City Administration recommends approval of the amendments to the Manhattan Zoning Regulations concerning cellular telecommunication towers and personal wireless telecommunication facilities, as proposed. The amendments involve modifications to the Table of Contents and the following Articles: Article III, General Provisions; Article VIII, Nonconformities; Article IX, Planned Unit Development Districts; Article XIV, Administration; and, Article XVI, Construction and Definitions. The amendments also include using Reserved Article XII to establish a new Article XII, Telecom Structures.

POSSIBLE MOTION

The Manhattan Urban Area Planning Board recommends approval of the proposed amendments to the Manhattan Zoning Regulations concerning Telecom Structures, including modifications to the Table of Contents and Article III, General Provisions; Article VIII, Nonconformities; Article IX, Planned Unit Development Districts; Article XIV, Administration; and, Article XVI, Construction and Definitions; and establishing a new Article XII, Telecom Structures, based on the findings in the Staff Memorandum.

04120}MUAPB}TelecomAmendmentsRev