



MINUTES
SPECIAL CITY COMMISSION MEETING
TUESDAY, JANUARY 8, 2008
7:00 P.M.

The Special Meeting of the City Commission was held at 7:00 p.m. in the City Commission Room. Mayor Tom Phillips and Commissioners Mark Hatesohl, Bob Strawn, Bruce Snead, and James E. Sherow were present. Also present were the City Manager Ron R. Fehr, Assistant City Manager Jason Hilgers, City Attorney Bill Frost, City Clerk Gary S. Fees, Youth in Government Representative Megan Allen, 9 staff, and approximately 75 interested citizens.

PLEDGE OF ALLEGIANCE

Mayor Phillips led the Commission in the Pledge of Allegiance.

PROCLAMATION

Mayor Phillips proclaimed January 18-25, 2008, ***Dr. Martin Luther King, Junior Observance Week***. Governor Mays, Manhattan Martin Luther King, Jr. Memorial Committee, was present to receive the proclamation.

PUBLIC COMMENTS

Mayor Phillips opened the public comments.

Dee R. Ross, 2304 Brockman, informed the Commission that he is still trying to get answers to his questions regarding the Kansas Entrepreneurial Center (KEC) and the National Institute for Strategic Technology Acquisition and Commercialization (NISTAC). He asked about the profits that are generated from trademarks and patented products from these two entities and commented about the salaries of the Director of NISTAC and the City Manager for the City of Manhattan.

Ron Fehr, City Manager, apologized to Mr. Ross for not being able to meet with him personally and stated that he would try to supply answers to his questions under the City's jurisdiction and was willing to meet with him.

PUBLIC COMMENTS (*CONTINUED*)

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

COMMISSIONER COMMENTS

Mayor Phillips welcomed Megan Allen, Youth in Government representative.

Ron Fehr, City Manager, informed the community that the city-wide tree limb pickup would begin on Monday, January 14, 2008. He then requested that if any volunteer organizations are interested in assisting citizens with the effort to please call City Hall, and encouraged neighbors to assist their fellow neighbors that need assistance.

CONSENT AGENDA

(* denotes those items discussed)

MINUTES

The Commission approved the minutes of the Regular City Commission Meeting held Tuesday, December 18, 2007, and the Special City Commission Meeting held on Thursday, December 20, 2007.

CLAIMS REGISTER NO. 2566

The Commission approved Claims Register No. 2566 authorizing and approving the payment of claims from December 12, 2007, to December 26, 2007, in the amount of \$3,521,652.91.

LICENSES - RENEWALS

The Commission approved a Tree Maintenance license for calendar year 2008 for Brinker Tree Care, Inc., 2907 Jacque Circle; Carnahan Creek Tree Service, Inc., 12415 Carnahan Road, Olsburg, Kansas; and Kanscapes, 8455 Rivervalley Drive.

* **FINAL PLAT – MEAWDOWLARK HILLS RETIREMENT COMMUNITY, UNIT FOUR**

The Commission accepted the easements and rights-of-way, as shown on the Final Plat of Meadowlark Hills Retirement Community, Unit Four, a Residential Planned Unit Development, generally located north of Kimball Avenue and west of Tuttle Creek Boulevard, based on conformance with the Manhattan Urban Area Subdivision Regulations.

CONSENT AGENDA (CONTINUED)

CHANGE ORDER NO. 1-FINAL – LEE MILL HEIGHTS ADDITION, UNIT THREE – STREET IMPROVEMENTS (ST0626)

The Commission approved Change Order No. 1 – Final, for Lee Mill Heights Addition, Unit Three, Street Improvements (ST0626) resulting in a net increase in the amount of \$15,406.00 (+5.51%) to the contract with Middlecreek Corporation, of Peabody, Kansas.

CHANGE ORDER NO. 1-FINAL – CEDAR GLEN ADDITION – STORMWATER DRAINAGE IMPROVEMENTS (SM0602)

The Commission approved Change Order No. 1 – Final, for Cedar Glen Addition, Stormwater Drainage Improvements (SM0602), resulting in a net increase in the amount of \$50,574.50 (+6.40%) to the contract with Middlecreek Corporation, of Peabody, Kansas.

AWARD CONTRACT – HOUSING REHABILITATION PROJECTS

The Commission accepted the bids for 1007 Yuma Street, 1527 Fair Lane, and 2417 Buttonwood Drive; awarded the bids to the lowest responsible bidders; authorized the Mayor and City Clerk to enter into agreements with the contractors and property owners for expenditure of Housing Rehabilitation Funds; and authorized City Administration to approve any necessary change orders.

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.

BOARD APPOINTMENTS

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

Aggieville Business Improvement District

Re-appointment of Kale Becker, 2508 Meade Circle, to a three-year term. Mr. Becker's term begins immediately, and will expire on December 31, 2010.

Board of Zoning Appeals

Re-appointment of Harry Hardy, 3117 Lundin Dr. Apt 5, to a three-year term. Mr. Hardy's term begins immediately, and will expire on December 31, 2010.

CONSENT AGENDA (CONTINUED)

BOARD APPOINTMENTS (CONTINUED)

City/University Special Projects Fund Committee

Appointment of Daryn Soldan, to a one-year (Student) term. Mr. Soldan's term begins January 9, 2008, and will expire on June 30, 2008.

Re-appointment of Roger C. Adams, 1609 Humboldt St., to a one-year (Faculty) term. Mr. Adams's term begins January 9, 2008, and will expire on June 30, 2008.

Re-appointment of Eileen Meyer, 2429 Buena Vista Drive, to a two-year (Citizen) term. Ms. Meyer's term begins immediately, and will expire on June 30, 2009.

Downtown Business Improvement District Advisory Board

Re-appointment of Jim Wright, 2902 Lakewood Drive, to a two-year term. Mr. Wright's term begins immediately, and will expire on December 31, 2009.

Partner City Advisory Committee

Appointment of Mary C. Kramer, 1222 Windsong Lane, to a three-year term. Ms. Kramer's term will begin immediately, and will expire on August 31, 2010.

Commissioner Strawn stated that he has a family member that works at Meadowlark and would not be participating on Item D: FINAL PLAT – MEWDOWLARK HILLS RETIREMENT COMMUNITY, UNIT FOUR.

After discussion, Commissioner Snead moved to approve the consent agenda, as presented. Commissioner Sherow seconded the motion. On a roll call vote, motion carried 5-0, with the exception of Item D: FINAL PLAT – MEWDOWLARK HILLS RETIREMENT COMMUNITY, UNIT FOUR, which carried 4-0 with Commissioner Strawn not participating on the item.

GENERAL AGENDA

FIRST READING - AMEND - MANHATTAN MARKETPLACE, UNIT TWO

Mayor Phillips outlined the meeting procedure and time allotted for tonight's presentations and comments.

GENERAL AGENDA (*CONTINUED*)

FIRST READING - AMEND - MANHATTAN MARKETPLACE, UNIT TWO (*CONTINUED*)

Eric Cattell, Assistant Director for Planning, presented the item and answered questions from the Commission.

Jason Hilgers, Assistant City Manager/Redevelopment Coordinator, presented an overview of the Downtown Redevelopment project, risks to the City of Manhattan and impacts to the community. He then answered questions from the Commission regarding the Tax Increment Finance (TIF) B Bond, Final Development Agreement, projected income streams, North End and South End alternatives, and funding mechanisms.

Ron Fehr, City Manager, provided additional information on expected lease percentages and revenue streams to pay off the bonds. He then answered questions from the Commission on the initial establishment of the redevelopment district and financing.

Bill Frost, City Attorney, provided additional clarification on the bonds.

Jason Hilgers, Assistant City Manager/Redevelopment Coordinator, responded to questions regarding the financial implications and time considerations associated with the Manhattan Marketplace Planned Unit Development (PUD) amendment.

Bernie Hayen, Director of Finance, responded to questions from the Commission regarding the financial impacts and stated that without a viable revenue stream to back the bonds, the City's rating would be lowered. He then answered additional questions relating to financing the project.

Ron Fehr, City Manager, and Jason Hilgers, Assistant City Manager/Redevelopment Coordinator, informed the Commission that a variety of revenue sources, in addition to property taxes, would be necessary to make up for any shortfalls of revenue. They then answered questions from the Commission regarding incremental tax percentages, property tax forecast modeling, financing options for the conference center, TIF and Transportation Development District (TDD) items, and potential revenue streams that could be used to pay for short term financing for the South End project.

Bob Welstead, President, Dial Realty, discussed the conditions of approval as reviewed by the Manhattan Urban Area Planning Board on Monday, January 7, 2008, and asked for direction from the Commission. He provided additional information on the proposed housing and stated they are committed to building the housing and are obligated to pay

GENERAL AGENDA (*CONTINUED*)

FIRST READING - AMEND - MANHATTAN MARKETPLACE, UNIT TWO (*CONTINUED*)

real estate taxes on the residential lots, whether they are built or not. He informed the Commission that communication continues with Warren Theatres in Wichita and responded to questions from the Commission regarding the condition of approval for the percentage of EIFS material on the Hy-Vee building.

Pete Hosch, Assistant Vice President-Real Estate, Hy-Vee Grocery Stores, provided additional information about the percentage of EIFS material as a condition and said that structural issues have been created with the addition of windows to the facility.

Bill Frost, City Attorney, responded to questions from the Commission regarding terminating the contract with Dial Realty and the time constraints associated with the South End project. He then provided clarification on items associated with the item.

Ron Fehr, City Manager; Jason Hilgers, Assistant City Manager/Redevelopment Coordinator; and Bill Frost, City Attorney, responded to questions from the Commission regarding associated project risks and potential revenue sources available for the South End project.

Dee R. Ross, 2404 Brockman Street, voiced concern that the initial negotiations with Dial required them to have 70 percent lease obligations by July 1, 2007, and were allowed an extension. He insisted that Dial needs to live up to its promises and stated that someone needs to stand up and say the tax buck stops here.

Dixie West, 1014 Houston Street, voiced concern for the funding and future costs associated with the proposed Discovery Center. She said if this passes tonight, then she did not want to hear from City Staff or the Commission how much this will cost the City of Manhattan to operate and sustain.

Karen Mayse, 3340 Newbury Street, President, League of Women Voters of Riley County, informed the Commission of the Leagues position that government decisions should be based on citizen input and best practices when changing a zoning district. She provided information on broad-based petition efforts and voiced concern that the developer has greater influence with the Commission than the citizens of Manhattan. She asked the Commission to listen to its citizens and to deny the amended PUD.

GENERAL AGENDA (CONTINUED)

FIRST READING - AMEND - MANHATTAN MARKETPLACE, UNIT TWO (CONTINUED)

Scott Quaintance, owner of Quaintance-Garcia Apartments in the North End redevelopment area, announced a petition that would be provided to Pete Hosch, Assistant Vice President-Real Estate, Hy-Vee Grocery Stores, and stated that he was not opposed to Hy-Vee coming to Manhattan, but was opposed to their store being an anchor in the redevelopment.

Linda Glasgow, 2236 Snowbird Drive, President, Manhattan/Riley County Preservation Alliance, asked the Commission to consider that the proposal from Dial does not improve the current PUD; that the proposal compromises the Strasser House and residents; that the core district will not be implemented into the project; and stated that the presumed loss of STAR bonds from the State is not reason enough to pass the North End project. She urged the Commission to table this proposed amendment and to come up with better funding mechanism to take us where we want to go.

Don Rose, 2011 Sunnymead Road, stated that he was against increasing the size of the building in the proposed amended PUD and asked that the City and County use the excess funds to pay off existing bonds and be out of debt.

Katherine Cardella, 323 South 14th Street, voiced concern in the use of eminent domain to make money for corporations and asked, if approved, what will the implications be in the future for the residents of the City of Manhattan.

Ed Olson, 3639 Everett Road, stated that he was opposed to the proposed changes and asked that the Commission further negotiate with Dial and to consider the detrimental impacts that have been identified.

Ruth Schrum, 720 Midland Avenue, affected property owner, asked if off-street parking would be established for the housing and for those property owners on the west side of Fourth Street. She asked if Dial continues to own the land with the properties on the North End district. She then answered questions from the Commission.

Clarence Swallow, 3800 McDowell Creek Road, asked the Commission to make the right decision which is usually the cheapest in the long run.

Hillary Esry, 407 Ehlers Road, informed the Commission that the use of eminent domain has been used to help another corporation and asked if local businesses have been approached to be part of the redevelopment.

GENERAL AGENDA (*CONTINUED*)

FIRST READING - AMEND - MANHATTAN MARKETPLACE, UNIT TWO (*CONTINUED*)

Roger Seymour, 517 North 4th Street property owner, stated that he has lost parking spaces and that the project has diminished the value of his property.

Mike Bonella, 331 North 14th Street, provided the Commission an online petition and stated the community is overwhelming against this proposed amendment. He asked the Commission to make the right decision instead of doing the easy one and to not bring in a new business to an already saturated market.

Christopher Renner, 508 Valley Drive, presented an article from Newton, Iowa, about Hy-Vee and stated they can do business in a 60,000 square foot store. He informed the Commission that he was concerned with cannibalization of local businesses and said that Dial has failed us.

Steven Mall, 325 Fordham Road, informed the Commission that eminent domain is not right and stated that Manhattan has condemned property for cheaper grapes.

G. L. Hersch, 1346 Laramie Street, showed petitions to the Commission received from citizens against the proposal and stated that the City of Ogden could use a Hy-Vee store.

Lisa Rockley, Executive Director, Downtown Manhattan Inc. (DMI), stated that DMI has been involved in this redevelopment since the early stages and strongly encouraged the Commission to deny the amendment to the PUD.

Debbie Nuss, 1419 Humboldt Street, informed the Commission that the public feels they have been betrayed and questions have not been answered to their satisfaction. She stated the public believes that the Commission is not listening and asked what recourse the public would have to overturn the Commissions decision tonight, if the amendment is proposed.

Gwyn Riffel, 1117 Hylton Heights Road, stated that Dial has lost sight of the vision for the downtown project. He referred to different sections in the STAR bond application and stated that the application and actions proposed tonight are in conflict. He asked the Commission to make the right decision, allow adequate time to do this project right, and urged the Commission to deny the application.

Elaine Mohr, 800 South Juliette Avenue, asked the Commission to find a suitable tenant and make this a project that we can all be proud of with a common vision to unite us all. She requested that the PUD amendment be denied.

GENERAL AGENDA (CONTINUED)

FIRST READING - AMEND - MANHATTAN MARKETPLACE, UNIT TWO (CONTINUED)

Marolyn Caldwell, 325 Fordham Road, asked if the Commission or a subsequent Commission could accept another tenant other than Hy-Vee.

Marge Davidson, fifth generation Manhattanite, stated that a grocery store is not a destination and asked to respect Ray's Apple Market and listen to the citizens that pay your salary.

Dave Colburn, 1906 Bluestem Terrace, informed the Commission that he understood the dilemma to solidify economics; however, he stated that you are alienating a huge portion of citizens and stated that a grocery store is not the only alternative if you have the courage to say no to this proposal. He then answered questions from the Commission regarding selling out our downtown.

Jeff Head, 3115 Heritage Ridge Court, said Hy-Vee's business model is at odds with the Manhattan Marketplace PUD. He voiced concerns for truck pollution and said the public has spoken against this amendment.

Linda Morse, 2118 Spain Drive, voiced concern in the delay for residential construction that was planned for this project and was opposed to the use of eminent domain in the future for uses other than streets and utility easements.

Gene Klinger, 1516 Wyndom Heights, informed the Commission that it will be 25 years this week that the Manhattan Town Center development started. He provided background information on the Town Center and asked the Commission to do the same thing with Dial Realty and deny the amendment request. He stated that he has never seen so much unity in the community.

Jean Hill, 1818 Cedar Crest, stated that the issue is a lack of trust from community members and voiced concern that the housing units are not secure. She stated that the dreams, aspiration, and plans for this redevelopment are getting rolled over like Fourth Street.

Nancy Stover, 351 North 15th Street, asked that the Commission allow the appropriate time for them to consider what has been said tonight and asked that the redevelopment offer what was originally envisioned.

GENERAL AGENDA (CONTINUED)

FIRST READING - AMEND - MANHATTAN MARKETPLACE, UNIT TWO (CONTINUED)

Enell Foerster, 920 Ratone Street, informed the Commission that she and her husband have been community fighters for over 50 years and feel that the community is really mad and concerned by this item. She asked the Commission to carefully consider what they are doing tonight.

At 10:15 p.m., the Commission took a brief recess.

Paul Nickel, 610 Scenic Drive, stated that he was impressed with insight and thoughtful comments made and encouraged the Commission to vote no on the item tonight.

Glenda Phillips, 2201 Hillview Drive, stated that her husband was also Tom and read an article from Lincoln, Nebraska, regarding Dial Realty and Wal-Mart and, emphasized the importance to have a fall-back plan when working with developers.

Eric Cattell, Assistant Director for Planning, responded to questions regarding zoning regulations and residential off street parking.

Rick Kiolbasa, Dial Realty, responded to questions regarding potential tenants that have been contacted and informed the Commission that Dial would be selling the land to Hy-Vee. He then responded to questions from the Commission regarding local businesses that have been contacted.

Ron Fehr, City Manager, responded to questions regarding the timing of the City Commission meetings and action steps for the downtown corridor.

Pete Hosch, Assistant Vice President-Real Estate, Hy-Vee Grocery Stores, responded to questions regarding the Newton, Iowa, store and business decisions that the Hy-Vee make to be successful. He then responded to questions from the Commission regarding display sales and stated that Hy-Vee would not proceed forward if the PUD amendment was not approved.

Ron Fehr, City Manager, responded to questions regarding legal advice provided to citizens and timeline of the item.

Bill Frost, City Attorney, responded to questions regarding zoning matters.

GENERAL AGENDA (CONTINUED)

FIRST READING - AMEND - MANHATTAN MARKETPLACE, UNIT TWO (CONTINUED)

Lyle Butler, President, Manhattan Area Chamber of Commerce, provided background information on the developers that were interviewed, the selection criteria, and the process that was used. He then answered questions from the Commission.

Jason Hilgers, Assistant City Manager/Redevelopment Coordinator, and Ron Fehr, City Manager, responded to questions about the leases in the North End project, moral obligation pledge, and financial incentives for Dial to complete the projects.

Bob Welstead, President, Dial Realty, informed the Commission that he is in contact with Jayme Morris-Hardeman to consider the Strasser House for Sunflower CASA. He then responded to questions from the Commission regarding what is being done to maintain the Strasser House and what kind of guarantees would be provided on building the proposed housing.

Ron Fehr, City Manager, responded to questions from the Commission on the STAR bonds that will be used in the South End project and provided an overview of elements planned for the South End.

Rick Kiolbasa, Dial Realty, responded to additional questions from the Commission and provided additional detail on the North End development and the senior citizen housing. He then responded to issues about the lack of trust and credibility concerns that were expressed and stated that Dial has a significant investment in this project and is highly motivated.

Pete Hosch, Assistant Vice President-Real Estate, Hy-Vee Grocery Stores, stated that Dial approached them late in the process and asked if their company wanted to be in this location. He responded to questions regarding financial incentives and stated that Hy-Vee is not getting any financial incentives and will be at a disadvantage with the TDD and being taxed at a higher rate.

Bob Welstead, President, Dial Realty, responded to additional questions from the Commission regarding tenants targeted.

Bernie Hayen, Director of Finance, responded to financial questions related to the proposed amendment and stated that no revenue source is available to the City that would provide temporary financing to allow Dial additional time to explore another tenant in the North End district.

GENERAL AGENDA (*CONTINUED*)

FIRST READING - AMEND - MANHATTAN MARKETPLACE, UNIT TWO (*CONTINUED*)

Pete Hosch, Assistant Vice President-Real Estate, Hy-Vee Grocery Stores, clarified that Hy-Vee is paying for the land from Dial and that they are not being subsidized.

Rick Kiolbasa, Dial Realty, responded to questions about the payment of land for the site.

Bernie Hayen, Director of Finance, responded to additional financial questions from the Commission regarding temporary bonding of land acquisitions and availability of temporary revenue stream.

Ron Fehr, City Manager; Bill Frost, City Attorney; and Jason Hilgers, Assistant City Manager/Redevelopment Coordinator provided additional clarification on the plan adopted, revenue stream, STAR bonds, moral obligation pledge, and project timeframe necessary to accomplish the project.

After further discussion, Commissioner Hatesohl moved to approve first reading of an ordinance amending Manhattan Marketplace, Unit Two, a Commercial Residential Planned Unit Development, generally located north of Osage Street, west of Tuttle Creek Boulevard, south of Moro Street and east of North 4th Street, and Ordinance No. 6544, based on the findings in the Staff Report, with the six (6) conditions of approval recommended by City Administration. Commissioner Snead seconded the motion.

Mayor Phillips asked for clarification on the six conditions provided in the January 8, 2008, staff memorandum.

Eric Cattell, Assistant Director for Planning, presented additional clarification on the conditions outlined and informed the Commission that condition number one was eliminated.

Commissioner Snead clarified the conditions listed in the January 8, 2008, memorandum to be: condition number two, as written; condition number three, still under discussion; condition number four shall conform to the Design Guidelines with the percentage of EIFS material on east and north facades, as proposed; condition number five, as written; and, condition number six, as written.

GENERAL AGENDA (CONTINUED)

FIRST READING - AMEND - MANHATTAN MARKETPLACE, UNIT TWO (CONTINUED)

After further discussion, Commissioner Sherow moved to propose an amendment to the motion in keeping the Planning Board's recommendation that the front (east) and north facades of Hy-Vee shall conform to the Design Guideline's 20 percent restriction on the percentage of EIFS material.

Bill Frost, City Attorney provided clarification on the proposed amendment and stated that there is not a recommendation from the Planning Board and that this is the wording that was in the motion of the Planning Board meeting.

Commissioner Sherow proposed a revised amendment to his motion to maintain the same wording as stated at the Planning Board meeting.

The amendment offered by Commissioner Sherow died for lack of a second.

After further discussion, Mayor Phillips moved for an amendment to be added to the motion to include the outdoor sales area of Building G shall be authorized until August 1, 2009, to enable Hy-Vee time to amend the state law regarding alcohol sales. If they are successful in amending the law, then the building shall not exceed 7,500 square feet and shall have a front elevation that presents a different architectural front design and if state law is not amended, then the outdoor sales shall terminate and Hy-Vee shall commence construction.

Pete Hosch, Assistant Vice President-Real Estate, Hy-Vee Grocery Stores, and Rick Kiolbasa, Dial Realty, asked about the timeframe being proposed and voiced concerns on improvements to be made to the expansion area, connectivity to adjacent building, and asked for additional time of five years. They also asked that the parking ratio remain as proposed.

Bill Frost, City Attorney, asked for clarification on the amendment being proposed for the ordinance and asked what needs to happen at the five year anniversary.

Mayor Phillips stated that the amendment needs to state the use will be up to five years from the date of the Certificate of Occupancy and that the use of outdoor storage terminates at the end of five years, and after the five year period, there will need to be a building permit applied for and a stand alone building constructed of no more than 7,500 square feet. The amendment was seconded by Commissioner Snead.

GENERAL AGENDA (CONTINUED)

FIRST READING - AMEND - MANHATTAN MARKETPLACE, UNIT TWO (CONTINUED)

Bill Frost, City Attorney, provided clarification on the amendment and informed the Commission that the ordinance would include the use and stated relationship for a period up to five years from the date of the Certificate of Occupancy, and from that point forward, there would need to be a building permit applied for and a stand alone building constructed.

After additional discussion, Mayor Phillips and Commissioner Snead were agreeable to the comments provided for the amendment. Mayor Phillips said the intent of amendment is to ensure that the building does not become a 94,000 square foot grocery store and that outside sales are not there permanently.

Pete Hosch, Assistant Vice President-Real Estate, Hy-Vee Grocery Stores, responded to questions from the Commission.

Bob Welstead, President, Dial Realty, responded to questions from the Commission and stated that Dial would be willing to recapture the space or lease the space.

After further discussion, on a roll call vote, the amendment to the motion carried 5-0.

Eric Cattell, Assistant Director for Planning, asked for clarification on condition three and condition five.

Pete Hosch, Assistant Vice President-Real Estate, Hy-Vee Grocery Stores, provided additional information on the proposal to satisfy condition five.

After additional discussion and comments from the Commission, on a roll call vote, the motion carried 3-2, with Commissioners Strawn and Sherow voting against the motion.

ADJOURNMENT

At 1:55 a.m., the Commission adjourned.



Gary S. Fees, CMC, City Clerk

STAFF REPORT

ON AN APPLICATION TO AMEND THE APPROVED PRELIMINARY DEVELOPMENT PLAN OF MANHATTAN MARKETPLACE UNIT TWO COMMERCIAL PLANNED UNIT DEVELOPMENT (PUD)

BACKGROUND

APPLICANT OWNER: Dial-Manhattan Shops, LLC.

ADDRESS: 11506 Nicholas St. #200, Omaha, NE 68154-4421.

OWNER: Dial-Manhattan LLC.

LOCATION: Generally north of Osage Street, west of Tuttle Creek Boulevard, south of Moro Street and east of N. 4th Street.

(Note: Properties located at 312 Fremont Street and 318 Fremont Street are bounded by the PUD. 312 Fremont Street is zoned C-5 District. The current occupant is a plumbing business. The use at 318 Fremont Street is an apartment building, which is currently zoned R-3 District.)

AREA: Amendment site: Approximately 13.59 acres.

Total area for the approved Manhattan Marketplace Unit Two PUD: 21.8 acres.

DATE OF PUBLIC NOTICE PUBLICATION: Monday, November 13, 2007

DATE OF PUBLIC HEARING: PLANNING BOARD: Monday, December 3, 2007

CITY COMMISSION: Tuesday, December 18, 2007

EXISTING PUD:

Manhattan Marketplace, Unit Two, a Commercial Planned Unit Development and Ordinance No. 6544, dated June 6, 2006 (*attached*).

Attachment No. 1

A short description of the approved PUD is listed below with a “***” denoting those parts of the approved PUD affected by the proposed Amendment. Proposed modifications are described beginning on page 3.

Permitted Uses.

The permitted uses include all the permitted and conditional uses of the C-4, Central Business District.

Proposed Buildings, Structures, and Phasing.

The site is within the North Project Area of the Downtown Redevelopment Plan and identified as the Tuttle Creek District in the Design Guidelines for Downtown Redevelopment. The proposed development consists of commercial, residential, and mixed-use commercial/residential buildings. A public plaza is proposed on Lot 15. There is an existing stone residential structure on Lot 11, which will remain. All other proposed development is new construction. For the purposes of review, floor area is considered equal to lot coverage.

** A total of 207, one and two bedroom dwelling units are proposed in several buildings throughout the PUD.

** Lot 6: One and two-story commercial Buildings K, J, I and O. Lot coverage is approximately 62,700 square feet. Building K is also proposed to have ten (10) second floor residential dwelling units. Building Height: 24-39 feet.

** Lot 7: One-story commercial Buildings G and H. Lot coverage is approximately 22,233 square feet. Building Height: 22-30 feet.

** Lot 8: One-story commercial Building F. Lot coverage is approximately 68,500 square feet. Building Height: 35 feet. (*Note: Lot coverage was noted at approximately 73,000 square feet in area on the approved PUD due to the addition of an outdoor service area.*)

** Lot 9: One-story commercial Buildings L, M and N. Lot coverage is approximately 17,295 square feet. Building Height: 22-28 feet.

** Lot 10: Two-story residential Buildings T and U with fourteen (14) (*mislabeled 16 on plan sheet*) total dwelling units. Building Height: 25-26 feet.

** Lot 11: Existing residential structure (Strasser House). Lot coverage is approximately 1,582 square feet and may be used by the applicant as a real estate office or some other permitted use. Height: estimated 25 feet.

Attachment No. 1

** Lot 12: Two-story residential Building S with twelve 12 dwelling units. Building Height: 27 feet.

Lot 13: Two-story residential Building R with twenty (20) residential dwelling units. Building Height: 26-25 feet

Lot14: Three-story commercial/residential Building Q approximately 11,000 gross square feet of commercial floor area square on the first floor, and twenty-two (22) residential apartments, 11 units per floor, on floors 2 and 3. Building Height: 46 feet.

Lot 15: Four-story mixed use commercial/residential Building P with a parking garage, consisting of approximately 14,800 gross square feet of commercial space with restaurant on the first floor; 129 residential apartments, 43 units per floor, on floors 2-4; and a parking garage with approximately 270 parking spaces. Building Height: 57-66 feet

Lot 16: One-story commercial Building E. Lot coverage is approximately 7,429 square feet. Building Height: 24-28 feet.

DESCRIPTION OF PROPOSED AMENDMENT:

Whenever there are substantial modifications to an approved Preliminary Development Plan the Manhattan Zoning Regulations require an Amendment of the PUD (*attachment*). Proposed modifications to the PUD include, but are not limited to: changes to the approved site plans, architectural and floor plans, exterior building materials, landscape and screening plans, and signage plans; provision for outdoor seasonal sales; and the removal of one (1) building. (*Note: As a part of the Amendment, buildings and lots have been re-labeled.*) A Final Development Plan and Final Plat will need to be submitted at a later date, prior to construction of buildings.

Construction Phasing

Commercial construction on Lots 1-4, Travel Easements and streets are scheduled to commence in 2008 with opening dates in the Fall of 2008. No improvements to the Strasser House on Lot 5 are noted. Residential construction on Lots 6 and 7 are scheduled to commence in 2008.

Design Guidelines for Downtown Redevelopment

The Design Guidelines for Downtown Redevelopment sets out policy, intent, and conditions; site guidelines; building guidelines; supplemental guidelines for large format retail design and small scale residential guidelines; and, checklists for site and building

Attachment No. 1

guidelines. While the Guidelines are not regulations, they were incorporated as a part of the Development Agreement between the City and Dial. The Guidelines are for developers, architects, owners and decision makers for reviewing and evaluating proposals and design quality. Exceptions to the Guidelines may be considered if the overall intent of the Guidelines has been met. In addition, large format buildings, those with footprints greater than 10,000 square feet in area, such as iconic, corporate or standard building design, will be allowed, only if the purposes, intent and conditions of the Guidelines are met. General purpose and intent statements consists of:

- Promote a civic and functional relationship between the public streetscape and adjacent private development.
- Increase the economic and cultural vitality of Downtown Manhattan.
- Create an environment conducive to pedestrian circulation.

Amendment Description, Modifications and Design Guidelines include:

Note: In addition to the changes described below, the Amendment will eliminate 12 residential dwelling units from the approved 207 total residential dwelling units. The amendment proposes a total of 195 residential dwelling units .

Proposed Lot 1: Description: One story proposed commercial Buildings K (**Office Max**), J, and M with building heights from 26-32 feet. Lot coverage is approximately 33,704 square feet. (*Note: The approved PUD consists of Buildings K and J, which have been re-configured to consist of K, J, and M.*)

Modification: The approved floor plan for Building K shows 10 residential apartment units on the second floor of the building. It is City Administration's understanding that the proposed tenant does not desire to have a residential use above the business. The amended floor plan eliminates the 10 residential dwelling units.

Design Guidelines: Design Guidelines are met with two exceptions: (1) The sidewalk along the south side of Building K is 5 feet in width at certain points due to pilaster and tree conflicts; and, (2) Building K appears to have an entrance on the Osage Street corner frontage (south elevation), but does not. The business entrance is off 3rd Place. Because the building is sited on an important intersection, it may be appropriate to have an entrance on the Osage Street corner of the building. Note: The sidewalk along the south side of Building K is associated with the City's Osage Corridor street project. The City will coordinate with the developer to modify the design to provide wider walk able space along this sidewalk. One option could include moving the tree wells so they don't line up directly with the adjacent building pilasters.

Attachment No. 1

Proposed Lot 2: Description: one-story commercial Buildings I (**Bed, Bath and Beyond**) and O with building heights range from 25-34 feet. Lot coverage is approximately 30,134 square feet.

Modification: Allow a 400 square foot wall sign on the 3rd Place façade on Building I for Bed, Bath and Beyond. The approved sign is 200 square feet in area. The Design Guidelines indicate that signs must conform to the Manhattan Zoning Regulations. The applicable zoning district to determine conformance is the C-4, Central Business District. Gross surface area for wall signs are based on “the total gross surface area of all signs shall not exceed fifteen (15) times the square root of the street frontage on which the business has frontage, but in no case more than twenty (20) percent of the first floor of the facade of the building.”

For comparison, Best Buy’s wall sign was allowed at 350 square feet in area, or 144 square feet in area greater than the C-4 District requirement. If a comparable linear frontage to sign area ratio is applied to the Bed, Bath and Beyond sign, as applied to the Best Buy sign (350 square feet of sign/187.7 linear feet of building frontage=1.9), then the same ratio applied to Building I would be equivalent to a 220 square foot sign. C-4 District sign regulations applied to Building I would permit a sign 158 square feet in area. An increase to 220 square feet is reasonable and appropriate in scale to the building.

Design Guidelines: Design Guidelines are met, except for the wall sign.

Proposed Lot 3: Description: One-story commercial Building F (**Petco**) with building height up to 33 feet. Lot coverage is approximately 16,824 square feet.

Modifications: No substantial modifications.

Design Guidelines: Design Guidelines are met, except the north façade of the building does not have articulating features. However, the north façade is intended to be an interior wall when the intervening space is filled by an expansion of Hy-Vee. Given the future intent to fill the space, it is unreasonable to require the façade to provide articulating features.

Proposed Lot 4: Description: two-story commercial Building H (**Hy-Vee**). Building height is 25 feet. Façade height at the main entrance height is 36 feet.

The store is a 24 hour operation. The bulk of all deliveries take place on Monday and Friday with the potential for 40% to 60% of deliveries on Monday and Friday. Weekly deliveries consist of between 40 and 55 full size semi truck deliveries, which can be expected based on the size of the store and 45 to 65 route delivery trucks. The bulk of

Attachment No. 1

deliveries are between 6 AM and 5 PM with limited deliveries outside those hours. The primary use of the store is grocery sales. In addition, Hy-Vee departments may consist of a bank, pharmacy with drive-up window, coffee shop, dry cleaning, Starbucks, Postal substation, health quick care, and eating area with 170 seats. The site plan shows an outdoor seating area in front of the dining area at the northeast corner of the building.

An approximate 19,760 square foot area in the off-street parking lot, generally along the Tuttle Creek Boulevard frontage, will be for seasonal storage and sales of lawn, garden and landscaping items and outdoor furniture, which may be enclosed with temporary fencing or an equivalent barrier (*see photos*). Seasonal sales and storage is generally from March 1st to September 15th, or the planting and growing season. In addition, the outdoor area may be used for car shows, youth carnivals or similar activities. Outdoor storage is also proposed on apportion of the front sidewalk of the grocery store for seasonal sales such as pumpkins or Christmas Trees.

Hy-Vee notes that the 15,737 square foot future expansion area (proposed Building G) may also be used for lawn and garden products.

Modification: Lot coverage is approximately 78,113 square feet and includes an additional 15,737 square feet of expansion space to the south of the store scheduled to be occupied by Hy-Vee. The future expansion would fill the intervening space between the Petco building and Hy-Vee. The expansion space is proposed to be fenced with a 5.5 foot tall wrought iron fence with gate. Proposed Building H is approximately 40 feet greater in depth from east to west than the previously approved building (Building F) for this location. The change in lot coverage between approved Building F and proposed Building H is an approximate 12% increase.

If Hy-Vee expands to include Building G, total lot coverage is 93,850 square feet. Lot coverage for approved Buildings H and F is approximately 75,531 square feet in area. This is equivalent to a lot coverage increase of approximately 20%, with the majority due to the increase in the size of previously approved Building H from approximately 7,031 square feet, to 15,737 square feet in area.

Modification: A proposed drive-thru pharmacy and grocery pick-up is generally located at the southeast corner of the proposed building. Entry and exit driving lanes are consistent with the south flow of traffic along 3rd Place. Drive-in establishments are a permitted use in the PUD.

Modification: Building M is deleted from Lot 9 and replaced as off-street parking lot, also shown as the outdoor seasonal storage for Hy-Vee.

Attachment No. 1

Modification: An approximate 19,760 square foot area is proposed in the off-street parking lot generally along the Tuttle Creek Boulevard frontage for seasonal sales and storage of lawn, garden and landscaping items and outdoor furniture. Seasonal outdoor sales and storage is proposed to be generally from March 1st to September 15th, or the planting and growing season. In addition, the outdoor area may be used for car shows, youth carnivals or similar activities. Outdoor sales/storage is also proposed on the front sidewalk of the grocery store for seasonal sales such as pumpkins or Christmas Trees. Hy-Vee notes that the 15,737 square foot expansion area may also be used for lawn and garden products.

Design Guidelines Building materials consist of pre-cast concrete is proposed on the north (Moro Street frontage), south, and east (rear) elevations of the building and a small segment on the west elevation (3rd Place). Pre-cast is a material prohibited by the Design Guidelines. EIFS is not permitted to exceed 20% of a street façade. EFIS is proposed on the north and east facades of approximately 29% of each façade.

Design Guidelines: Building H proposes wall signs of varying size for independent businesses located in the grocery store, except for the “Food” sign, which duplicates the “Hy-Vee” sign. The main Hy-Vee wall sign is proposed at 7 feet in height and 31.5 feet in length, or 221 square feet in area, which conforms to the C-4 District. Other wall signs conform, except that signage should be limited to one sign per business.

Design Guidelines: Drive-thru pharmacy, pedestrian sidewalk, curbing and landscaping along the 3rd Place (east elevation) of the Hy-Vee store do not meet Design Guidelines or the approved PUD. The south curb cut exceeds the minimum 30 foot driveway width, which is 35 feet on the south entry, but 25 feet at the north exit. The drive-thru lanes are a break in the continuity of the pedestrian sidewalk and street wall. This interrupts the pedestrian streetscape provided with the approved PUD and required by the Design Guidelines. However, the sidewalk proposed along the building frontage keeps pedestrians off driveway curb cuts and maintains a 10 foot wide pedestrian walkway.

Design Guidelines: The sidewalk in front of Hy-Vee is landscaped at approximately 8.4% to 10% versus a minimum 15% and should be increased to the minimum. The Design Guidelines would require nine (9) trees to be provided, based on the 310 foot length of the façade, while 8 are shown. However to maintain symmetry and to protect the vision triangle at the northeast corner of Hy-Vee, 8 trees, with 4 on either side of the entrance is a reasonable balance. (Note: the north side of Hy-Vee along Moro Street, as well as the north side of Moro Street, will be a City design project.)

Design Guidelines: Some architectural elements of the building do not meet the Design Guidelines with respect to building facades, proportion and scale and building materials (*see attached letter from Bowman Bowman Novick dated September 24, 2007, No's 6, 7 and 8*).

Attachment No. 1

Proposed Lot 5: Description: Two (2) approved residential buildings, which were architecturally the same as Building S. The approved two (2) buildings consisted of 14 dwelling units and 22 bedrooms. Lot area is approximately 22, 238 square feet and lot depth is approximately 85 feet east to west. Fourteen (14) off-street parking spaces between the two buildings are deleted as a part of the amendment.

Modification: The modified lot is approximately 8,973 square feet in area and 38 feet in depth east to west, which is reduced in part by the southern portion of the approved lot being added to proposed Lot 6 for the Strasser House and in part by the increased east to west depth of the Hy-Vee building. Three (3) proposed residential buildings will replace the previous two (2) buildings. Proposed Building type T is a flat roofed, approximate 19 foot tall building, measured from street grade, one and half story above grade and half story below grade, brick residential structure with two, one-bedroom, dwelling units above and two, one-bedroom, units below grade. A total of 12 dwelling units and 12 bedrooms are proposed. Above grade units have decks along N. 4th Street and below grade units have patio areas, which will be screened by masonry walls from the Hy-Vee service areas. There are no wall openings along the east side of the building. At least 16 on street parking spaces to the immediate west of proposed Lot 5 are available along N. 4th Street to serve the occupants. The proposed Buildings T conform to the Design Guidelines.

Proposed Lot 6: The Strasser House is located on Lot 6, which is increased in lot area from approximately 4,795 square feet to approximately 6,055 square feet in area. The east setback of the building to the proposed screening wall is reduced from approximately 10 feet to 4 feet. A “green screen” trellis will be on the Strasser House side of the 8 foot tall masonry screening wall. The applicant’s consultant and the City’s Code Services Department researched the need for protection of wall openings in the east wall of the Strasser House and code requirements are met.

Proposed Lot 7: Two-story residential Building S with 12 dwelling units and 20 bedrooms. No changes to the approved architecture or floor plans are proposed. Building height is 27 feet and is the same residential building approved with the PUD. Off-street parking is reduced from 24 parking spaces to 19 spaces.

PROPOSED SIGNS

| <u>Type</u> | <u>Dimensions</u> | <u>Lighting</u> |
|--------------------|--------------------------|------------------------|
| Wall signs | Vary per business | Internal Illumination |

Attachment No. 1

Wall signs are internally lit and well scaled to the building facades, except as noted above under the description of the substantial modifications. The seasonal outdoor garden sales area might have temporary signage on the tents/awnings (*see photos*).

Signs generally follow the C-4, Central Business District sign requirements; however, the wall sign on Building I (Bed Bath and Beyond) exceeds the approved 200 square feet in area and is proposed at 400 square feet in area; and the additional wall sign on Building H (Food sign) duplicates the intent of another sign (Hy-Vee).

PROPOSED LIGHTING: Light poles will be 27 feet in height in the parking lots and 14 feet in height along pedestrian store front walkways, both of which are consistent with the approved PUD. Light fixtures will be provided on individual buildings according to architectural plans and not cast direct light on streets or adjacent property. Specific building light fixture signs will need to be provided with the Final Development Plan. The written application documents indicate that lighting fixtures along the rear of the commercial buildings will be a full cut-off shielded design.

MATTERS TO BE CONSIDERED WHEN AMENDING A PLANNED UNIT DEVELOPMENT

1. 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 applicant indicates the revised application represents, “The many changes, updates and revisions to this submittal have been made to carry out the spirit, intent and purpose of the conceptual Master Plan, Design Guidelines and Preliminary PUD which has been created for this district. Specifically, the design and scale of all of the residential units provided on 4th Street, combined with the preservation of the Strasser House along a tree-lined street, not only buffers but enhances the neighborhood.” In addition, architectural and pedestrian elements provide for an extension of the downtown area.

The general intent of the PUD is to provide for a pedestrian oriented mixed use retail and residential environment as an extension of Downtown. The pedestrian environment is a key element of the Design Guidelines. Proposed architectural and site modifications that do not meet the Design Guidelines could be revised to ensure that the intent of the approved PUD is met, if the recommended conditions of approval are required. Any conditions of approval will be made a part of an amending ordinance and would have to be reflected on Final Development Plan submittals.

Attachment No. 1

2. 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 states that, “The proposed amendment is made necessary because of the city and Dial’s desire to further the revitalization of the downtown area. The challenge has been to transform this property from a variety of dilapidated businesses and aging housing into an active and vital mixture of new residential and retail services yet preserving a good transition and buffer to the surrounding neighborhood. Specifically, the preservation of the Strasser house on its existing site and the addition of twelve apartment housing units along 4th Street south of Moro, provide for a better buffer transition than what was previously proposed.” In addition, “The changes to the PUD were caused by the marketplace. Many retailers were contacted to see if the demographics that Manhattan provides would be suitable for their type of store. Upon further review, the tenants that are choosing to come to Manhattan are tenants that can and will be successful and sustainable for many years to come”

It is recognized that modifications may be needed to address market conditions to insure a viable development. Modifications should conform to the Design Guidelines to meet the overall intent of the approved PUD.

3. 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: Approval of the proposed Amendment would result in a relative gain to the general public welfare by allowing the implementation of the PUD and the overall downtown redevelopment project to proceed and because of the substantial public investment in public improvements that have already been made in association with the PUD. It appears that the primary measurable change is increased truck traffic associated with the Hy-Vee grocery store. A supplemental traffic engineering analysis by the applicant’s professional engineer, and review and acceptance by the City Engineer, indicate the public street system has the capacity and has been designed to handle increased truck traffic. Proposed modifications to the approved PUD are minimal. Streets and easements are otherwise designed to accommodate the downtown redevelopment project.

The proposed amendment will not be granted as a special benefit to any one person. While the proposed modifications to include the Hy-Vee may not be what the community originally anticipated, the changes are in response to market conditions in order to make the project viable and a benefit to the general public.

ADDITIONAL MATTERS TO BE CONSIDERED WHEN AMENDING A PLANNED UNIT DEVELOPMENT

1. LANDSCAPING: The proposed landscape plan provides for a number and variety of shade and ornamental trees, evergreen trees, shrubs, foundation plantings, parking lot landscaping, screening, and ground cover throughout the site. The landscaping plans conform to the approved PUD and requirements of the Design Guidelines, except as noted above. Landscaping and underground irrigation will be maintained by the owner.

2. SCREENING: Dumpsters are proposed to be screened by masonry enclosures with doors. Loading dock and trash compacter locations adjacent to the rear of Buildings F and H will be screened from residential dwellings to the west and from public streets, in combination with landscape screening and 8 foot tall masonry walls along property lines, or walls that are integrated with the building design (Buildings F, H and T).

3. DRAINAGE: The site is proposed to drain to the east to inlets and then to the drainage channel along the east side of Tuttle Creek Boulevard. A comprehensive drainage plan was submitted and approved with the approved PUD and there are no changes to the drainage proposal.

4. CIRCULATION:

Public Access

The proposed internal circulation plan provides for safe, convenient and efficient movement of goods, motorists, bicyclists, and pedestrians. Conflicts between motorists and pedestrians are minimized.

The site will be accessed from the surrounding street system and a right-in and right-out off Tuttle Creek Boulevard. Internal travel easements and public streets will provide access to all lots. Sidewalks are proposed throughout the site, as well as along Tuttle Creek Boulevard. Sidewalk crossings of most streets will be brick paved to emphasize pedestrian crossings.

The applicant's original traffic analyses were comprehensive for the entire North Project Area and indicated nominal impact on the surrounding transportation network as a result of the proposed development. The analysis was previously accepted by the City Engineer with the rezoning to PUD.

Attachment No. 1

The applicant's professional engineer has submitted a supplemental traffic engineering analysis Technical Memorandum (*attached*), which describes the impact of increased truck traffic related to the proposed Hy-Vee grocery store on N. 4th Street. The Memorandum's conclusion is that 4th Street is designed as a collector street consistent with the Manhattan Urban Area Comprehensive Plan and Downtown Tomorrow Plan and the additional truck traffic will have minimal impact on the street.

The City Engineer (*attachment*) has reviewed the Technical Memorandum and accepts it with no exceptions.

Off-Street Parking

The Manhattan Zoning Regulations do not require off-street parking in the C-4 District for any use. The number of approved parking spaces in the area of the Amendment, within the approved PUD, is 638 commercial and 38 residential, a total of 676.

Within the area of the Amendment, a total of 680 off-street parking spaces are proposed, of which 19 are associated with Lot 7, residential Building S. In addition, 81 can be expected to be used for the seasonal outdoor sales storage area by Hy-Vee. Cart corrals are proposed in the parking lot and have been set aside and do not reduce the proposed total 680 parking spaces. On- street parking along the east side of N. 4th Street can be used to meet the needs for residential buildings, as well as the Strasser House.

The proposed number of parking spaces should be adequate. Without specific detailed floor plans, parking must be calculated based on gross floor area. Off-street parking demand is based on net floor area. Storage, bathrooms, mechanical rooms and similar areas that do not create parking demand are deducted from the total floor area. It is assumed that actual demand would be less than demand based on gross floor area. It should also be assumed that demand for every commercial and residential use will have to be met at the same time.

5. OPEN SPACE/LANDSCAPED AND COMMON AREA: Approximately 16% of the site is open space/landscaped area, which will be maintained by the applicant.

6. CHARACTER OF THE NEIGHBORHOOD: The site is within a commercial service/retail corridor, and bounded on the east by Tuttle Creek Boulevard, on the west by North 4th Street, on the south by the Central Business District, and the north by Bluemont Avenue and a mixture of retail and service retail uses. The area to the west of the site is characterized as a mix of low and medium density residential uses.

MATTERS TO BE CONSIDERED WHEN REZONING

1. EXISTING USE: Manhattan Marketplace Unit Two, a Commercial Planned Unit Development, subject to Ordinance No. 6544 (attached) approved on June 6, 2006. The site is generally vacant and being prepared for redevelopment.

2. PHYSICAL AND ENVIRONMENTAL CHARACTERISTICS: Generally flat. Existing structures have been demolished and the site has been graded and is vacant except for the Strasser House and two existing properties on Fremont Street, which are not within the PUD. Existing drainage is to the east to the ditch along the west side of Tuttle Creek Boulevard. The site is located in a 500 Year Flood Plain and is not subject to flood plain development regulations or requirements.

3. SURROUNDING LAND USE AND ZONING:

(a.) NORTH: Bluemont Avenue, commercial retail and service uses; C-5 District and Wal-greens PUD

(b.) SOUTH: Leavenworth Street, Manhattan Town Center; C-4 District.

(c.) EAST: Tuttle Creek Boulevard, commercial/retail uses: C-5 District and PUD.

(d.) WEST: N. 4th Street, single-family, two-family, multiple-family residential uses, community facilities (Senior Center); R-M, Four Family Residential District and R-2 District with TNO, Traditional Neighborhood Overlay District and C-4 District.

4. GENERAL NEIGHBORHOOD CHARACTER: See Number 6 above.

5. SUITABILITY OF SITE FOR USES UNDER CURRENT ZONING: The existing site is suitable for the Permitted Uses approved with the PUD.

6. COMPATIBILITY OF PROPOSED DISTRICT WITH NEARBY PROPERTIES AND EXTENT TO WHICH IT MAY HAVE DETRIMENTAL AFFECTS: The proposed modifications should have minimal impact on adjacent properties. Properties to the north are commercial. To the south is the approved PUD, with residential uses to the west of N. 4th Street. Proposed modifications should not adversely affect those areas as the changes associated with the Amendment are generally consistent with the approved PUD. To the east is Tuttle Creek Boulevard and the Amendment proposes no change that would adversely impact that street.

Attachment No. 1

- May 16, 2006 City Commission considers first reading of an ordinance rezoning of Manhattan Marketplace Addition, Unit Two to PUD, Commercial Planned Unit Development District and on a vote of 5-0, overrode the Planning Board's recommendation and approved first reading of an ordinance rezoning the site to PUD, Commercial Planned Unit Development, as modified by the revised Preliminary Development Plan that replaced the hotel use in Building P with residential dwellings, based on the findings in the Staff Report as verbally updated in the staff presentation, with the four (4) conditions of approval recommended by the Planning Board.
- June 6, 2006 City Commission overrides the recommendation of the Manhattan Urban Area Planning Board and approves Ordinance No. 6544 rezoning Manhattan Marketplace Addition, Unit Two, to PUD Commercial Planned Unit Development District as modified by the revised Preliminary Development Plan replacing the hotel use in Building P with residential dwellings, based on the findings in the Staff Report as updated by the Cover Memorandum, with the four (4) conditions of approval listed in the Staff Report.
- October 1, 2007 Public hearing to amend the approved PUD tabled by the Manhattan Urban Area Planning Board due to a technical problem with the sound system.
- October 15, 2007 Manhattan Urban Area Planning Board, on a vote of 7-0, recommended denial of an amendment of Manhattan Marketplace Addition, Unit Two Commercial Planned Unit Development District and ordinance No. 6544. The application was withdrawn by the applicant on November 8, 2007.

9. 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 PUD amendment is

Attachment No. 1

consistent with the intent and purposes of the Zoning Regulations, the intent of the PUD Regulations and Design Guidelines, subject to the conditions of approval listed under the staff recommendation.

10. 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 that denial would accomplish in comparison to the hardship to the applicant and the City. That portion of the PUD affected by the Amendment is an integral part of the overall downtown redevelopment project. Substantial public investment has, and will continue to be made, in order to implement the PUD as a part of the overall downtown redevelopment effort. Denial of the Amendment would be a hardship on the applicant, as well as the general public, given the levels of public investment already made and the issues associated with the development agreement between the City and Dial (*see memorandum from Ron Fehr, City Manager*).

11. ADEQUACY OF PUBLIC FACILITIES AND SERVICES: Adequate public facilities and services are available to serve the site.

12. OTHER APPLICABLE FACTORS: None.

13. STAFF COMMENTS: City Administration recommends approval of the proposed Amendment of Manhattan Marketplace, Unit Two, a Commercial Planned Unit Development, and Ordinance No. 6544, subject to the following conditions:

1. Decorative pedestrian scale lights shall be provided on the vertical support columns, consistent with pedestrian lights proposed on the vertical accent pilasters along the front and northern facades of Hy-Vee.
2. The Bed Bath & Beyond wall sign shall be reduced to 220 square feet in area to be proportional to its frontage and consistent with the PUD.
3. Outdoor seasonal sidewalk sales in front of Hy-Vee shall be conducted in a manner so as to remain ADA compliant and shall not restrict pedestrian movement. The outdoor seasonal storage and sales area in the parking lot and the area of Building G shall be limited to the areas delineated on the site plan and from March 1st to September 15th of each year.
4. The front (east) and Moro Street (north) façades of Hy-Vee shall conform to the Design Guideline's 20 % restriction on the percentage of EIFS material.

Attachment No. 1

5. The percentage of required landscaping along the sidewalk area in front of Building H (Hy-Vee) shall follow the Design Guidelines.
6. All provisions of Ordinance No. 6544 that are not in conflict with this amendment shall remain in force.

ALTERNATIVES:

1. Recommend approval of the proposed Amendment of Manhattan Marketplace, Unit Two, a Commercial Planned Unit Development, and Ordinance No. 6544, stating the basis for such recommendation.
2. Recommend denial of the proposed Amendment, and Ordinance No. 6544, stating the specific reasons for denial.
3. Table the proposed Amendment to a specific date, for specifically stated reasons.

POSSIBLE MOTION:

The Manhattan Urban Area Planning Board recommends approval of the proposed Amendment of Manhattan Marketplace, Unit Two, a Commercial Planned Unit Development, and Ordinance No. 6544, based on the findings in the Staff Report, subject to the six (6) conditions of approval recommended by City Administration.

PREPARED BY: Steve Zilkie, AICP, Senior Planner

DATE: November 28, 2007

07108