

MINUTES
SPECIAL CITY COMMISSION MEETING
TUESDAY, MARCH 24, 2009
7:00 P.M.

The Special Meeting of the City Commission was held at 7:00 p.m. in the City Commission Room. Mayor Mark J. Hatesohl and Commissioners Bob Strawn, Bruce Snead, James E. Sherow, and Tom Phillips were present. Also present were the City Manager Ron R. Fehr, Assistant City Manager Jason Hilgers, Assistant City Manager Lauren Palmer, City Attorney Bill Frost, City Clerk Gary S. Fees, 8 staff, and approximately 24 interested citizens.

PLEDGE OF ALLEGIANCE

Mayor Hatesohl led the Commission in the Pledge of Allegiance.

COMMISSIONER COMMENTS

Mayor Hatesohl announced that American Eagle Airlines would be launching nonstop jet service from Manhattan to Dallas/Fort Worth starting August 25, 2009. He stated that this would be a 50 passenger jet and then thanked Rich Jankovich, Chair, Manhattan Regional Airport Advisory Board, and Peter VanKuren, Airport Director, for their work.

CONSENT AGENDA

(* denotes those items discussed)

MINUTES

The Commission approved the minutes of the Regular City Commission Meeting held Tuesday, March 3, 2009, and the Special City Commission Meeting held Tuesday, March 10, 2009.

CLAIMS REGISTER NOs. 2606 and 2607

The Commission approved Claims Register Nos. 2606 and 2607 authorizing and approving the payment of claims from February 25, 2009, to March 17, 2009, in the amounts of \$191,661.87 and \$4,099,551.15.

CONSENT AGENDA (CONTINUED)

LICENSES

The Commission approved a Tree Maintenance License for calendar year 2009 for Castle Tree Care, 4711 McIntyre Road, Manhattan; Kanscapes, Inc., 8455 River Valley Drive, Manhattan, and an annual Cereal Malt Beverages On-Premises License for Last Chance, Inc. D/B/A Rusty's Last Chance, 1213 Moro Street, Manhattan.

ORDINANCE NO. 6755 – AMEND ZONING REGULATIONS – FINAL DECISION OF BOARD OF ZONING APPEALS

The Commission approved Ordinance No. 6755 amending the Manhattan Zoning Regulations to clarify when the Final Decision of the Board of Zoning Appeals occurs, by modifying Article XIV, Sections 14-405, 14-506, 14-607, and 14-706; and, Article VIII, Section 8-501(I), based on the findings in the Staff Memorandum, as recommended by the Manhattan Urban Area Planning Board (*See Attachment No. 1*).

RESOLUTION NO. 032409-A – HAZARD MITIGATION PLAN

The Commission approved Resolution No. 032409-A authorizing E-Fm Consulting, LLC, of Lawrence, Kansas, to represent the City in the preparation of a Hazard Mitigation Plan for the City.

NEGOTIATE CONTRACT – DESIGN – 17TH STREET TRANSPORTATION IMPROVEMENTS (ST0824, CIP# EN801P)

The Commission accepted the recommendation of the Selection Committee and authorized City Administration to negotiate a contract with Landplan Engineering P.A., of Manhattan, Kansas, for the design of the 17th Street Transportation Improvements (ST0824, CIP# EN801P).

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NEGOTIATE CONTRACT – DESIGN – TECUMSEH-QUIVERA SEWER SYSTEM IMPROVEMENTS (ST0824, CIP#SW801P)

Mike Engler, Bartlett & West, responded to questions from the Commission and stated that the project is to be done locally with Sloan/Meier/Hancock Engineers.

The Commission accepted the recommendation of the Selection Committee and authorized City Administration to negotiate a contract with Bartlett & West and Sloan/Meier/Hancock Engineers for the design of the Tecumseh-Quivera drainage area improvements (ST0824, CIP#SW801P).

CONSENT AGENDA (CONTINUED)

* **AWARD CONTRACT – MARLATT WATERWAY STORM DRAINAGE IMPROVEMENTS (SM0701).**

Ron Fehr, City Manager, and Bernie Hayen, Director of Finance, responded to questions regarding the financing of the Marlatt Waterway Storm Drainage Improvements.

The Commission accepted the Engineer's Estimate in the amount of \$744,261.00 and awarded a construction contract in the amount of \$415,006.95 to the lowest responsible bidder, Rush Creek Construction, of Beatrice, Nebraska, for the Marlatt Waterway Storm Drainage Improvements Project (SM0701).

FIRST READING – ISSUE – GENERAL OBLIGATION BONDS – MARLATT WATERWAY STORM DRAINAGE IMPROVEMENTS (SM0701)

The Commission approved first reading of an ordinance authorizing the issuance of no more than \$575,000.00 in general obligation bonds to finance the Marlatt Waterway Storm Drainage Improvements Project (SM0701).

* **AWARD CONTRACT – CURED-IN-PLACE SEWER LINING (SS0903)**

Dale Houdeshell, Director of Public Works, presented background information on the item and responded to questions from the Commission.

The Commission accepted the lowest responsible bid and awarded a contract in the amount of \$339,400.40 to Utility Maintenance Contractors, of Wichita, Kansas, for the Cured-in-Place Pipe Sewer Lining project (SS0903).

AWARD CONTRACT – SANITARY SEWER MANHOLE REHABILITATION (SS0902)

The Commission accepted the lowest responsible bid and authorized the Mayor and City Clerk to execute an agreement with Mayer Specialty Services, LLC, of Goddard, Kansas, to a maximum cost of \$54,000.00 for the Sanitary Sewer Manhole Rehabilitation Project (SS0902).

AWARD CONTRACT – INVERTED SIPHON REHABILITATION AND ODOR CONTROL (SP0702P)

The Commission accepted the Engineer's Estimate in the amount of \$361,663.44 and awarded a construction contract to the lowest responsible bidder, Walters-Morgan Construction, Inc., of Manhattan, Kansas, in the amount of \$327,424.65 for the Inverted Siphon Rehabilitation and Odor Control Project (SP0702P).

CONSENT AGENDA (CONTINUED)

RESOLUTION NO. 032409-B – ISSUE GENERAL OBLIGATION BONDS – INVERTED SIPHON REHABILITATION AND ODOR CONTROL (SP0702P)

The Commission approved Resolution No. 032409-B authorizing and providing for the alteration, repair, and reconstruction of a sanitary sewer in the City and authorizing financing in an amount not to exceed \$490,000.00 in General Obligation Bonds for the Inverted Siphon Rehabilitation and Odor Control (SP0702P).

AWARD CONTRACT – WELL REHABILITATION (WA708P)

The Commission accepted the lowest responsible bid and awarded a contract in the amount of \$164,470.00 to Layne Western, a division of Layne Christensen Company, of Wichita, Kansas, for the Well Rehabilitation project (WA708P).

AWARD CONTRACT – ANNEBERG PARK ROAD REPAIRS

The Commission accepted the low quote submitted by J&J Construction, Inc., of McFarland, Kansas, for Emergency Road Repairs at Anneberg Park for the 2007 flash flood damage repair and rock sub-base preparation and awarded a contract in the amount of \$80,143.02 under the terms of the cost-sharing agreement with FEMA.

* **AUTHORIZE PURCHASE – ONE-TON TRUCK – FORESTRY DIVISION
(CPX42E)**

The Commission authorized the purchase of a 2009 Ford F-350 in the amount of \$23,790.00 from Olathe Ford, of Olathe, Kansas, to replace Unit #69, Parks Division, Forestry Section.

**AUTHORIZE PURCHASE – SPRAYER UNIT – FORESTRY DIVISION
(CP906E)**

The Commission authorized the purchase of a 2009 John Bean spray system in the amount of \$23,735.00 from Vegetation Management Supply, Inc., of Wichita, Kansas, to replace Unit #69A, Parks Division, Forestry Section.

**AUTHORIZE PURCHASE – ONE-TON TRUCK, 4-WHEEL DRIVE WITH
BED – STREET DIVISION (STX03E)**

The Commission awarded the purchase of a one-ton truck, 4-wheel drive w/ bed to Green Ford, of Abilene, Kansas, for \$35,148.00 to replace Unit #35, Street Division.

CONSENT AGENDA (CONTINUED)

AGREEMENT – SELF-CONTAINED BREATHING APPARATUS – FIRE DEPARTMENT

The Commission accepted the low bid and authorized City Administration to enter into a purchase agreement in the amount of \$25,468.45 with Wise Safety and Environmental, of Lenexa, Kansas, for the purchase of five (5) complete self-contained breathing apparatus for the Fire Department.

* AGREEMENT – REGIONAL PLANNING ORGANIZATION MODEL

Ron Fehr, City Manager, acknowledged William Dodge, Project Director/Facilitator with Bucher, Willis, Ratliff Corporation, of Kansas City, Missouri.

The Commission authorized City Administration to finalize and the Mayor and City Clerk, on behalf of the Flint Hills Region, to execute an agreement with Bucher, Willis, Ratliff Corporation, of Kansas City, Missouri, for preparation of the Regional Planning Organization Model Project.

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.

GENERAL AGENDA

AMENDMENT - NISTAC ECONOMIC DEVELOPMENT AGREEMENT

Lauren Palmer, Assistant City Manager, introduced the item.

Lyle Butler, President, Manhattan Area Chamber of Commerce, presented background information on the item and informed the Commission that they have been in contact with an international company looking to expand in the animal science industry in our community. He stated the need for wet lab space and supported the improvements to the K-State/Manhattan Innovation Center at 2005 Research Park Circle in Manhattan, which will serve to bring quality bioscience jobs to the Flint Hills Region.

John Pagen, Vice President of Economic Development, Manhattan Area Chamber of Commerce, provided a brief background of the National Institute for Strategic Technology Acquisition and Commercialization (NISTAC), the focus of NISTAC, and updates on the Kansas Entrepreneurial Center (KEC) Business Incubator.

GENERAL AGENDA (CONTINUED)

AMENDMENT - NISTAC ECONOMIC DEVELOPMENT AGREEMENT (CONTINUED)

Lauren Palmer, Assistant City Manager, provided an overview of the existing Agreement with NISTAC and the City of Manhattan. She then provided an update on NISTAC's job creation numbers, the proposed amendment to the NISTAC Agreement, a financial summary, and an overview of the recommendation.

Ron Fehr, City Manager, and Lauren Palmer, Assistant City Manager, answered questions from the Commission regarding terms of the Agreement and employment projections. They then responded to questions about NISTAC, the City's investment in the facility, and the viability of incubator businesses to provide commercialized products.

John Pagen, Vice President of Economic Development, Manhattan Area Chamber of Commerce, informed the Commission that the National Bio and Agro-Defense Facility (NBAF) would not be built until 2014 and stated that this is the last portion of the NISTAC building to be finished.

Lyle Butler, President, Manhattan Area Chamber of Commerce, informed the Commission that there are multiple strategies of economic development and that large and mature companies have also expressed an interest with the announcement of NBAF, some with an interest in our region and others in Overland Park and Olathe. He stated that the planning for the NISTAC facility included a flexible design and then answered additional questions from the Commission regarding the facility and use of funds for bioscience initiatives.

Patrick Schaub, Bowman Bowman and Novick, presented an overview of the design and site plan of the NISTAC facility and pilot space build-out plans. He stated that it would take between four to six months to construct the build-out space.

Kent Glasscock, President, NISTAC, provided a brief perspective on knowledge-based economic development initiatives and the opportunity to leverage the K-State intellectual community. He informed the Commission that this is an opportunity to invest in the City's NISTAC facility and urged the Commission to make the proposed improvements to the pilot space for use as a wet lab. He then responded to questions from the Commission regarding the expense of a wet lab facility and elaborated on the mission of NISTAC.

Ron Fehr, City Manager; Bill Frost, City Attorney; and Lauren Palmer, Assistant City Attorney, provided additional information on the request of funds and the Agreement between the City and NISTAC.

Dee Robert Ross, 2304 Brockman Street, informed the Commission that NISTAC is a private, not-for-profit organization and should not receive taxpayer's dollars provided by the City.

GENERAL AGENDA (CONTINUED)

AMENDMENT - NISTAC ECONOMIC DEVELOPMENT AGREEMENT (CONTINUED)

Ruth Dyer, Associate Provost, Kansas State University, informed the Commission that K-State strongly supports the build-out of the NISTAC facility. She stated this is an opportunity to leverage resources and build effective teams as we continue to strengthen the economic viability of the bioscience industry in Manhattan.

After discussion, Commissioner Snead moved to schedule April 7, 2009, as the date to authorize participation as a signatory in an application to the Kansas Bioscience Authority (KBA) for additional funding to support the NISTAC build-out, and as the date for final consideration of the second amendment to the Economic Development Agreement with NISTAC, contingent upon approval of the KBA grant application. Commissioner Sherow seconded the motion.

After additional discussion and comments by the Commission, on a roll call vote, motion carried 5-0.

SET JUST COMPENSATION - PROPERTY ACQUISITION - 4TH STREET AND BLUEMONT AVENUE INTERSECTION IMPROVEMENT PROJECT (ST0703)

Brian Williams, Assistant to the City Manager, presented the item.

At 8:55 p.m., Phillips moved to recess into Executive Session until 9:10 p.m., for the purpose of preliminary discussions related to the acquisition of real estate. Commissioner Snead seconded the motion. On roll call vote, the motion carried 5-0.

At 9:10 p.m., the Commission reconvened with Mayor Hatesohl and Commissioners Strawn, Snead, Sherow, and Phillips in attendance. Commissioner Sherow moved to come out of Executive Session. Commissioner Snead seconded the motion.

After discussion, Commissioner Snead moved to establish the values of "just compensation" as outlined in the confidential documents for the acquisition of property needed for the 4th Street and Bluemont Avenue intersection improvement project, and authorize City Administration to extend formal offers and negotiate with the property owners for acquisition of the required properties based upon such "just compensation." Commissioner Phillips seconded the motion. On a roll call vote, motion carried 5-0.

ADJOURNMENT

At 9:11 p.m., the Commission adjourned.



Gary S. Fees, MMC, City Clerk



INTER-OFFICE MEMORANDUM

DATE: February 12, 2009

TO: Manhattan Urban Area Planning Board

FROM: Chad Bunger, Planner

RE: Amend the Manhattan Zoning Regulations to Clarify the Final Decision of the Board of Zoning Appeals

BACKGROUND

The Board of Zoning Appeals (BZA) is required to render a written decision without unreasonable delay after the close of a public hearing, but in all cases, within sixty (60) days of the close of the hearing, to meet the requirements of decisions related to approvals or denials of Appeals, Variances, Exceptions, Conditional Uses, and Modifying Nonconforming Uses Utilizing A Conditional Use.

The current procedure, which is referred to as a Notice of Decision, is a document that sets out the BZA's decision to approve, approve with conditions, or deny an application, finding of facts, conditions of approval, as well as information about the 180 day period of validity. Previous to the beginning of 2009, the BZA Chairperson and BZA Secretary (Staff Liaison) signed the Notice at the BZA meeting following the date of decision, which resulted in a four to five week delay. For example, if a decision was made in January, the Notice would be signed in February. Generally, this was due to the BZA considering its findings, which are set out in the Minutes, and which are not considered until the next month's meeting. A new Notice of Decision process was implemented and the BZA Chairperson and BZA Secretary either sign the Notice on the same night the decision is made, the BZA's findings are determined on the same night, and the applicant and/or owner are sent the Notice within one week of BZA meeting. If the BZA has any concerns about findings of fact, the public hearing is tabled until the findings are determined.

The Legal Department advised the Community Development Department that Articles VIII and XIV should be amended to clearly indicate when the BZA's final decision is made to avoid confusion if a decision is appealed to district court.

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Procedurally, the final decision of the BZA could be interpreted to have occurred when the BZA Chairperson signed the Notice of Decision, rather than at the conclusion of the public hearing.

The proposed text amendments to the Zoning Regulations clarify when the final decision of the Board of Zoning Appeals is made.

The proposed changes to the Zoning Regulations are shown in ***bold italics***. Words proposed to be removed from the Zoning Regulations are shown with a ~~strikethrough~~. The proposed changes are as follows:

- 8-501(I) Decisions and Records. ***A final decision of the Board of Zoning Appeals occurs upon the majority vote of the Board on the conditional use and exception request at the public hearing.*** The Board of Zoning Appeals shall render a written decision containing specific findings of fact on an application for a conditional use and exception, if any, without unreasonable delay after the close of the hearing, ~~and in all cases, within sixty (60) days from the close of the hearing.~~ The Zoning Administrator shall maintain complete records of all actions of the Board of Zoning Appeals with respect to such applications. (Note: This conditional use and exception decision is only applicable to legally nonconforming uses.)
- 14-405. Decision of Appeals. The Board of Zoning Appeals may affirm or reverse, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and to that end shall have all the powers of the Zoning Administrator, may attach appropriate conditions and may issue or direct the issuance of a permit. The concurring vote of three members of the Board of Zoning Appeals shall be necessary to reverse, wholly or partly, modify, or attach any additional conditions to any decision or determination appealed from the Zoning Administrator under these regulations. ***A final decision of the Board of Zoning Appeals occurs upon the concurring vote of three members of the Board on the appeal at the public hearing.*** The Board of Zoning Appeals shall render a written notice of final decision on the appeal without unreasonable delay after the close of a hearing, ~~and in all cases, within sixty (60) days after the close of the hearing.~~ (*Explanation: Concurring means that at least three members of the BZA must vote to affirm or reverse the appeal, as opposed to a simple majority of a quorum of three members' decisions for exceptions, variances and conditional uses.*)

- 14-506. Decisions and Records. *A final decision of the Board of Zoning Appeals occurs upon the majority vote of the Board on the variance request at the public hearing.* The Board of Zoning Appeals shall render a written notice of final decision on an application for a variance without unreasonable delay after the close of a hearing, ~~but in all cases, within sixty (60) days from the close of the hearing.~~ The Zoning Administrator shall maintain complete records of all actions of the Board of Zoning Appeals with respect to applications for variances.
- 14-607. Decisions and Records. *A final decision of the Board of Zoning Appeals occurs upon the majority vote of the Board on the exception request at the public hearing.* The Board of Zoning Appeals shall render a written notice of final decision on an application for an exception without unreasonable delay after the close of the hearing, ~~but in all cases, within sixty (60) days from the close of the hearing.~~ The Zoning Administrator shall maintain complete records of all actions of the Board of Zoning Appeals with respect to applications for exceptions.
- 14-706. Decisions and Records. *A final decision of the Board of Zoning Appeals occurs upon the majority vote of the Board on the conditional use request at the public hearing.* The Board of Zoning Appeals shall render a written notice of final decision containing specific findings of fact on an application for a conditional use without unreasonable delay after the close of the hearing, ~~and in all cases, within sixty (60) days from the close of the hearing.~~ The Zoning Administrator shall maintain complete records of all actions of the Board of Zoning Appeals with respect to applications for conditional uses.

AMENDMENTS TO THE TEXT OF THE ZONING REGULATIONS

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

WHETHER SUCH CHANGES ARE CONSISTENT WITH THE INTENT AND PURPOSE OF THE ZONING REGULATIONS

The intent of the Zoning Regulations is to protect the public health, safety and general welfare, and to protect property values, through the creation of zoning districts in which land uses are controlled in order to be compatible with other nearby uses. The proposed amendments implement the intent and purpose of the regulations by clarifying when the final decision is made by of the Board of Zoning Appeals. Clarifying when the final

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decision occurs prevents any ambiguity regarding when the decision was made. The proposed amendments are consistent with the intent and purposes of the Zoning Regulations.

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

All zoning districts are equally affected. The Board of Zoning Appeals can hear cases for Appeals, Variances, Exceptions, Conditional Use and Conditional Use to Modify a Nonconforming Use, in all zoning districts in the City.

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

The proposed amendments are not made because of changing conditions in the City or planning area. The amendments clarify when the Board of Zoning Appeals makes a final decision.

WHETHER SUCH CHANGES ARE CONSISTENT WITH THE INTENT AND PURPOSE OF THE POLICIES AND GOALS AS OUTLINED IN THE ADOPTED COMPREHENSIVE PLAN OF THE CITY

The Zoning Regulations implement the Comprehensive Plan and its goals, objectives and policies, which are general in nature and do not specify administrative details such as the proposed amendments. However, the proposed amendments clarify when a final decision of the Board of Zoning Appeals is made to ensure that the general statements in the Comprehensive Plan are implemented consistent with legal requirements.

ALTERNATIVES

It appears the MUAPB has the following alternatives concerning the issue at hand. The Board may:

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

RECOMMENDATION

City Administration recommends approval of the amendments to the Manhattan Zoning Regulations to Article XIV, Administration, PART 4, Appeals, Section 14-405, Decision of Appeals; PART 5, Variances, Section 14-506, Decisions and Records; PART, 6, Exceptions, Section 14-607, Decisions and Records; PART 7, Conditional Uses, Section 14-706, Decisions and Records; and, Article VIII, Nonconformities, PART 5, Modifying Nonconforming Uses Utilizing a Conditional Use Application, Section 8-501(I), Decisions and Records: Article VIII, Nonconformities; and Article XIV, Administration, based on the findings in the Staff Memorandum.

POSSIBLE MOTION

The Manhattan Urban Area Planning Board recommends approval of the amendments to the Manhattan Zoning Regulations to Article XIV, Administration, PART 4, Appeals, Section 14-405, Decision of Appeals; PART 5, Variances, Section 14-506, Decisions and Records; PART, 6, Exceptions, Section 14-607, Decisions and Records; PART 7, Conditional Uses, Section 14-706, Decisions and Records; and, Article VIII, Nonconformities, PART 5, Modifying Nonconforming Uses Utilizing a Conditional Use Application, Section 8-501(I), Decisions and Records, as described in the Staff Memorandum, based on the findings in the Staff Memorandum.