



MINUTES
SPECIAL CITY COMMISSION MEETING
TUESDAY, OCTOBER 23, 2018
7:00 P.M.

The Special Meeting of the City Commission was held at 7:00 p.m. in the City Commission Room. Mayor Linda Morse and Commissioners Michael L. Dodson, Usha Reddi, Wynn Butler, and Jerred McKee were present. Also present were the City Manager Ron R. Fehr, Deputy City Manager Jason Hilgers, Assistant City Manager Kiel Mangus, City Attorney Katharine Jackson, Deputy City Clerk Brenda K. Wolf, 9 staff, and approximately 40 interested citizens.

PLEDGE OF ALLEGIANCE

Mayor Morse led the Commission in the Pledge of Allegiance.

PROCLAMATIONS

Mayor Morse proclaimed October 27, 2018, ***C. Clyde Run Fun Run/Walk and Midge's Mile Family Fun Walk***. C. Clyde Jones and Beverly Olson, Executive Director, and Beth Klug, Office Manager, Shepherd's Crossing, were present to receive the proclamation.

Mayor Morse proclaimed October 28, 2018, ***Fellowship Temple Day***. Edna M. Boyer, Co-Founder and Board of Trustees President; Walter Sherrod, Superintendent; and Anthony Whetstone, Sharon Pope, Cathleen Greene, and Cynthia Everson, members of the Board of Trustees, Fellowship Temple, were present to receive the proclamation.

Mayor Morse proclaimed November 10, 2018, ***Buddy Poppies***. Daniel Watkins, Post Commander, Veterans of Foreign Wars Post 1786, was present to receive the proclamation.

Mayor Morse proclaimed November 12, 2018, ***Veterans Day***. Janet Nichols, President, and Christine Benne, Vice President, Flint Hills Veterans Coalition; Paul Benne, Veteran, and Daniel Watkins, Post Commander, Veterans of Foreign Wars Post 1786, were present to receive the proclamation.

COMMISSIONER COMMENTS

Commissioner McKee stated that advance voting is now open and encouraged everyone to vote. He also stated that on November 6, 2018, Flint Hills Area Transportation Agency announced that they will be providing free transportation that day to anyone wanting to go to the polls to vote or to ride for the first time to try it out.

Commissioner Reddi stated that advance voting is available until November 5, 2018. She also mentioned Parent/Teacher conferences were this week for elementary schools and that students would be out of school on Thursday, October 25, 2018, and Friday, October 26, 2018. She encouraged parents to meet with their children's teachers and instructors. Commissioner Reddi thanked Kansas State University for hosting a free session at Forum Hall in Kansas State University Student Union on Monday, October 22, 2018, that she and Mayor Morse attended where Tarana Burke, founder of the "Me Too" movement spoke.

Mayor Morse stated that the Manhattan Emergency Shelter will reopen on November 1, 2018, and that the Manhattan Housing Authority residents started moving back in to the High Rise this week. She asked City Manager Ron Fehr to provide an updated from the September 3, 2018, Wildcat Creed flood.

Ron Fehr, City Manager, stated that the City received good news last week. The Federal Emergency Management Agency (FEMA) announced that federal disaster assistance had been made available to the City of Manhattan on a cost-sharing basis for damages incurred, with the federal share covering 75% of the costs and the State and local entities covering the other 25%. Through the program, FEMA provides supplemental federal disaster grant assistance for debris removal that occurred on public property, life-saving emergency protective measures that were in place, primarily the police and fire departments overtime (those crews that worked to warn people and assisted people in evacuating), and also the repair, replacement, or restoration of disaster-damaged, publicly-owned facilities. He commented that Manhattan didn't meet the threshold for private assistance which means there would be no federal funding for private property owners due to flood damage. He also mentioned that Manhattan would also be eligible for Federal funding on a cost-sharing basis for hazard mitigation for bank stabilization. He also mentioned the generosity of the community in which \$38,000.00 had been raised for the flood assistance fund and the Greater Manhattan Foundation had agreed to match that amount, to help individuals impacted by the flood. He stated applications for assistance can be made at the Salvation Army, Catholic Charities, and Shepherd's Crossing and that information was available on the Greater Manhattan Foundation's and the City of Manhattan's websites. He also stated that on Thursday, October 18, 2018, at the Joint City/Riley County/Pottawatomie County meeting, the Commissioners talked about the Wildcat Creek flooding and where to go from here with regard to improvements and prevention measures. He mentioned the 2011 flood along Wildcat Creek was a Working Group that created a watershed plan and highlighted items that were accomplished. He stated the City passed a local conditions flood plain policy that restricted what could be done in the Wildcat Creek Watershed and a study was

COMMISSIONER COMMENTS (*CONTINUED*)

done that looked at building detention structures on Fort Riley. He stated the Study indicated that on the five-year anniversary, which was this year, the Plan be revisited and new measures created. He discussed items to be reviewed as well as any future mitigation aspects. He stated the process will begin with each of the governing bodies making recommendations for individuals to resurrect the committee and initiate those aspects with opportunities for public input.

CONSENT AGENDA

(* denotes those items discussed)

MINUTES

The Commission approved the minutes of the Regular City Commission Meeting held Tuesday, October 2, 2018.

CLAIMS REGISTER NO. 2893

The Commission approved Claims Register No. 2893 authorizing and approving the payment of claims from September 26, 2018-October 16, 2018, in the amount of \$4,303,188.82.

LICENSES

The Commission approved a Tree Maintenance License for the calendar year 2018 for Skyview Tree Specialists, LLC, 615 North Clay, Liberal, Kansas, and a Tree Maintenance License for calendar year 2019 for Parsons Tree Care, 1401 Zeandale Road; Mugler Tree Care 2400 West 60th Street; and Blueville Nursery Inc., 4539 Anderson Avenue.

* FINAL PLAT - HUDSON ADDITION

Commissioner Dodson stated he had concerns regarding curb cuts. He said curb cuts are issues all over town, particularly in front of a school.

The Commission accepted the easements and rights-of-way, as shown on the Final Plat of the Hudson Addition, located at 1500 Hudson Avenue, generally located approximately 265 feet north of the intersection of Claflin Road and Hudson Avenue, based on conformance with the Manhattan Urban Area Subdivision Regulations and approval of the Final Plat by the Manhattan Urban Area Planning Board.

CONSENT AGENDA (CONTINUED)

ORDINANCE NO. 7380 - SPECIAL EVENT WITH ALCOHOL - YOUNG TRUSTEES MANHATTAN CHILI COOK-OFF

The Commission approved Ordinance No. 7380 authorizing a special event with alcohol permit for the application submitted by the Young Trustees for the Manhattan Chili Cook-Off to occur in Blue Earth Plaza and the adjacent sidewalks and streets along South Third Street and Blue Earth Place as defined in the submitted site plan, following all requirements of Ordinance No. 7379 relating to their special event with alcohol to be held on November 3, 2018, from 8:00 a.m. - 6:00 p.m.

FIRST READING - KDHE LOAN - WASTEWATER TREATMENT PLANT MECHANICAL, ELECTRICAL AND PLUMBING IMPROVEMENTS (SS1712, CIP #WW179E) AND HEADWORKS PUMP STATION IMPROVEMENTS (SS1713, CIP #WW178E)

The Commission approved first reading of an ordinance authorizing the execution of a new loan agreement (C20 2064 01) between the City of Manhattan, Kansas, and the State of Kansas, acting by and through the Kansas Department of Health and Environment, for the purpose of obtaining a loan from the Kansas Water Pollution Control Revolving Loan Fund in order to finance water pollution control projects; establishing a dedicated source of revenue for repayment of such loan; authorizing and approving certain documents in connection therewith; and authorizing certain other actions in connection with the loan agreement for Wastewater Treatment Plant Mechanical, Electrical and Plumbing Improvements (SS1712, CIP #WW179E) and Headworks Pump Station Improvements (SS1713, CIP #WW178E).

FIRST READING - 2019 SERVICE FEES - AGGIEVILLE BUSINESS IMPROVEMENT DISTRICT

The Commission approved first reading of an ordinance levying business improvement service fees for 2019 on businesses located within the Aggieville Business Improvement District.

FIRST READING - 2019 SERVICE FEES - DOWNTOWN BUSINESS IMPROVEMENT DISTRICT

The Commission approved first reading of an ordinance levying business improvement service fees for 2019 on businesses located within the Downtown Business Improvement District.

FIRST READING - FRANCHISE AGREEMENT - EXTEMET SYSTEMS, INC.

The Commission approved first reading of an ordinance amending Article XI of Chapter 15 of the Code of Ordinances, authorizing a competitive infrastructure provider franchise with ExteNet Systems, Inc.

CONSENT AGENDA (CONTINUED)

AGREEMENT - ENGINEERING SERVICES - KIRKWOOD DRIVE EXTENSION, WALTERS DRIVE TO MARLATT AVENUE (SM1816, ST1811)

The Commission authorized the Mayor and City Clerk to execute an Agreement for Professional Engineering Services, in an amount not to exceed \$77,595.00, with SMH Consultants, of Manhattan, Kansas, for the Kirkwood Drive Extension Project (SM1816, ST1811).

KANSAS DEPARTMENT OF TRANSPORTATION APPLICATION - SAFETY GRANT - KIRKWOOD DRIVE EXTENSION, WALTERS DRIVE TO MARLATT AVENUE (SM1816, ST1811)

The Commission authorized City Administration to submit an application to the Kansas Department of Transportation for a Safety Grant for the Kirkwood Drive Extension Project (SM1816, ST1811).

REQUEST FOR QUALIFICATIONS - TUTTLE CREEK BOULEVARD NORTH CHANNEL IMPROVEMENTS (SM1814, CIP #SW088P)

The Commission authorized City Administration to seek qualifications for professional design services for the project, and appointed Commissioner Butler to serve on the Selection Committee for the Tuttle Creek Boulevard North Channel Improvements (SM1814, CIP#SW088P).

AWARD CONTRACT - WATER TREATMENT PLANT LIME PIT SLUDGE REMOVAL (WA1812)

The Commission awarded and authorized the Mayor and City Clerk to execute a contract in the amount of \$332,520.00 to Midwest Concrete Materials, Inc., of Manhattan, Kansas, for the Water Treatment Plant Lime Pit Sludge Removal project (WA1812), to be paid from the Water Fund.

AWARD CONTRACT - 2018 STREET MAINTENANCE CONCRETE PANEL, PHASE 2 (ST1810)

The Commission awarded and authorized the Mayor and City Clerk to execute a construction contract to Pavers, Inc., of Salina, Kansas, in the amount of \$1,484,945.00 for the 2018 Concrete Street Maintenance, Phase II project (ST1810), to be paid from the Special Sales Tax Street Maintenance Fund.

- * ASSIGNMENT OF REAL ESTATE CONTRACT - AGGIEVILLE HOTEL
Mayor Morse stated that she would vote no on this item.

The Commission approved the assignment of the real estate contract with First Commercial Properties, LLC, to MHI - Manhattan 2, LLC, regarding the property located on Lots 499 and 500 in Ward 4 (Aggieville Hotel at 12th Street and Bluemont Avenue) and authorized the Mayor to execute the Assignment of Contract.

CONSENT AGENDA (*CONTINUED*)

HOLIDAY DISPLAY AGREEMENT - WHOVILLE, INC.

The Commission approved the request and authorized the Mayor and City Clerk to execute an agreement with Whoville, Inc., for the 2018 holiday lighting and special events regarding “The Festival of Lights” at Blue Earth Plaza.

LEASE PURCHASE - CEMETERY UNIT 882 - REPLACE BACKHOE LOADER (CIP #CP206E)

The Commission authorized the purchase of a 2019 Case 580SN Backhoe Loader in the amount of \$93,100.00 plus \$2,200.00 for miscellaneous items from The Victor L. Phillips, Co., of Topeka, Kansas, with a trade-in value in the amount of \$10,000.00 for the current Unit 882 for the Cemetery Division (CIP #CP206E), for a total amount of \$85,300.00, and authorized the Mayor and/or City Clerk to execute the lease purchase agreement, to be paid from the General Fund.

BOARD APPOINTMENTS

The Commission approved the following appointments by Mayor Morse to various boards and committees of the City:

Joint Corrections Advisory Board

Appointment of Marcus Kidd, 1104 Newfoundland Drive, to fill the unexpired Juvenile term of Stacy Cam. Mr. Kidd’s Juvenile term begins immediately and will expire June 30, 2019.

Parks and Recreation Advisory Board

Appointment of Jurdene Coleman, 4573 Sunflower Slope Drive, to fill the unexpired USD 383 term of Curt Herrman. Ms. Coleman’s term begins immediately and will expire June 30, 2019.

Mayor Morse opened the public comments.

Hearing no comments, Mayor Morse closed the public comments.

Commissioner McKee moved to approve the consent agenda. Commissioner Reddi seconded the motion. On a roll call vote, motion carried 5-0 with the exception of Item M, ASSIGNMENT OF REAL ESTATE CONTRACT – AGGIEVILLE HOTEL, which carried 4-1 with Mayor Morse voting against.

PUBLIC HEARING

PUBLIC HEARING - CREATE - MANHATTAN TOWN CENTER COMMUNITY IMPROVEMENT DISTRICT (CID)

Jason Hilgers, Deputy City Manager, highlighted aspects of the proposed CID, the timeline of the process, the district boundary and areas of proposed improvements.

Bill Frost, Legal Counsel for the City, provided an overview of the Development Agreement and the new land leases with the Manhattan Town Center.

Bill Frost, Legal Counsel for the City, and Jason Hilgers, Deputy City Manager, answered questions from the Commission.

Mayor Morse opened the public hearing.

Hearing no comments, Mayor Morse closed the public hearing.

1ST READING - CREATE - MANHATTAN TOWN CENTER COMMUNITY IMPROVEMENT DISTRICT (CID)

Mayor Morse commented that she was pleased the mall would be getting a face lift.

Commissioner McKee disclosed that he worked part time at a store in the mall but that wouldn't prohibit him from making a fair decision regarding the item. He stated that he hoped the renovation would bring more retail space back into the mall.

Commissioner Butler moved to find the creation of the proposed CID advisable, approve first reading of an ordinance establishing a Community Improvement District (CID) at Manhattan Town Center levying .75% CID sales tax and authorizing the Mayor to execute the proposed Development Agreement, and authorize City Administration to finalize and the Mayor to execute the new amended land lease, including the two additional leases for Lot F and Lot G, with Manhattan Town Center. Commissioner Dodson seconded the motion. On a roll call vote, motion carried 5-0.

PUBLIC HEARING - VACATE ROADWAY EASEMENT; RESOLUTION NO. 102318-A - AMENDED PETITION - CUMBERLAND ROAD STREET IMPROVEMENTS (ST1710); and AWARD CONTRACT - CUMBERLAND ROAD STREET (ST1710) AND DRAINAGE (SM1810) IMPROVEMENTS

Brian Johnson, City Engineer, highlighted the scope of the project, the right-of-way on the north side of Anderson Avenue, the roadway easement and underlying property owner on the south side of Anderson Avenue, and the need to bring the future Tract C outlot into the benefit district. He then answered questions from the Commission.

Mayor Morse opened the public hearing.

PUBLIC HEARING (*CONTINUED*)

PUBLIC HEARING - VACATE ROADWAY EASEMENT; RESOLUTION NO. 102318-A - AMENDED PETITION - CUMBERLAND ROAD STREET IMPROVEMENTS (ST1710); and AWARD CONTRACT - CUMBERLAND ROAD STREET (ST1710) AND DRAINAGE (SM1810) IMPROVEMENTS (*CONTINUED*)

Hearing no comments, Mayor Morse closed the public hearing.

1ST READING - VACATE ROADWAY EASEMENT; RESOLUTION NO. 102318-A - AMENDED PETITION - CUMBERLAND ROAD STREET IMPROVEMENTS (ST1710); and AWARD CONTRACT - CUMBERLAND ROAD STREET (ST1710) AND DRAINAGE (SM1810) IMPROVEMENTS (*CONTINUED*)

Commissioner Butler moved to find that no private rights will be injured or endangered by such Roadway Easement vacation and that the public will suffer no loss or inconvenience thereby; approve first reading of an ordinance vacating a portion of an existing Roadway Easement; find the amended petition for the Street Improvements sufficient; approve Resolution No. 102318-A amending Resolution No. 112117-D and finding the project advisable and authorizing construction for the Street Improvements (ST1710); accept the Engineer's Opinion of Probable Cost in the amount of \$320,811.50; and award and authorize the Mayor and City Clerk to execute a construction contract to the lowest responsive bidder, Larson Construction, of Manhattan, Kansas, in the amount of \$274,732.00 for the Street and Stormwater Improvements (ST1710/SM1810). Commissioner McKee seconded the motion. On a roll call vote, motion carried 5-0.

GENERAL AGENDA

APPROVE - SUNSET ZOO MASTER PLAN AND STRATEGIC PLAN (2018-2023) (CIP #SZ025P)

Scott Shoemaker, Sunset Zoo Director, thanked Zoo supporters, and provided a history of the Zoo. He then introduced Craig Rhodes, GLMV Architecture, and Kathy Wagner, Zoo Advisors.

Kathy Wagner, Zoo Advisors, presented the charge; the project; the process; background information regarding animal welfare, attendance and market penetration, and revenue; responses from interviews and a survey and what the plan drivers are; the Strategic Plan mission, vision and core values; and the six strategic goals that were developed.

Craig Rhodes, GLMV Architecture, provided information on the Master Plan like adding a carousel, reimagining the Children's Zoo, adding new species, adding a giraffe habitat; covered the priorities, features and estimated costs of the three phases and costs of projects; and provided other benchmark master plans they have worked on.

GENERAL AGENDA (CONTINUED)

APPROVE - SUNSET ZOO MASTER PLAN AND STRATEGIC PLAN (2018-2023) (CIP #SZ025P) (CONTINUED)

Kathy Wagner Zoo Advisors, highlighted possible funding strategies and operating considerations.

Scott Shoemaker, Sunset Zoo Director; Craig Rhodes, GLMV Architecture; and Kathy Wagner, Zoo Advisors, answered questions from the Commission.

Mayor Morse opened the public comments.

Stacy Brockhoff, 301 Ridge Drive, stated the new Master Plan shows the Zoo in her front yard and in her mother's backyard and takes away existing green space from the neighborhood. She commented that she wasn't sure if the neighborhood was aware of what was being planned as she didn't know about Plan until April or the Commission meeting until Monday evening. She reminded the Commission about conservation of green space that already exists.

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

Scott Shoemaker, Sunset Zoo Director, provided information regarding public input to the Master Plan. He stated that Zoo Advisors held three, three-day hearing sessions, and went through the standard process of advertising and notifying the community. In response to Brockhoff's concerns, he mentioned there were announcements about the public meetings and at one of the meetings, comments were made regarding preserving green space so the Master Plan contains a buffer between the Zoo and the neighborhood. He then answered questions from the Commission.

Commissioner McKee moved to approve the Sunset Zoo Master Plan and Strategic Plan (2018-2023) (CIP #SZ025P). Commissioner Butler seconded the motion.

Commissioner Reddi encouraged City staff to keep the neighborhood informed and engaged with what is going on with the Plan.

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

REQUEST FOR QUALIFICATIONS - CONSTRUCTION SERVICES - EXPEDITION ASIA EXHIBIT

Scott Shoemaker, Sunset Zoo Director, stated the Expedition Asia Exhibit would be the first project of the Master Plan and explained the various challenges of the project and why staff is recommending utilizing a quality-based selection process for construction services. He also mentioned that all three species are highly endangered. He stated that funding for this

GENERAL AGENDA (CONTINUED)

REQUEST FOR QUALIFICATIONS - CONSTRUCTION SERVICES - EXPEDITION ASIA EXHIBIT (CONTINUED)

project would be from the excess revenue from the Quality of Life sales tax and fundraising efforts. He recognized Nancy Knopp who was the Chair of the fundraising committee. He then answered questions from the Commission.

Mayor Morse opened the public comments.

Hearing no comments, Mayor Morse closed the public comments.

Commissioner Butler moved to authorize City Administration to finalize and advertise a Request for Qualifications for quality-based construction services for the construction of the Malayan Tiger and Sloth Bear exhibits, and renovation of the Amur Leopard exhibit and to appoint Commissioner McKee to serve on the Selection Committee. Commissioner Dodson seconded the motion. On a roll call vote, motion carried 5-0.

At 9:22 p.m., the Commission took a brief recess.

DISCUSSION - NONCONFORMITIES PROVISIONS - PROPOSED UNIFIED DEVELOPMENT ORDINANCE (UDO)

Chad Bunger, Assistant Director of Community Development, presented the revisions of the approach to take to address nonconformities in Manhattan. He highlighted the goals for the proposed permit process; mentioned all cities of the First Class were surveyed and Manhattan was the only city that distinguished between residential and non-residential properties on how nonconformities are handled and that all but four cities had anything but 50% of the fair market value as the threshold of when the nonconforming use should be going away; explained the proposed nonconforming use permit process and that a fee was proposed to be charged but the amount of the fee was not known at this time.

Chad Bunger, Assistant Director of Community Development, and Katie Jackson, City Attorney, answered questions from the Commission regarding the appeal process to the Board of Zoning Appeals and the criteria the Board of Zoning Appeals use to make their determination.

Chad Bunger, Assistant Director of Community Development, mentioned elements of the nonconforming use permit and permitted nonconforming use; stated that they are looking at clarifying how to address nonconforming structures; clarified how to address nonconforming lots, and when nonconforming use would be discontinued or abandoned. He answered questions from the Commission regarding discontinuance.

Eric Cattell, Director of Community Development, provided additional information regarding discontinuance.

GENERAL AGENDA (*CONTINUED*)

DISCUSSION - NONCONFORMITIES PROVISIONS - PROPOSED UNIFIED DEVELOPMENT ORDINANCE (UDO) (*CONTINUED*)

Commissioner Butler suggested removing the mention of six months for discontinuance when dealing with a property where the nonconforming use is outside of a building and removing the mention of 12 months for discontinuance when dealing with property where the nonconforming use is inside a building. He stated that the wording needed to be expanded so not to inadvertently trap a property owner because the property is not rented.

Chad Bunger, Assistant Director of Community Development, stated that the reason 12 and six months were included was so that discontinued or abandoned property wouldn't sit for years.

Commissioner McKee agreed with Commissioner Butler. He thought 12 months was a fine amount of time but some language could be added that demonstrated that if someone was not living in a property but was actively maintaining it.

Commissioner Dodson stated that additional wording was needed regarding discontinuance. He was concerned with the inability of the City to see inside a project that has not been maintained and didn't understand how a nonconforming lot could continue to exist without going to the Board of Zoning Appeals.

Chad Bunger, Assistant Director of Community Development, provided an example of how a nonconforming lot with structures could continue to exist without going to the Board of Zoning Appeals.

Commissioner Butler suggested calling the site and interior visit of the permit process a Zoning Verification Inspection, then create a checklist and have a foot note that if a safety violation was noticed, that it couldn't be ignored but would be handled in a separate process. He stated that some folks are going to be concerned that this is a means of getting a foot in the door for exterior inspections.

Commissioner Dodson stated that from the last discussion there was mention of having a person to adjudicate and that person not being someone in-house but maybe having a Municipal Judge do it.

Chad Bunger, Assistant Director of Community Development, stated that there originally was a hearing officer but that wording was eliminated.

Katie Jackson, City Attorney, stated that the way the ordinance would be written that it would dramatically reduce the number of people who would have a need to appeal. She

GENERAL AGENDA (CONTINUED)

DISCUSSION - NONCONFORMITIES PROVISIONS - PROPOSED UNIFIED DEVELOPMENT ORDINANCE (UDO) (CONTINUED)

commented that the first proposal had a hearing officer reviewing every application which would be a more time consuming process but with the revision, City staff made it easier for the City to give an administrative determination and if that evidence wasn't there, then the property owner could appeal to the Board of Zoning Appeals rather than creating an administrative hearing officer and process, and putting a judge in that capacity.

Eric Cattell, Director of Community Development, stated that by not having a hearing officer, a position would not have to be created and budgeted for, but instead the Board of Zoning Appeals would be the hearing officer.

Commissioner Dodson asked if the transferability of a nonconforming piece of property would be easier.

Chad Bunger, Assistant Director of Community Development, stated that was the intent where the property owner would receive some type of document from the Zoning Administrator that would say that the property had a nonconforming use status.

Commissioner Dodson asked when property is being transferred if the deed would have wording to the fact that the property was nonconforming.

Katie Jackson, City Attorney, stated that it would not and that it was questionable whether a certificate from the City would have any impact on the transfer from a legal perspective.

Commissioner Reddi asked for a clarification of what it meant that the Board of Zoning Appeals may approve change of use to a less intensive nonconforming residential use.

Chad Bunger, Assistant Director of Community Development, explained that the Board could, if an appeal was submitted, allow a reduction in the intensity of a non-conformity.

Commissioner Reddi stated that she didn't want property owners thinking that if they just went to the BZA they would get approval that the Zoning Administrator or staff might not approve. She asked if staff looked at all the documents that are provided to the BZA and made a recommendation.

Chad Bunger, Assistant Director of Community Development, stated that someone other than the Zoning Administrator, like a staff person or someone from the City Attorney's office, would prepare a staff report and give evidence to the BZA in which to make their determination.

GENERAL AGENDA (CONTINUED)

DISCUSSION - NONCONFORMITIES PROVISIONS - PROPOSED UNIFIED DEVELOPMENT ORDINANCE (UDO) (CONTINUED)

Katie Jackson, City Attorney, responded to questions from the Commission and stated the Board considers the same set of standards as does the Zoning Administrator and that the Zoning Administrator may have limited evidence with an application but during the public hearing process, the Board of Zoning Appeals could be considering additional evidence.

Ron Fehr, City Manager, stated that currently the Board of Zoning Appeals generally approves the requests because staff makes the recommendation to approve the request and an applicant isn't as likely to appeal if there is not staff support for the request.

Chad Bunger, Assistant Director of Community Development, responded to questions from the Commission and stated that the enforcement would be spelled out and how strict the enforcement would be, will be a policy decision.

Mayor Morse opened the public comments.

Richard Hill, 433 Houston Street, provided an example to the Commission regarding the difference between 100% and 50% thresholds. He stated the purpose of the nonconforming use letter was to be an absolute determination for the property owner. He does not want the City to change opinion of whether a piece of property is nonconforming after an opinion is issued. He also stated that the City should prepare regulations to deal with those that intentionally violate the law, but don't penalize those property owners who are trying to follow the law.

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

Chad Bunger, Assistant Director of Community Development, asked if the revisions made were more in line with what the Commissioners wanted. He stated that language could be added clarifying that this will be a Zoning Verification Inspection and define so it's clear that it's not a full-blown inspection. He said that they can take a look at the time limits and wording for discontinuance or abandonment.

Commissioner McKee stated the one concern he had was about the Board of Zoning Appeals and likes how the process is set up so someone can appeal. As far as the 50% or the 100%, he thinks there should be a flat 50% across the board. He really wants to see the enforcement mechanism spelled out more and that Mr. Hills' comments are applicable about the permit being absolute because that is the point of the permit. He asked if it had to be written in the UDO that if the City issues an opinion the property is nonconforming, not illegal, staff would have to have some type of documentation in which it could go back and overturn that decision.

GENERAL AGENDA (CONTINUED)

DISCUSSION - NONCONFORMITIES PROVISIONS - PROPOSED UNIFIED DEVELOPMENT ORDINANCE (UDO) (CONTINUED)

Katie Jackson, City Attorney, stated there is a process for someone to get an absolute determination of the status of their property under the law and that is the District Court process. She said staff would have to replicate the District Court process and to make workable and to apply to more people, staff scaled back that process. She clarified that if the City has registered a property and had all the evidence, the City would not re-investigate. Only if a future owner comes and says it is wrong or has additional evidence, the City would then re-investigate.

Commissioner Reddi stated the revision was a better proposal than the previous version. She wanted to see about the Zoning Administrator's ability to conditionally register a property during that process.

Chad Bunger stated that they took out the reference to a "shot clock" which would limit the time the staff had to review evidence and render a decision. He said they would notify and that it would be up to property owner to submit their permit application. He commented that there could be a flux of property owners that want to get their permit. He stated they did put language in that said that if an application is submitted, staff would consider the property owner as temporarily approved for the permit until proven otherwise and if something was to happen to the structure, 50% or less, staff would consider what was submitted as fact and not what damaged while reviewed.

Commissioner Reddi recommended that a timeframe be established to respond to a property owner regarding the status of their permit. She was glad to see simplifying it and trying to get more property owners on board, and thought educating the public and those involved was key.

Commissioner Dodson stated that even though the process was simpler, it was still complex. He suggested eliminating the rest of the language regarding the possibility of overturning the determination if new evidence comes to light and say, if the finding is that the property is nonconforming, that's it.

Mayor Morse said she has ongoing questions about the Board of Zoning Appeals and the relative ease with which they approve. She was especially concerned with those that have five exceptions on one property in one meeting. She stated we aren't allowing the Manhattan Urban Area Planning Board to weigh in.

Commissioner Butler stated that the Zoning Verification Inspection needs to be made clear, clean up the language of abandoned property, and that the permit needs to be absolute so there's no confusion on insurance and things of that nature. He stated he's not fully convinced he likes the 50%; it needs to be somewhere between 50% and 100%.

GENERAL AGENDA (CONTINUED)

DISCUSSION - NONCONFORMITIES PROVISIONS - PROPOSED UNIFIED DEVELOPMENT ORDINANCE (UDO) (CONTINUED)

As this was a discussion item, the Commission took no formal action.

EXECUTIVE SESSION

Commissioner Reddi moved to recess into Executive Session until 11:15 p.m., pursuant to K.S.A. 75- 4319(b)(2), for consultation with an attorney for the City on matters which would be deemed privileged in an attorney-client relationship. Commissioner McKee seconded the motion. On a roll call vote, motion carried 5-0.

At 11:15 p.m., the Commission reconvened with Mayor Morse, and Commissioners Dodson, Reddi, Butler, and McKee in attendance.

Mayor Morse stated that concluding the Executive Session and the Commission will not be taking any binding action.

ADJOURNMENT

At 11:16 p.m. the Commission adjourned.


Brenda K. Wolf, CMC, Deputy City Clerk