

MINUTES
SPECIAL CITY COMMISSION MEETING
TUESDAY, JANUARY 23, 2007
7:00 P.M.

The Special Meeting of the City Commission was held at 7:00 p.m. in the City Commission Room. Mayor Bruce Snead and Commissioners Tom Phillips, Mark Hatesohl, Jayme Morris-Hardeman, and Ed Klimek were present. Also present were the City Manager Ron R. Fehr, Deputy City Manager Diane Stoddard, Assistant City Manager Jason Hilgers, City Attorney Bill Frost, City Clerk Gary S. Fees, Youth in Government Representative Felix Wang, 7 staff, and approximately 9 interested citizens.

PLEDGE OF ALLEGIANCE

Mayor Snead led the Commission in the Pledge of Allegiance.

COMMISSIONER COMMENTS

Mayor Snead recognized Felix Wang, Youth in Government representative.

CONSENT AGENDA

(* denotes those items discussed)

MINUTES

The Commission approved the minutes of the Special City Commission Meetings held Tuesday, January 9, 2007, and Tuesday, January 16, 2007.

CLAIMS REGISTER NOS. 2576 and 2577

The Commission approved Claims Register Nos. 2576 and 2577 authorizing and approving the payment of claims from December 27, 2006, to January 16, 2007, in the amount of \$482,753.83 and \$1,691,822.64 respectively.

LICENSE

The Commission approved the application for a Tree Maintenance license for calendar year 2007 for Allscapes, 608 Pottawatomie Avenue.

CONSENT AGENDA (CONTINUED)

FINAL PLAT – GRAND MERE VANESTA, UNIT 3

The Commission accepted the easements and rights-of-way, as shown on the Final Plat of Grand Mere Vanesta, Unit 3, generally located north of the existing Vanesta Drive and Churchill Street intersection, based on conformance with the Manhattan Urban Area Subdivision Regulations.

ORDINANCE NO. 6602 – REPEAL – SALE OF FIREARMS

The Commission approved Ordinance No. 6602 repealing Article II of Chapter 13.5 of the Code of Ordinances relating to the sale of firearms.

ORDINANCE NO. 6603 – AMEND – K-MART PUD

The Commission overrode the Planning Board's recommendation and approved Ordinance No. 6603 amending the Final Development Plan of the K-Mart Commercial Planned Unit Development, located at the K-Mart Shopping Center, 401 East Poyntz Avenue, and Ordinance Nos. 4635 and 6359, as proposed, based on the findings in the Staff Report, with the eleven (11) conditions of approval, as listed in the Staff Report (*See Attachment No. 1*), as recommended by the Manhattan Urban Area Planning Board, and with the new Condition No. 12, as recommended by City Administration.

* **FIRST READING – NO PARKING – DENISON AVENUE (ANDERSON AVENUE TO KIMBALL AVENUE)**

Steve Hampton, Interim City Engineer, and Rob Ott, Acting Director of Public Works, provided additional information on the item and answered questions from the Commission.

The Commission approved first reading of an ordinance establishing a "No Parking" zone along both sides of Denison Avenue from Anderson Avenue to Kimball Avenue.

SET PUBLIC HEARING DATE – SPECIAL ASSESSMENTS – GENERAL OBLIGATION BONDS 2007-A

The Commission set February 6, 2007, as the date to hold the public hearing levying special assessments against the benefiting property in the following twenty-eight (28) projects, which have been completed: *Abbott Acres Addition – Water (WA0604); Brookfield Addition, Unit 8 – Sanitary Sewer (SS0604), Street (ST0610), and Water (WA0607); Block 1 of Four Winds Village Addition – Sanitary Sewer (SS0510), Street (ST0516), and Water (WA0510); Grand Mere Vanesta, Unit 1 – Sanitary Sewer, Street, and Water (SP0505); Hackberry Addition, Unit 2 – Street (ST0518); Highland Meadows Addition, Unit 2 –*

CONSENT AGENDA (CONTINUED)

SET PUBLIC HEARING DATE – SPECIAL ASSESSMENTS – GENERAL OBLIGATION BONDS 2007-A (CONTINUED)

Sanitary Sewer (SS0507), Street (ST0513), and Water (WA0507); Oak Hollow Addition, Unit 11 – Sanitary Sewer (SS0502), Street (ST0506), and Water (WA0502); Platt Addition – Sanitary Sewer (SS0511), Street (ST0517), and Water (WA0511); Prairie Lakes Addition, Unit 2 – Sanitary Sewer (SS0509), Street (ST0515), and Water (WA0509); Stone Pointe Addition, Unit 1 – Water (WA0608); Western Hills Addition, Unit 13 – Sanitary Sewer (SS0603), Water (WA0603), and Stormwater (SM0601); and Woodland Hills, Unit 5, Phase 2/Unit 6, Phase 1 – Sanitary Sewer (SS0516), Street (ST0523), and Water (WA0517).

RESOLUTION NO. 012307-B – PETITION – STONE POINTE ADDITION, UNIT TWO – STORM SEWER IMPROVEMENTS (SM0606)

The Commission found the petition sufficient and approved Resolution No. 012307-B finding the stormwater (SM0606) improvements for Stone Pointe Addition, Unit Two, advisable and authorizing construction.

RESOLUTION NO. 012307-C – PETITION – STONE POINTE ADDITION, UNIT TWO – SANITARY SEWER IMPROVEMENTS (SS0624)

The Commission found the petition sufficient and approved Resolution No. 012307-C finding the sanitary sewer (SS0624) improvements for Stone Pointe Addition, Unit Two, advisable and authorizing construction.

RESOLUTION NO. 012307-D – PETITION – STONE POINTE ADDITION, UNIT TWO - STREET IMPROVEMENTS (ST0630)

The Commission found the petition sufficient and approved Resolution No. 012307-D finding the street (ST0630) improvements for Stone Pointe Addition, Unit Two, advisable and authorizing construction.

RESOLUTION NO. 012307-E – PETITION – STONE POINTE ADDITION, UNIT TWO - WATER IMPROVEMENTS (WA0628)

The Commission found the petition sufficient and approved Resolution No. 012307-E finding the water (WA0628) improvements for Stone Pointe Addition, Unit Two, advisable and authorizing construction.

CONSENT AGENDA (CONTINUED)

AGREEMENT – ENGINEERING SERVICES – STONE POINTE ADDITION, UNIT TWO, IMPROVEMENTS (SM0606, SS0624, ST0630, WA0628)

The Commission authorized the Mayor and City Clerk to execute an agreement with Schwab-Eaton, Inc., P.A., of Manhattan, Kansas, to perform engineering services for Stone Pointe Addition, Unit Two, Improvements (SM0606, SS0624, ST0630, WA0628).

RESOLUTION NO. 012307-F – EUREKA ADDITION – STREET IMPROVEMENTS (ST0613)

The Commission found the revised petition sufficient and approved Resolution No. 012307-F finding the project advisable and authorizing construction and rescinding Resolution No. 091906-B for Eureka Addition Street Improvements (ST0613).

RESOLUTION NO. 012307-G – EUREKA ADDITION – WATER IMPROVEMENTS (WA0610)

The Commission found the revised petition sufficient and approved Resolution No. 012307-G finding the project advisable and authorizing construction and rescinding Resolution No. 091906-D for Eureka Addition Water Improvements (WA0610).

AGREEMENT – FUTURE SALE OF PROPERTY - EUREKA ADDITION

The Commission authorized the Mayor and City Clerk to enter into an agreement with SSF Development, of Manhattan, Kansas, regarding the future sale of property within the Eureka Addition.

AWARD – STATE VEHICLE BIDS

The Commission authorized City Administration to purchase two (2) compact pickup trucks and three (3) one-half ton pickup trucks utilizing state vehicles bids.

AWARD – RUBBER TIRE FRONT-END LOADER

The Commission authorized City Administration to purchase in the amount of \$117,691.00 a Model 426HT JCB rubber tire front-end loader from Sellers Tractor Company, of Salina, Kansas.

EMPLOYMENT AGREEMENT – CITY MANAGER

The Commission authorized the Mayor and City Clerk to execute the modified Employment Agreement between the City of Manhattan and City Manager Ronald R. Fehr retroactive to the first pay period of 2007.

CONSENT AGENDA (*CONTINUED*)

* AGREEMENT – OPERATION OF CONCESSIONS

Bernie Hayden, Director of Finance, provided information on the item and answered questions from the Commission.

Ron Fehr, City Manager, provided additional information on the item.

Dee R. Ross, 2304 Brockman, informed the Commission that it is a futile effort to change the Commissioners concept of thinking. He asked for additional information and commented on the Parks and Recreation theft of funds and misuse of City resources, and stated that someone is making a huge profit at taxpayers' expense.

Mayor Snead informed Mr. Ross that he did not agree with some of the comments made.

The Commission removed item from the table and approved the concession operating agreement between the City of Manhattan and Streeter Enterprises, LLC, for calendar year 2007.

BOARD APPOINTMENTS

The Commission approved appointments by Mayor Snead to various board and committees of the City.

Board of Zoning Appeals

Appointment of La Barbara J. Wigfall, 2602 Georgetown Place, to a three-year term. Ms. Wigfall's term begins immediately and will expire on December 31, 2009.

Downtown Business Improvement District

Re-appointment of Bruce Thierolf, 3163 Ella Lane, to a two-year term. Mr. Thierolf's term begins immediately and will expire on December 31, 2008.

Riley County/Manhattan Health Board

Re-appointment of Tim Bagby, 1409 Westwind Drive, to a two-year Citizen-At-Large term. Mr. Bagby's term begins February 1, 2007, and will expire January 31, 2009.

Re-appointment of Paul Stagner, 2015 Meadowmere Court, to a two-year Dentist term. Mr. Stagner's term begins February 1, 2007, and will expire January 31, 2009.

CONSENT AGENDA (CONTINUED)

BOARD APPOINTMENTS (CONTINUED)

Appointment of Jo Hardy, 3224 Ashwood Circle, to a two-year Nurse term. Ms. Hardy's term begins February 1, 2007, and will expire January 31, 2009.

Appointment of Doreen Shanteau, 1208 Meadowlark Circle, to a two-year Citizen-Public Health/Env. Expertise term. Ms. Shanteau's term begins February 1, 2007, and will expire January 31, 2009.

Social Services Advisory Board

Appointment of Jane Gibson, 1427 Leavenworth Street, to a fill an unexpired term for Kevin Page. Ms. Gibson's term begins immediately and will expire on June 30, 2008.

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

GENERAL AGENDA

PUBLIC HEARING – ORDINANCE NO. 6604 - DOWNTOWN REDEVELOPMENT NORTH PROJECT AREA – EXPANSION OF TRANSPORTATION DEVELOPMENT DISTRICT

Jason Hilgers, Assistant City Manager and Redevelopment Coordinator, presented the item and answered questions from the Commission.

Mayor Snead opened the public hearing.

Hearing no comments, Mayor Snead closed the public hearing.

ORDINANCE NO. 6604 - DOWNTOWN REDEVELOPMENT NORTH PROJECT AREA – EXPANSION OF TRANSPORTATION DEVELOPMENT DISTRICT

Rob Ott, Acting Director of Public Works, answered questions from the Commission regarding traffic patterns and streets.

Jason Hilgers, Assistant City Manager and Redevelopment Coordinator, provided additional information on the modeling that has been done.

GENERAL AGENDA (CONTINUED)

ORDINANCE NO. 6604 - DOWNTOWN REDEVELOPMENT NORTH PROJECT AREA – EXPANSION OF TRANSPORTATION DEVELOPMENT DISTRICT (CONTINUED)

After discussion, Commissioner Phillips moved to approve Ordinance No. 6604 expanding the North Project Area Transportation Development District. Commissioner Hatesohl seconded the motion. On a roll call vote, motion carried 5-0.

POLICY RESOLUTION NO. 012307-A - PROHIBITION OF CONCEALED CARRY ON CERTAIN CITY PROPERTY

Katharine Jackson, Assistant City Attorney, presented the item.

Ron Fehr, City Manager, provided clarification on City-owned locations being designated.

Katharine Jackson, Assistant City Attorney, responded to questions from the Commission.

Ron Fehr, City Manager; Curt Loupe, Director of Parks and Recreation; Katharine Jackson, Assistant City Attorney, and Mike Watson, Director, Riley County Police Department, provided additional information and answered questions from the Commission.

Felix Wang, Youth in Government representative, questioned how the concealed weapons would be enforced.

Katharine Jackson, Assistant City Attorney, stated that a violation would be reported to the Riley County Police Department for assistance and cited as a Class B misdemeanor. She said the violator would be prosecuted in district court, not municipal court.

Mike Watson, Director, Riley County Police Department, informed the Commission that he was in favor of property owners making their own decisions. He said that RCPD officers would enforce the law and didn't anticipate getting a lot of calls or problems with what's being proposed.

Dee R. Ross, 2304 Brockman, informed the Commission that this item wasn't published as was mentioned at the last meeting.

Mayor Snead and City Manager Ron Fehr informed Mr. Ross that the entire Commission packet is made available to the public and that an article had appeared on the item in the local newspaper that mentioned City-owned facilities being proposed.

GENERAL AGENDA (CONTINUED)

POLICY RESOLUTION NO. 012307-A - PROHIBITION OF CONCEALED CARRY ON CERTAIN CITY PROPERTY (CONTINUED)

After discussion, Commissioner Morris-Hardeman moved to approve Policy Resolution No. 012307-A identifying City-owned property where the carrying of concealed weapons is prohibited (*See Attachment No. 2*). Commissioner Phillips seconded the motion.

Ron Fehr, City Manager, answered additional questions from the Commission and stated that the issue of non concealed guns on City-owned property could be investigated if the Commission is interested in addressing that issue.

On a roll call vote, motion carried 4-1, with Commissioner Hatesohl voting against the motion.

SALES AND PROPERTY TAX FEASIBILITY CONSULTANT – DOWNTOWN REDEVELOPMENT PROJECT

Jason Hilgers, Assistant City Manager and Redevelopment Coordinator, presented the item. He then answered questions from the Commission.

Ron Fehr, City Manager, provided additional information on the item and said this will ensure a second due diligence effort.

Jason Hilgers, Assistant City Manager and Redevelopment Coordinator, provided additional information and answered questions from the Commission.

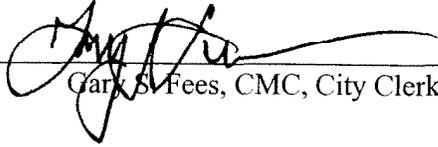
Ron Fehr, City Manager, provided additional information on the item.

Dee R. Ross, 2304 Brockman, stated to the Commission that this was another exercise in futility and voiced opposition to another study. He stated that the money is coming from the taxpayers and benefiting someone else.

After discussion, Commissioner Morris-Hardeman moved to approve City Administration entering into an agreement with Real Estate Research Consultants, of Orlando, Florida, in an amount not to exceed \$70,000.00 plus approved expenses for a market feasibility study of the Downtown Redevelopment District. Commissioner Phillips seconded the motion. On a roll call vote, motion carried 5-0.

ADJOURNMENT

At 8:14 p.m. the Commission adjourned.



Gary S. Fees, CMC, City Clerk

STAFF REPORT

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

BACKGROUND

APPLICANT: East Manhattan Developers, L.C. – Steven R. Struebing, Managing Member

ADDRESS: 819 North Washington, Junction City, KS 66441

OWNER: Same

ADDRESS: Same

LOCATION: K-Mart Shopping Center at 401 E. Poyntz Avenue.

AREA: 9.37-acres; Lot 1, K-Mart Addition.

DATE OF PUBLIC NOTICE PUBLICATION: Monday, November 27, 2006

DATE OF PUBLIC HEARING: PLANNING BOARD: Monday, December 18, 2006

CITY COMMISSION: Tuesday, January 9, 2007

DESCRIPTION OF PROPOSED AMENDMENT:

- Modify the Permitted Uses of the PUD (Ordinance No. 4635 attached) to allow the Permitted Uses of the C-2, Neighborhood Shopping District, to include: Fabric stores, Financial services, and Office supplies; and to exclude from the proposed list of C-2 District Permitted Uses: Air conditioning, heating and plumbing sales, Churches, chapels, temples and synagogues, and Convenience stores.
- To allow temporary and seasonal outdoor display and storage of merchandise and goods to be permitted between March 1 and October 1 of the calendar year in areas identified on the plans;
- To allow a reduction of off-street parking from the approved 555 to 538 parking spaces, to allow expanded landscape islands and new plantings in existing landscape islands, and a proposed change to landscape irrigation; and,

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- A modification of the vacant grocery store building's floor plan and building façade, which includes a canopy, entrances, material changes, and signs.
- In addition, the applicant forwarded the owner of Town East shopping center a proposed private reciprocal travel easement (attached).

Existing Building

The vacant grocery store building's floor plan, facade and signs will be modified. Interior modifications include two to three tenant spaces and entrances. Gross floor area for the vacant building is 37,153 square feet (total sales area of 28,143 square feet) to be divided into a 22,633 square foot tenant space (16,325 square foot sales area) and a 14,520 square foot tenant space (11,818 square feet in area). The 14,520 square foot area may be further divided into two tenant spaces.

Exterior changes include a new terra cotta standing seam metal roof canopy, brick canopy support columns, new aluminum store front, painting existing ribbed entrance façade to match brick, tan EFIS façade, and new brown fascia panels on the canopy for proposed signs. Signs include proposed fascia signs are 8 square feet in area, of 8 inch tall white pin mounted letters, and 90 square foot backlit box sign over the larger, 22,633 square foot, tenant space.

City Administration suggests that exempt signs, such as address numerals and directional signs, be allowed and that temporary sales aids and portable signs be prohibited.

Outdoor Seasonal and Other Storage

As shown on the proposed site plan, outdoor storage will be along the proposed remodeled facade and along the K-Mart façade. Seasonal display is also proposed in the off-street parking lot for K-Mart and along the Sarber Lane frontage of K-Mart.

A proposed seasonal display area is shown in the parking lot to the south of K-Mart and is approximately 16,400 square feet in area. A second seasonal display area is proposed to the west of the garden center and is approximately 4,600 square feet in area.

The applicant has not indicated what temporary and seasonal merchandise would consist of or what other merchandise and goods would be displayed.

For guidance, Article V, Accessory Uses, Temporary Uses, Home Occupations, Part 2, Temporary Uses Section 5-201 (A-F) regulate temporary merchandise and goods in zoning districts, unless restricted to particular zoning districts (the K-Mart PUD does not indicate

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seasonal sales or promotional activities are a permitted accessory use). Seasonal display of merchandise and goods applicable could include: Christmas tree sales, seasonal sales of live planting stock, landscaping materials, and firewood; other promotional activities of retail merchants involving the display of goods and merchandise; and, fireworks stands. Display limitations include: Christmas tree sales not to exceed 60 days, live planting stock, landscaping materials, and firewood not to exceed a total of ten (10) weeks in any six-month period; promotional sales, a total of two weeks in any three-month period; and fireworks stands, which are regulated by Municipal Code.

Common seasonal sales include merchandise and goods such as, but not limited to, live landscape stock and related materials consisting of lawn chairs/furniture, overstock palletized goods and palletized rock/dirt etc. A typical period for display, such as the current Super Wal-Mart display is from March 1st to Labor Day. Promotional sidewalk sales events sales are limited to a one (1) week period during the weeks of Memorial Day, July 4th, and Labor Day.

Off-Street parking and Landscaping

The existing PUD is required to have 555 parking spaces, a ratio of 5.20 parking spaces per 1,000 square of gross floor area. Five hundred and thirty eight (538) parking spaces exist. In part, the reduction is due accessible parking added after approval in 1990. The proposed 538 parking spaces results in a proposed ratio of 5.17 parking spaces per 1,000 square feet of net retail floor space. The proposed seasonal display area for K-Mart reduces the total number of off-street parking spaces by 56 parking spaces for that portion of the calendar year from March 1 to October 1, or 482 parking spaces, as well as 5 spaces lost for expanded new landscape islands south of the remodeled building, resulting in a ratio of 4.63, for at least.

Expanded landscape islands and existing islands south of the remodeled building will be landscaped with new ground cover shrubs. A note on the plan indicates the owner will follow a regular schedule of watering of a method and rate to maintain landscaping in lieu of underground irrigation. The 1990 PUD landscape plan indicated underground irrigation was required and was installed. Repair or replacement of underground irrigation will ensure adequate maintenance of landscaping.

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

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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 Permitted Uses of the K-Mart PUD are discount department stores, garden center, auto service center and a grocery store. The current major tenant is K-Mart and its garden center. The auto center building and grocery store building are vacant.

The applicant indicates, “The intent and purpose of the PUD as originally approved was for a major retail shopping district. All of the changes to the permitted uses which are requested are consistent with the original intended use of the property, and are in fact nearly identical to the permitted uses under the City’s C-2 Neighborhood Shopping District Zone.”

Seasonal display is an accessory use in the existing PUD. The existing Garden Center allows permanent outdoor display in an area enclosed by chain link fence. Seasonal display of landscaping materials occur annually in the parking lot south of K-Mart and along the front of the building. In the past, seasonal outdoor storage of landscaping materials also occurred to the west of the Garden Center. Seasonal display of landscaping materials on the sidewalk in front of K-Mart is common occurrence. The proposed Amendment establishes clear areas for seasonal and temporary storage.

Changes to the off-street parking reflect existing and temporary conditions. Building façade changes to the vacant grocery store building are in response to previous comments by the Manhattan Urban Area Planning Board during a public hearing conducted on October 16, 2006 to consider a similar Amendment, which was withdrawn by the applicant.

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 applicant indicates that, “ Only two uses are specified as permitted under the approved PUD: discount department stores and grocery stores. The grocery supermarket space as reflected on the Final Development Plan is currently vacant. Because of the dramatic change and consolidation in the grocery supermarket business and the addition in the immediate vicinity of very large supermarkets (Dillons and Wal-Mart Supercenter), it is highly unlikely that another grocery supermarket operator will locate in this space, and the space will likely remain vacant without a change in permitted uses.”

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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: No specific gain to the public is found; however, no public improvements or easements are adversely affected. The proposed amendment will not be granted as a special benefit to any one person, but will benefit the public as a whole by allowing more shopping opportunities.

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

1. LANDSCAPING: Landscape islands will be expanded with updated juniper ground cover in islands to the south of the current vacant grocery store building. Underground irrigation was added in 1990 and should be used to ensure landscaping is maintained. The property owner should be responsible for maintenance of landscaping south of the vacant grocery store building.

2. SCREENING: The proposed storage areas are similar to outdoor storage associated with other large retailers, such as Home Depot and the Super Wal-Mart, both of which have outdoor storage adjacent to the building in areas that are screened in a similar manner as proposed with the Amendment. Wal-Mart also allows seasonal display in the parking lot. In addition, the outdoor garden area adjacent to the west end of K-Mart has been a permanent outdoor storage area since at least 1990. Other large sites such as Wal-Mart and Home Depot have outdoor storage for seasonal and other merchandise.

3. DRAINAGE: The proposed Amendment does not alter drainage. The site drains to storm sewer inlets in the parking lot, which connect to off-site underground storm sewer pipes.

4. CIRCULATION:

Access

The site is accessed from two curb cuts off Sarber Lane and a main entrance and secondary entrance off East Poyntz Avenue (US 24 Highway) Frontage Road. Sidewalks do not exist along street frontages. No changes to circulation are proposed.

Access to the PUD is also from Town East shopping center to the east of the K-Mart PUD, since the parking lots adjoin one another. The applicant forwarded the owner of Town East shopping center a proposed private reciprocal travel easement.

Off-Street Parking

The proposed number of off-street parking spaces is reduced by 56 spaces during the parking lot seasonal display for K-Mart. The reduction of parking spaces is temporary in nature, typically between late March to Labor Day. As stock is reduced, the display area commonly is reduced in area with more parking spaces becoming available. Adequate parking should be available.

5. OPEN SPACE AND COMMON AREA: There is no common area/open space in the K-Mart PUD.

6. CHARACTER OF THE NEIGHBORHOOD: The area is characterized by a mix of retail and service commercial uses along East Poyntz Avenue and Sarber Lane. Some commercial areas are characterized as shopping centers and some are individual sites. Industrial manufacturing uses are in the neighborhood, but not along the same access routes as the retail and service commercial uses.

EXISTING USE: K-Mart PUD: discount department store with garden center, and vacant auto service center and vacant grocery store

PHYSICAL AND ENVIRONMENTAL CHARACTERISTICS: The PUD is a developed retail shopping area with off-street parking lots, access drives and parking lot landscape islands and perimeter landscaping. Existing building pads are in the 100 Year Flood Plain. The Base Flood Elevation is 1008 feet. The approved Final Development Plan indicates that lowest enclosed floor elevations are between 1008 feet and 1009 feet. Existing buildings are legally nonconforming to the current elevation requirement, which requires one foot of elevation above 1008 feet. Substantial improvements to existing buildings require the lowest enclosed floor to be at least one foot above 1008 feet, or a minimum elevation of 1009 feet.

SURROUNDING LAND USE AND ZONING:

(1) **NORTH:** manufacturing and automobile service commercial; I-2, Industrial Park District and C-5, Highway Service Commercial District.

(2) **SOUTH:** US 24 Highway, railroad: I-3, Light Industrial District.

(3) **EAST:** Town East retail shopping center, undeveloped highway service commercial lot: C-2, Neighborhood Shopping District and C-5 District.

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(4) WEST: Sarber Lane, restaurant, grocery and furniture stores, auto repair; PUD and C-5 District.

GENERAL NEIGHBORHOOD CHARACTER: See above.

SUITABILITY OF SITE FOR USES UNDER CURRENT ZONING: The site is suitable for the permitted uses.

COMPATIBILITY OF PROPOSED DISTRICT WITH NEARBY PROPERTIES AND EXTENT TO WHICH IT MAY HAVE DETRIMENTAL AFFECTS: The proposed Amendment should not adversely impact surrounding properties. The adjoining property to the east is Town East shopping center, which is zoned C-2, Neighborhood Shopping District, and undeveloped C-5, Highway Service Commercial District. The shopping center consists of an "L" shaped building abutting the eastern wall of the vacant grocery building and a vacant C-5 lot, in the southwestern corner of the Town East shopping center. To the south are East Poyntz Avenue right-of-way and railroad tracks. To the north is an industrial park. To the west is Sarber Lane right-of-way, a restaurant, newly constructed and existing furniture stores, grocery store and auto service related services. The proposed Amendment adds all of the Permitted Uses of the C-2, Neighborhood Shopping District, which is generally consistent with the commercial nature of the surrounding neighborhood in which neighborhood shopping and highway service uses are allowed. Display of seasonal and other merchandise and goods is an accessory use of the existing K-Mart PUD.

Seasonal outdoor storage is consistent with activities on surrounding neighborhood properties such as Dillons and the Super Wal-Mart PUD.

CONFORMANCE WITH COMPREHENSIVE PLAN: The Manhattan Urban Area Comprehensive Plan identifies the K-Mart Shopping Center as Community Commercial (CC), which is a mix of retail and commercial services in a unified setting that serves the entire community. The proposed Amendment to the PUD will continue these types of activities and conforms to the Comprehensive Plan.

The proposed Amendment is generally in conformance with the Comprehensive Plan.

ZONING HISTORY AND LENGTH OF TIME VACANT AS ZONED:

- 1969: Annexed and zoned C-5, Service Commercial District, and I-2, Industrial Park District.
- 1973: Rezoned to Planned Unit Development for K-Mart, auto service and outdoor garden and food store.

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- 1985: Amendment to add floor space to Food-4-Less building.
- 1987: Amendment to expand outdoor K-Mart garden center.
- 1990: Rezoned to a new Commercial Planned Unit Development in order to expand the existing K-Mart, alter landscaping, and to allow an automobile service center.
- 1997: Amend signage for auto service center.
- 2003: Amend signage and landscaping plans.
- 2006: MUAPB conducts public hearing on October 16, 2006, and recommends denial of an Amendment to the K-Mart PUD. Applicant withdraws application.

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 purposes of the Zoning Regulations, and the intent of the PUD 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: There appears to be no relative gain to the public, which denial would accomplish. No adverse impacts to the public are expected. There may be a hardship to the applicant if the amendment is denied.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES: Adequate public utilities and facilities are available to serve the PUD.

OTHER APPLICABLE FACTORS: None.

STAFF COMMENTS:

City Administration recommends approval of the proposed Amendment of the K-Mart Planned Unit Development with the following conditions of approval:

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1. Permitted Uses shall include: all of the Permitted Uses of the C-2, Neighborhood Shopping District to include: Fabric stores, Financial services, and Office supplies; and exclude from the proposed list of C-2 District Permitted Uses: Air conditioning, heating and plumbing sales, Churches, chapels, temples and synagogues, and Convenience stores.
2. Building façade and signs shall be provided, as proposed.
3. Exempt signage shall be permitted as described in Article VI, Section 6-104 (A)(1),(2),(4),(5),(7) and (8); and Section 6-104 (B)(2), of the Manhattan Zoning Regulations. Temporary sales aids and portable signs, as described in Article VI, Signs, of the Manhattan Zoning Regulations, shall be prohibited.
4. Seasonal outdoor display, storage and sales shall be limited to the parking lot in front of K-Mart, to the west of the K-Mart Garden Center, and along the front of the buildings, as shown on the application documents.
5. Seasonal sales shall be limited to a period from March 1st to Labor Day weekend of each year.
6. Seasonal sales shall include merchandise and goods such as, but not limited to, live landscape stock and related materials consisting of lawn chairs/furniture, overstock palletized goods and palletized rock/dirt and similar merchandise and goods.
7. Sidewalk sales shall be limited to a one (1) week period during the weeks of Memorial Day, July 4th, and Labor Day.
8. Landscaping shall be maintained in good condition by the property owner.
9. The underground irrigation system shall be used to irrigate landscaping.
10. Landscaping shall be provided consistent with approved landscaping plans.
11. A Landscaping Performance Agreement between the City and the property owner shall be entered into, prior to issuance of a building permit.

ALTERNATIVES:

1. Recommend approval of the proposed Amendment of the K-Mart Planned Unit Development, and Ordinance No. 4635, stating the basis for such recommendation.
2. Recommend denial of the proposed Amendment of the K-Mart Planned Unit Development, and Ordinance No. 4635, stating the specific reasons for denial.
3. Table the proposed Amendment(s) to a specific date, for specifically stated reasons.

Attachment No. 1

POSSIBLE MOTION:

The Manhattan Urban Area Planning Board recommends approval of the proposed Amendment of the K-Mart Planned Unit Development, and Ordinance No. 4635, based on the findings in the Staff Report, with the conditions recommended by City Administration.

PREPARED BY: Steve Zilkie, AICP, Senior Planner

DATE: December 12, 2006
06031

Attachment No. 2

1. City Hall
2. Municipal Court
3. The Headquarters Fire Station
4. Douglass Center
5. Douglass Center Annex
6. The Community House
7. The Arts in the Park stage/pavilion
8. The restored Union Pacific Depot
9. The Ice Rink
10. All City swimming pools
11. Griffith Park
12. CiCo Park
13. Anneberg Park
14. Eisenhower Park
15. Northview Park
16. Sunset Zoo