



***MINUTES***  
***CITY COMMISSION MEETING***  
***TUESDAY, MARCH 5, 2013***  
***7:00 P.M.***

The Regular Meeting of the City Commission was held at 7:00 p.m. in the City Commission Room. Mayor Loren J. Pepperd and Commissioners John Matta, Wynn Butler, Richard B. Jankovich, and James E. Sherow were present. Also present were the City Manager Ron R. Fehr, Assistant City Manager Jason Hilgers, Assistant City Manager Lauren Palmer, City Attorney Bill Raymond, City Clerk Gary S. Fees, 9 staff, and approximately 55 interested citizens.

**PLEDGE OF ALLEGIANCE**

Mayor Pepperd led the Commission in the Pledge of Allegiance.

**PROCLAMATIONS**

Mayor Pepperd proclaimed March 11-17, 2013, ***Brain Awareness Week***. Rose Harris, Representative, Brain Awareness Committee, Little Apple Pilot Club, was present to receive the proclamation.

Mayor Pepperd proclaimed March 2013, ***American Red Cross Month***. Greg Simms, Regional Chief Executive Officer, and Ron Frank, Volunteer, were present to receive the proclamation.

**PUBLIC COMMENTS**

Mayor Pepperd opened the public comments.

Stan Hoerman, 2021 Bluehills Road, spoke on behalf of neighbors on Bluehills Road and Blue Stem Terrace regarding the poor condition of their streets. He asked how long it would take for the City of Manhattan to take care of the streets in their neighborhood. He asked to be put on the top of the City's list for street repairs and to consider using the half-cent sales tax to pay for the repairs.

## PUBLIC COMMENTS (CONTINUED)

Ron Fehr, City Manager, stated that Public Works is developing a street repair priority plan for the year and will be doing the bulk of the street repairs in the summer. He explained the process and work to be completed with City crews and with private contractors.

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

## COMMISSIONER COMMENTS

Commissioner Jankovich stated the Flint Hills Summer Fun Camp would be doing a fundraiser at the Wareham on April 21, 2012, titled, "An Evening with Bill Snyder." He also congratulated Bruce Snead and his group for hosting the Annual Radon Stakeholders Meeting in Manhattan on March 4-5, 2013, and finding out what the Little Apple has to offer.

Commissioner Sherow encouraged public participation in the upcoming elections and cited a letter received by resident Helen Roser voicing her concerns regarding *The Manhattan Mercury's* policy of charging for candidate support letters to the editor during the election season. He stated that this policy has hampered the ability of some campaigns to compete with others with larger campaign funds in getting their message out. He stated that money already plays too large a role in the elections and restricts citizens with limited means from voicing their opinions of the candidates publically in the editorial forums. He thanked Helen for writing her letter to the Commission.

Commissioner Matta concurred with comments from Commissioner Sherow and expressed his thanks to Helen Roser for her letter. He stated that other comparable communities are better off because their newspapers allow such letters and comments to be published free of charge. He then congratulated the Flint Hills Tea Party Educational Fund for its second annual Youth Education Scholarship for Liberty Constitution Week for Kansas High Schools on Sunday, March 3, 2012, at the Kansas State University Alumni Center. He recognized the three finalists receiving scholarships. He encouraged all high school students to sign-up and informed the community that this event is open to high school freshman through seniors and students can win multiple times.

Mayor Pepperd informed the community that Friday, March 8, 2013, at 5:30 p.m., is an opportunity for the public to greet and meet finalists for the new Director of the Flint Hills Discovery Center. He provided an update on future City Commission and Joint City/County Commission meeting schedules. He then stated that he attended a farewell ceremony on Sunday, March 3, 2013, for the 538 Transportation Detachment from the U.S. Army Reserves going to Afghanistan.

## CONSENT AGENDA

(\* denotes those items discussed)

### MINUTES

The Commission approved the minutes of the Regular City Commission Meeting held Tuesday, February 19, 2013.

### CLAIMS REGISTER NOS. 2724 and 2725

The Commission approved Claims Register Nos. 2724 and 2725 authorizing and approving the payment of claims from February 13, 2013, to February 26, 2013, in the amounts of \$231,069.99 and \$1,379,563.18, respectively.

### LICENSES

The Commission approved a Tree Maintenance License for calendar year 2013 for Kyle's Tree Service, 2049 Hayes Drive, and an annual Cereal Malt Beverage On-Premises License for JP's Sports Grill, Building 5 – Jardine Terrace.

### ORDINANCE NO. 6987 – VACATE DRAINAGE EASEMENTS – LOTS 2, 3, 4, AND 5, HERITAGE SQUARE SOUTH PUD

The Commission approved Ordinance No. 6987 vacating portions of two drainage easements on Lots 2 and 3 and Lots 4 and 5, Heritage Square South P.U.D.

### ORDINANCE NO. 6988 – VACATE DRAINAGE EASEMENT – LOT 150, PRAIRIE LAKES, UNIT 3

The Commission approved Ordinance No. 6988 vacating the portion of a drainage easement on Lot 150, Prairie Lakes, Unit 3, an addition to the City of Manhattan.

### ORDINANCE NO. 6989 – VACATE DRAINAGE EASEMENT – LOTS 1 AND 2, GRANDE BLUFFS AT MILL POINTE, UNIT ONE

The Commission approved Ordinance No. 6989 vacating a portion of a drainage easement on Lots 1 and 2 in Grande Bluffs at Mill Pointe, Unit One, an addition to the City of Manhattan, Riley County, Kansas.

### ORDINANCE NO. 6990 – VACATE DRAINAGE EASEMENT – LOT 12, STONE POINTE ADDITION, UNIT TWO

The Commission approved Ordinance No. 6990 vacating a portion of a drainage easement on Lot 128, Stone Pointe Addition, Unit Two, an addition to the City of Manhattan.

### ORDINANCE NO. 6991 – AMEND PRELIMINARY DEVELOPMENT PLAN – LOT 3, HERITAGE SQUARE SOUTH PUD

The Commission approved Ordinance No. 6991 amending the Preliminary Development Plan of Lot 3, Heritage Square South Commercial Planned Unit Development and Ordinance No. 6607, as proposed, generally located southeast of the intersection of South Port Drive and US-24, based on the findings in the Staff Report (*See Attachment No. 1*).

## CONSENT AGENDA (CONTINUED)

### ORDINANCE NO. 6992 – AMEND ZONING ORDINANCE – ADD CULTURAL FACILITIES

The Commission approved Ordinance No. 6992 amending Article IV of the Manhattan Zoning Regulations, to add “Cultural Facilities” as a Permitted Use in the C-3, Aggieville Business District; C-4, Central Business District; and, C-5, Highway Service Commercial District, based on the findings in the Staff Memorandum (*See Attachment No. 2*).

### ORDINANCE NO. 6993 – AMEND FINAL DEVELOPMENT PLAN – LOT 4, DOWNTOWN ENTERTAINMENT DISTRICT PUD

The Commission approved Ordinance No. 6993 amending Ordinance No. 6951 and the Final Development Plan of Lot 4, Downtown Entertainment District Commercial Planned Unit Development District, generally located on the southeast corner of S. 4<sup>th</sup> Street and Colorado Street, based on the findings in the Staff Report (*See Attachment No. 3*).

\* **RESOLUTION NO. 030513-A – OMNIBUS CONTINUING DISCLOSURE UNDERTAKING**

The Commission approved Resolution No. 030513-A authorizing the Mayor to execute the “*Omnibus Continuing Disclosure Undertaking*” statement for the City of Manhattan.

\* **RESOLUTION NO. 030513-B – ISSUE – TEMPORARY NOTE SERIES NO. 2013-01**

Ron Fehr, City Manager, provided additional information on the results of the bid opening and responded to questions from the Commission.

The Commission approved accepting the best bid from UMB Bank, n.a., Kansas City, Missouri, for selling the notes; and approved Resolution No. 030513-B issuing Temporary Note Series No. 2013-01 in the amount of \$3,260,000.00 to finance the following seven (7) capital and special assessment projects to be debt financed: *Airport Land Purchase; Prairie Lakes Addition, Unit Six, Sanitary Sewer (SS1207), Street (ST1209), and Water (WA1208); and Miller Ranch Addition, Unit Five, Sanitary Sewer (SS1209), Street (ST1211), and Water (WA1214)*.

\* **NEGOTIATE CONTRACT – WILDCAT CREEK LIFT STATION, PHASE 2, IMPROVEMENTS (SS1211, CIP #WW016P)**

The Commission accepted the recommendation of the selection committee and authorized City Administration to negotiate a contract with Olsson Associates, of Manhattan, Kansas, for the Wildcat Creek Lift Station Improvements, Phase II (SS1211, CIP #WW016P).

## CONSENT AGENDA (CONTINUED)

\* **AWARD CONTRACT – HOUSING REHABILITATION PROGRAM**

Commissioner Butler stated that he would be abstaining on the item due to a substantial interest with Economy Carpentry and Painting.

The Commission accepted the bids for 1426 Colorado Street; awarded a contract for the base bid only in the amount of \$24,450.00 to the lowest responsible bidder Economy Carpentry Painting and Concrete, of Manhattan, Kansas; authorized the Mayor and City Clerk to execute agreements with the contractor and property owner for expenditure of Housing Rehabilitation Funds; and authorized City Administration to approve any necessary change orders.

\* **FISCAL AGREEMENT – METROPOLITAN PLANNING ORGANIZATION**

The Commission authorized the Mayor and City Clerk to execute the Flint Hills Metropolitan Planning Organization Fiscal Agreement.

**AGREEMENT – STATE HISTORIC PRESERVATION OFFICER**

The Commission authorized the Mayor and City Clerk to execute an agreement with State Historic Preservation Officer (SHPO) for review as per State Historic Preservation Law.

\* **ADDENDUM – CONCESSIONS EXTENSION**

The Commission authorized the Mayor and City Clerk to execute an Addendum for a one year extension to the concessions agreement with Streeter Enterprises, LLC.

\* **ADDENDUM – BEVERAGE EXTENSION**

The Commission authorized the Mayor and City Clerk to execute an Addendum between the City of Manhattan and Pepsi Cola Bottling of Manhattan, Inc., for a period of one year.

**BOARD APPOINTMENTS**

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

*Arts & Humanities Advisory Board*

Re-appointment of Jan Danenberg, 2901 Nevada Street, to a three-year term. Ms. Danenberg's term will begin April 1, 2013, and will expire March 31, 2016.

## CONSENT AGENDA (*CONTINUED*)

### BOARD APPOINTMENTS (*CONTINUED*)

#### *Metropolitan Planning Organization Policy Board*

Appointment of Commissioner Wynn Butler, 3600 Windsong Court, to a permanent position on the Board. Commissioner Butler's term begins immediately.

Appointment of Commissioner John Matta, 1213 Greystone Place, to an alternate position on the Board. Commissioner Matta's term begins immediately.

#### *Municipal Audit Committee*

Re-appointment of Jane Bloodgood, 3100 Willowood Circle, to a three-year Citizen-At-Large term. Ms. Bloodgood's term will begin April 1, 2013, and will expire March 31, 2016.

After discussion, Commissioner Sherow moved to approve the consent agenda, as read. Commissioner Jankovich seconded the motion. On a roll call vote, motion carried 5-0, with the exception of Item N, AWARD CONTRACT – HOUSING REHABILITATION PROGRAM, which carried 4-0-1, with Commissioner Butler abstaining on the item; and, with the exception of Item O, FISCAL AGREEMENT – METROPOLITAN PLANNING ORGANIZATION, which carried 4-1, with Commissioner Matta voting against the item.

## GENERAL AGENDA

### AGREEMENT - RIGHT-OF-WAY USE FOR FIXED ROUTE BUS SERVICE BUS STOPS - FLINT HILLS AREA TRANSPORTATION AGENCY (ATA)

Lauren Palmer, Assistant City Manager, presented background information and an overview of the item. She then responded to questions from the Commission.

Anne Smith, Director, Flint Hills Area Transportation Agency (ATA), presented additional information regarding ridership levels from 2007-2012, proposed bus stop signage, funding received, current bus stop locations, and SafeRide bus routes. She then responded to questions from the Commission regarding wage rates for drivers, number of employees, fares being charged, local match criteria and amounts, fixed-route activity, demand response activity, overall ridership levels, and time of operations and pickup points for this weekend. She encouraged the public to call ATA or view their website for additional information.

## GENERAL AGENDA (CONTINUED)

### AGREEMENT - RIGHT-OF-WAY USE FOR FIXED ROUTE BUS SERVICE BUS STOPS - FLINT HILLS AREA TRANSPORTATION AGENCY (ATA) (CONTINUED)

Janet Benson, 401 Denison Avenue, informed the Commission that the bus comes within a block of her house so she can now use the ATA system. She spoke in strong support of a fixed route system and for signage.

Tim Lindemuth, 500 Denison Avenue, asked how many City Commissioners rode the red and orange fixed route system. He provided his observation and experience in riding on the fixed route system. He highly encouraged the Commission to grant the request and to make this transportation system take off. He said there are many students and individuals in the community that need public transportation.

Phil Anderson, 1718 Fairchild Avenue, stated that one of his concerns is that it sometimes sounds as though the Commission is attempting to judge ATA as a business and it is really a public service. He stated there are benefits to this public service that need to be considered, such as reducing congestion, reducing wear and tear on public roads, and reducing needs for additional parking in congested areas. He said this is important to consider and that there are definite benefits to the city and should not be measured just as a business, but as a public benefit to all of the citizens.

Brennan Walter, 1611 Laramie Street, Apt. 6, informed the Commission of his experience on the red route of the ATA system. He stated the service will improve access for many individuals in Manhattan to other destinations in the community for working or shopping. He said that Hays and Emporia have fixed route public transportation systems and that other Kansas cities are competing for economic development companies and who need to provide access to transportation. He encouraged the Commission to fully endorse the ATA fixed route system and to support the item.

Commissioner Matta provided an overview of the research he conducted on fixed routes during his election campaign. He voiced concern that the costs for operating a fixed route bus system will gradually become a financial burden to the community. He stated that he could not support the proposal.

After discussion and comments from the Commission, Commissioner Jankovich moved to authorize City Administration to negotiate and finalize a right-of-way use agreement with Flint Hills Area Transportation Agency for the placement of fixed route bus stop signage. Commissioner Sherow seconded the motion.

After additional discussion and comments from the Commission, on a roll call vote, motion carried 4-1, with Commissioner Matta voting against the motion.

## GENERAL AGENDA (CONTINUED)

### COOPERATIVE AGREEMENT – MANHATTAN PUBLIC LIBRARY CHILDREN’S LIBRARY EXPANSION (SP1301)

Lauren Palmer, Assistant City Manager, presented an overview of the Cooperative Agreement with the Manhattan Public Library. She outlined responsibilities of the City, the Library Board of Trustees, and the Manhattan Library Foundation; projected debt service schedule spreadsheet for the Children’s Library Expansion; project financing; and the proposed mill levy compromise.

Brice Hobrock, 4009 Snowy Reach, President, Manhattan Public Library Board of Trustees, informed the Commission that he was speaking as an advocate for approval of this project. He stated that 1,000 people per day on the average are coming to the Manhattan Public Library and that he was advocating on behalf of the children of Manhattan for their literacy and learning. He provided additional background information on the proposed expansion of the Public Library, fundraising efforts to-date, and highlighted the compromise offered relating to the uncertainties that exists for a 10 year commitment. He stated that this is the right time to build the project and asked the Commission to support this proposal and to help keep Manhattan as one of the finest cities in America.

Robert Haines, 226 Fordham Road, President, Manhattan Library Foundation, stated that the City is getting this building at a fire sale price and are paying .66 cents on the dollar. He stated that very favorable construction costs with the economy would be experienced and currently have the best rates since World War II.

Gary Jeffrey, Olsburg, Chair of the Library book sale this past weekend, wore a Cat in the Hat hat in honor of Dr. Seuss’ 109<sup>th</sup> birthday. He informed the Commission that the book sale was a huge success and all proceeds went to the Library. He stated that Manhattan has a jewel of a public library and is one of the reasons he moved here. He said that young families and retired individuals often look to libraries for many things.

Richard Hill, 3513 Stagecoach Circle, representing Landlords of Manhattan, informed the Commission that in time of looking at cutbacks at Fort Riley and funds being withdrawn by the federal and state governments, the City is picking up a lot of these items and now is not the time to increase the City’s mill levy. He voiced concerns with the language in the proposed Cooperative Agreement and the dollar amount of the addition, bond fees, and interest. He stated that the citizens cannot keep up with the tax increases. He urged the Commission to look at this item very, very closely.

## GENERAL AGENDA (CONTINUED)

### COOPERATIVE AGREEMENT – MANHATTAN PUBLIC LIBRARY CHILDREN'S LIBRARY EXPANSION (SP1301) (CONTINUED)

Linda Knupp, Director, Manhattan Public Library, stated the Library is capped at six (6) mills for its operating budget by Charter Ordinance. She said for the past 12 years, the Library has operated under the six (6) mill levy limit for the operating budget and the Employee Benefit Fund with the help of funds received from ongoing donations and support from the Friends of the Library Association. She provided additional information on the need for the project, fundraising efforts, and stated the five year compromise is a doable thing. She stated the Board is willing to make that compromise to move the project forward with the support of the community.

Bernie Hayen, Director of Finance, responded to questions from the Commission regarding the issuance of bonds and interest capitalized on the bonds.

Linda Knupp, Director, Manhattan Public Library, responded to questions from the Commission regarding the original agreement, the Employee Benefit Fund, and the debt service. She said that it was hard to predict ten (10) years out but five (5) years was a more reasonable projection based on past performance.

After discussion and comments from the Commission, Commissioner Butler moved to table the item until mid April. Commissioner Matta seconded the motion.

Bernie Hayen, Director of Finance, responded to questions from the Commission regarding City debt projections.

Ron Fehr, City Manager, clarified that a new Commission can reject a contract bid before the Commission if it finds the finances are not appropriate for doing this.

Commissioner Matta reiterated his concerns with the timing of the project and with unknown budget factors. He stated that he would vote no on the proposal, unless the costs were offset and the project would be tax neutral. He requested that the item be put in context with the City's budget discussions, the Parks and Recreation facilities, and the priorities established with the new Commission after the election.

Commissioner Jankovich provided additional information on the item and asked that the Library Foundation provide confirmation on the actual amount the Foundation is willing to contribute to the project. He asked that an analysis be done on the impact of debt service and to address future maintenance issues. He voiced concern with potential items being faced with from the state legislature in Topeka and funding cuts for the Airport tower. He discussed the potential to create two separate notes in order to lessen the interest costs over the life of the loan and to mitigate risk. He stated that there seems to be a significant mood in the community that this is a good project, but understood the issues and concerns, especially with sequestration.

## GENERAL AGENDA (CONTINUED)

### COOPERATIVE AGREEMENT – MANHATTAN PUBLIC LIBRARY CHILDREN’S LIBRARY EXPANSION (SP1301) (CONTINUED)

Lauren Palmer, Assistant City Manager, provided clarification on the project costs as defined in the contract and stated that interest costs would be outside of that.

Bernie Hayen, Director of Finance, said that the pro forma includes the interest and the paying down of the capital contribution that is being made offsets the total amount.

Lauren Palmer, Assistant City Manager, responded to questions from the Commission regarding the language “voting in good faith” in the Agreement to issue the bonds.

Commissioner Butler voiced opposition to the project and stated that his reasons for not supporting the item have nothing to do with the Library. He stated concerns with the financial climate of the nation given the sequestration, the Federal Aviation Authority looking at possibly removing funding for the airport tower at Manhattan Regional Airport, the possible expansion and costs associated with the Parks and Recreation facilities, and the state pushing more fiscal responsibility to local government. He stated that the Library expansion needs to be considered holistically with other priority items during the City’s budget process. He said that he could not support the item and did not want to send a false message. He stated that this Commission could not vote in good faith to approve the bonds.

Linda Knupp, Director, Manhattan Public Library, responded to questions from the Commission regarding the initial Agreement and the one-third commitment of costs. She stated that she would need to talk with the Library Foundation and donors to see if they would be willing to pledge \$800,000 against the actual costs or if the project comes in at a higher amount.

Robert Haines, 226 Fordham Road, President, Manhattan Library Foundation, responded to questions from the Commission and informed the Commission that he thought there was an agreement that if one-third of the costs was raised that it would look favorable. He said the Library Board and the Library Foundation have spent a considerable amount of the money helping with the fundraising. He stated it was presented that the Library Board and Foundation would pay one-third of the costs, up to a maximum of \$800,000. He said the Library’s six (6) mill levy has not been anywhere near the maximum. He stated the Library runs a prudent operation and the Foundation is very conservative.

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

## GENERAL AGENDA (CONTINUED)

### COOPERATIVE AGREEMENT – MANHATTAN PUBLIC LIBRARY CHILDREN’S LIBRARY EXPANSION (SP1301) (CONTINUED)

Mayor Peppard stated that members of the Library staff, Library Board, and Library Foundation had spent a lot of time, effort, and money on fundraising efforts. He thought the project needed to move forward and stated that if the bids come back too high, then the project could be voted down by the Commission.

Bill Raymond, City Attorney, responded to questions from Commissioner Matta regarding the Agreement, specifically, Section II. D. in the Agreement. He clarified that ultimately the authority rests with the City Commission to make the determination. He informed the Commission that this action will not bind a future Commission to make that determination. He also highlighted the provisions in Section III. B. in the Agreement and clarified the definition of good faith. He reiterated that a future Commission would not be bound by the passing of this Agreement.

Ron Fehr, City Manager, stated that it has always been our intent and the Library would verify that the new Commission would ultimately make the decision.

Bill Raymond, City Attorney, responded to additional questions from the Commission and clarified the authorities of the City Commission versus the Library Board. He said the Library Board does not have taxing statutory authority or the ultimate decision to go forward in issuing and agreeing on the bonds.

Commissioner Butler read an email received from Steve Disbrow who was not supportive of the item. He stated Mr. Disbrow’s concerns associated with the library proposal and encouraged the Commission to vote no on the item.

Commissioner Sherow stated that this is a well thought out project. He said that interest rates are at historic lows and bids are coming in competitively. He stated that he understood the unsure future and debt, but said that the Commission is confronted with that all the time as the Commission encountered with the north and south end redevelopments. He emphasized that the project provides a good level of commitment on the part of the Library and Commission and that it is a really good public benefit and service to the community.

After additional discussion and comments from the Commission, Commissioner Sherow moved to authorize the Mayor and City Clerk to execute the Cooperative Agreement with the Manhattan Public Library Board of Trustees and the Manhattan Library Foundation for the expansion of the Manhattan Public Library Children’s Library. Commissioner Jankovich seconded the motion. On a roll call vote, motion carried 3-2, with Commissioners Matta and Butler voting against the motion.

## GENERAL AGENDA (CONTINUED)

At 9:15 p.m., the Commission took a brief recess.

### FIRST READING - ADOPT AND AMEND - 2009 INTERNATIONAL ENERGY CONSERVATION CODE

Brad Claussen, Building Official, presented the item and responded to questions from the Commission.

Patrick Schutter, President, Flint Hills Area Homebuilders Association, informed the Commission that this is the best solution to solve issues with code enforcement and to provide a reasonable product to the end user. He voiced support for the amendments to the Code.

After discussion and comments from the Commission, Commissioner Jankovich moved to approve first reading of an ordinance adopting the 2009 edition of the International Energy Conservation Code and amending sections of the Code of Ordinances, City of Manhattan, Kansas, relating to Buildings and Building Regulations. Commissioner Sherow seconded the motion. On a roll call vote, motion carried 5-0.

### AWARD CONTRACT - MANHATTAN CORE DISTRICT IMPROVEMENT PROJECTS (ST1203, WA1301, ST1301, ST1302)

Rob Ott, City Engineer, presented an overview of the item. He then responded to questions from the Commission regarding utilities and stormwater issues.

Ron Fehr, City Manager, and Jason Hilgers, Assistant City Manager, provided additional information on the existing infrastructure, the proposed project and highlighted the favorable bid received for the project.

Rob Ott, City Engineer, informed the Commission that extra efforts will be made to ensure good communication with staff, the contractor and business owners. He provided an overview of the project schedule and stated that the annual Purple Power Play on Poyntz event would most likely be relocated to City Park this year.

After discussion and comments from the Commission, Commissioner Sherow moved to accept the Architect's Opinion of Probable Cost in the amount of \$3,147,500.00; award a construction contract in the amount of \$2,838,524.83 to Emery Sapp and Sons, of Kansas City, Missouri; and authorize the Mayor and City Clerk to execute a contract with Emery Sapp and Sons, of Kansas City, Missouri, for the Manhattan Core District Improvement projects (ST1203 – Streetscape, WA1301 - Water Main, ST1301 - Traffic Signal, and ST1302 - Asphalt Mill and Overlay).with all three alternates (Alternate No. 1 ~ Curb Extension at Fifth Street; Alternate No. 2 ~ Curb Extension at Sixth Street; Alternate No. 3 ~ Improvements on Fourth Street South of Houston Street). Commissioner Butler seconded the motion. On a roll call vote, motion carried 5-0.

**ADJOURNMENT**

At 9:50 p.m., the Commission adjourned.



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Gary S. Fees, MMC, City Clerk

## STAFF REPORT

### AN AMENDMENT OF AN ORDINANCE AND THE APPROVED PRELIMINARY DEVELOPMENT PLAN, PROPOSED AS A FINAL DEVELOPEMNT PLAN.

## BACKGROUND

**PROPOSED AMNENDMENT:** Amend Ordinance No. 6607 and the approved Preliminary Development Plan of Lot 3, Heritage Square South Commercial Planned Unit Development, to allow a proposed Dollar General store. Other site improvements include, but are not limited to, signs, landscaping, lighting, and other improvements. The amendment is proposed as a Final Development Plan.

**The proposed amendment is required** because Condition No. 11, Ordinance No .6607, states, *An amendment(s) of the PUD shall be submitted for review and approval, prior to issuance of any necessary permits for development on Lots 2, 3, 4, 5, 7, 8 and 10.*

**APPLICANT:** Abeln & Associates Architects, PA on behalf of 5700 Holdings, LLC-Tyler Oliver.

**ADDRESS:** 11827 W. 112<sup>th</sup> Street, Suite 220, Overland Park, KS 66210; 13356 Metcalf, Overland Park, KS 66213.

**OWNER:** Heritage Square Land Company-Tim Schultz.

**ADDRESS:** 1213 Hylton Heights Road, Suite 129, Manhattan, KS 66502.

**LOCATION:** Lot 3, Heritage Square South P.U.D. Addition, is generally located southeast of the intersection of South Port Drive and U.S.-24 Highway, approximately 3,600 feet east of Manhattan's city limits.

**AREA:** Lot 3 is 43,531 square feet in area.

**DATE OF PUBLIC NOTICE PUBLICATION:** Thursday January 3, 2013.

**DATE OF PUBLIC HEARING: PLANNING BOARD:** Thursday, January 24, 2013.  
**CITY COMMISSION:** Tuesday, February 19, 2013.

## EXISTING PUD:

### EXISTING PUD

**Ordinance No. 6607**

The Heritage Square South Commercial Planned Unit Development, and Ordinance No. 6607, approved February 6, 2007, is subject to the following conditions of approval:

1. Permitted uses shall include all of the Permitted Uses and Conditional Uses allowed in the C-5, Highway Service Commercial District, except for Adult Businesses and Commercial off-street parking lots as a Principal Use. Additional Permitted Uses include: Antique shops; Apparel stores; Blueprinting, desktop publishing, and photocopying establishments; Book stores; Camera and photographic supply stores; Carpet and rug stores; China and glassware stores; Department stores; Farm and ranch supply stores; Florist shops; Furrier shops; Governmental buildings; Hardware stores; Hobby shops; Motel; Medical clinic; Outdoor seating for restaurants; and Tavern.
2. Landscaping and irrigation shall be provided pursuant to a Landscaping Performance Agreement between the City and the owner, which shall be entered into prior to issuance of a building permit.
3. All landscaping and irrigation shall be maintained in good condition.
4. Light poles shall be provided as described in the application documents. Exterior building lighting shall be provided as proposed and be of a cut-off design, so as to not cast direct light or glare onto streets or adjacent property.
5. Ground Signs shall be permitted and constructed as proposed.
6. Wall signs shall be permitted as proposed.
7. One (1) pole sign shall be permitted per lot on Lots 6, 7, 8 and 10, and no pole signs shall be permitted on Lots 1, 2, 3, 4, 5 and 9. Pole signs shall have a maximum total height of 50 feet above the ground; shall not exceed a maximum total 120 square feet in area; and shall include skirting of the pole. The skirting and the base of pole signs shall include materials and architectural quality similar to those of the associated principal building such as brick, stone and/or stucco; and, pole signs shall include an enhanced landscaped area around the base.
8. Exempt signage shall be permitted as described in Article VI, Section 6-104 (A)(1),(2),(4),(5),(7) and (8); and Section 6-104 (B)(2), of the Manhattan Zoning Regulations. Temporary sales aids and portable signs, as described in Article VI, Signs, of the Manhattan Zoning Regulations, shall be prohibited.
9. Traffic and drainage improvements to US-24 shall be provided as required by the Kansas Department of Transportation, and the applicant shall submit with the Final Plat either the approved access permit, or a letter from a KDOT representative authorizing the project based on the approved concept.
10. Drainage improvements shall be provided as proposed in the application documents and as per the City Engineer's requirements.
11. An amendment(s) of the PUD shall be submitted for review and approval, prior to issuance of any necessary permits for development on Lots 2, 3, 4, 5, 7, 8 and 10.

### **Permitted Uses**

The Permitted Uses in the PUD are set out above in Condition No. 1.

### **Existing Development**

The first phase of the PUD consisted of Lots 1, 6, and 9. Lots 1 and 6 are individual sites for specific tenants: Fastenal and Farm and Tractor Supply, respectively. Heritage Commons, a multiple-tenant commercial building is on Lot 9 and currently occupied by a state government agency, liquor store, and restaurant, with the balance of the building vacant.

Development on the other seven vacant lots, including Lot 3, is subject to future amendments of the PUD once specific buildings and uses are known.

### **PUD AMENDMENT AND PROPOSED IMPROVEMNTS ON LOT 3**

#### **Building and Other Structure**

An approximate 130 foot by 70 foot, one-story commercial building is proposed for a Dollar General store, with a total interior floor area of 8,615 square feet. Interior space is divided into sales floor space, receiving area, bathrooms, break room, and office space. The front of the rectangular shaped building faces U.S.-24 Highway with the rear of the building to the south. Deliveries are to a receiving area located on the southwest corner of the building. The building height varies due to a sloped roof, and ranges from approximately 19-feet on the front to approximately 13-feet at the rear.

The platted front yard setbacks are along the north, west, and south front lot lines. The north front yard setback is 50-feet and the south and west front yard setbacks are 25-feet. The east yard is a side yard and the building is set back 25-feet from the east side lot line. (Note: Commercial areas may commonly be as close as zero feet.) In addition, there is a 30-foot utility easement on the north side of Lot 3, 15-foot utility easement on the west and south sides of the lot, and a ten foot drainage easement on the east side of the lot.

Exterior finish materials on the front are evenly divided into brick and split block in shades of tan and brown. EFIS is smooth faced and dark brown in color. Materials on the east and west sides of the building are similar with EFIS the predominate material. The rear of the building is EFIS in shade of dark brown and concrete block base in light buff and deep mocha.

A screened trash enclosure is proposed in the southwest corner of the site. Screening is described below.

### **Signs**

One approximate 149-square foot internally illuminated, Dollar General, wall sign is shown on the front of the building over the entrance. Two ground signs are proposed, one at the northwest corner of the building and one on the west side of the south entrance to the parking lot off South Port Drive. The five foot tall by ten foot wide internally lit signs are 50 square feet in area constructed on a three foot tall concrete block base, with an overall dimension of eight feet by ten feet.

### **Lighting**

All exterior lighting fixtures are downcast and will consist of building wall packs, and parking lot lights on 25 to 30-foot tall poles (cut sheets attached).

## **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 proposed amendment is consistent with the intent and purpose of the approved commercial PUD intended to consist of a broad range of highway service and retail uses. The approved PUD shows a commercial building footprint and parking on Lot 3, but no other information was provided with the initial rezoning. The proposed amendment will promote the efficient development of the site, and PUD, by allowing construction of a retail use intended to be part of the retail and commercial shopping area.

### **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 amendment is made necessary because Condition No. 11, of Ordinance No. 6607, requires an amendment of the PUD prior to issuance of any permits for development. The PUD has developed slowly and the amendment may spur additional demand and development in the surrounding 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:**

The proposed amendment will result in a gain to the public by allowing development of a vacant tract of land. The amendment is necessary because of a condition of the approval of the PUD and not because the amendment will confer a special benefit to any person.

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

- 1. LANDSCAPING:** Landscaping is largely on Lot 3's perimeter and consists of evergreen and shade trees, evergreen and rose shrubs, and grass lawns. A lawn irrigation sprinkler system will be provided to maintain landscaped areas.
- 2. SCREENING:** A six foot tall trash enclosure constructed of concrete block, painted to match the building, with steel frame gates will screen trash containers. An eight foot tall wood fence will screen HVAC units at the rear of the building.
- 3. DRAINAGE:** The south part of the site drains to the south to an existing storm water inlet on South Port Drive and connects to an underground storm water pipe in a drainage easement on the east side of Lot 3. Storm water flows underground to an existing 48-inch concrete pipe that drains to the north to the Blue River. The north part of the site will drain to a proposed storm water inlet to be constructed in the 48-inch concrete pipe.

The dedicated drainage easement along the east side of Lot 3 will be vacated and dedicated as a utility easement in order to allow the parking lot surfacing, which would not be allowed in the drainage easement. A petition was submitted to the Public Works Department to vacate the drainage easement and dedicate a utility easement in which the underground storm water pipe is located. The Public Works Department does not oppose the vacation and dedication, which is subject to a public notice and public hearing process conducted by the City Commission.

- 4. CIRCULATION:** The existing street system provides an internal circulation plan which is safe, convenient and efficient for movement of goods, motorists, and pedestrians. Conflicts between motorists and pedestrians are minimized.

Public Access. Pedestrians are, or will be, accommodated by sidewalks that will be constructed throughout the development located along one side of streets, as the development builds out.

As a part of Lot 3 development, public sidewalk will be constructed in South Port Drive right-of-way to the south of Lot 3, with a pedestrian connection from the public sidewalk to an internal pedestrian sidewalk on the south and east side of the building, which leads to the front door.

Traffic. In 2006, a Traffic Report was submitted and accepted by the City Engineer. Access to the development is from U.S.-24 Highway onto a main entry drive to the internal streets of the development, which connect to the east and west of the PUD. Major

highway improvements including left turning lanes, a traffic signal and closure of two existing median crossings, were constructed.

Off-Street Parking. Thirty off-street parking spaces are required and 30 are provided.

**5. OPEN SPACE/LANDSCAPED AND COMMON AREA:** No common area is proposed. Landscaped space is approximately 30% of the site's coverage.

**6. CHARACTER OF THE NEIGHBORHOOD:** The highway corridor is a service commercial neighborhood characterized primarily by individual building sites. Open sales display lots of vehicles and equipment are a common feature of the corridor.

### **MATTERS TO BE CONSIDERED WHEN REZONING**

**1. EXISTING USE:** Lot 3 is a vacant commercial tract of land.

**2. PHYSICAL AND ENVIRONMENTAL CHARACTERISTICS:** Lot 3 is a flat rectangular shaped tract of land with frontage on three public rights-of-way. The north lot line is along U.S.-24 Highway. The west and south lot lines are along South Port Drive. Access is prohibited onto U.S.-24 Highway. The existing grade of the site is at 1014-feet.

Lot 3 is shown on adopted Flood Insurance Rate Map (FIRM) Panel 359 of 500, dated July 6, 2010, and in the 0.2% annual chance flood plain (500-year) and 1% (100-year) flood plains, Base Flood Elevation (BFE) 1008.50-foot National Geodetic Vertical Datum (NGVD) .

Lot 3 is also shown on the Preliminary FIRM for Riley County, undated Panel 359 of 500, Zone AE, BFE 1014-feet (NGVD). Preliminary FIRMS are expected to be adopted in 2013-2014 time period. For future compliance with flood plain elevation requirements, the lowest enclosed floor will be constructed one-foot above BFE, or at 1015.25-foot (NGVD), as noted on the Sheet C-1.

**3. SURROUNDING LAND USE AND ZONING:**

**(a.) NORTH:** U.S.-24 Highway, cultivated agricultural field, highway service commercial and retail uses, and undeveloped tract (future Heritage Square North); Pottawatomie County CH, Highway & Commercial Corridor District.

**(b.) SOUTH:** Railroad; agricultural fields, Kansas River; Pottawatomie County A-1, General Agriculture District.

*Attachment No. 1*

**(c.) EAST:** Highway service commercial and retail uses; Pottawatomie County CH, Highway & Commercial Corridor District.

**(d.) WEST:** Furniture sales, storage units, and similar highway service commercial and retail uses, livestock sales; Pottawatomie County CH, Highway & Commercial Corridor District.

**4. GENERAL NEIGHBORHOOD CHARACTER:** See above under **No. 6, CHARACTER OF THE NEIGHBORHOOD.**

**5. SUITABILITY OF SITE FOR USES UNDER CURRENT ZONING:** Lot 3 is suitable for commercial development for the uses under the current zoning, as approved with the Preliminary Development Plan, subject to Condition No. 11, Ordinance No. 6607.

**6. COMPATIBILITY OF PROPOSED DISTRICT WITH NEARBY PROPERTIES AND EXTENT TO WHICH IT MAY HAVE DETRIMENTAL AFFECTS:** Minimal impact on adjacent commercial property in the Heritage Square South PUD with respect to light, noise, and traffic is anticipated. Lot 3 is intended to develop as a commercial lot in a manner similar to other commercial sites in the PUD.

The Preliminary PUD shows a building footprint with the rear of the building facing the exiting street (South Port Drive), and the sides of the building parallel to U.S.-24 Highway and an internal street (South Port Drive), with store front oriented to an internal east facing façade, parking lot and building site. The proposed building's storefront will face U.S.-24 Highway, its west side parallel to the exit street (South Port Drive) to U.S.-24 Highway, the east side towards an internal driving aisle and future building site to the east, and rear of the building facing an internal street (South Port Drive). The change in orientation should not have a negative effect on the businesses to the south that are separated from Lot 3 by a public street. Trash containers and HVAC will be screened. Facing the proposed building towards a major highway is more compatible than having the rear of the building facing the main entrance and exit to the PUD, as shown on the Preliminary PUD.

**7. CONFORMANCE WITH COMPREHENSIVE PLAN:** The Future Land Use Map for the Northeast Planning Area of the Manhattan Urban Area Comprehensive Plan designates the site as Community Commercial (CC). The Comprehensive Plan also reflects the land use designation of the US 24 Corridor Plan developed by Pottawatomie County. The site is also subject to the US 24 Corridor Special Planning Area Policies in the Comprehensive Plan.

The existing PUD was found to conform to the Comprehensive Plan in 2006. The proposed PUD amendment conforms to the Manhattan Urban Area Comprehensive Plan.

**8. ZONING HISTORY AND LENGTH OF TIME VACANT AS ZONED:**

- June 29, 2006: City of Manhattan receives requests for island annexation of the proposed Heritage Square North and Heritage Square South tracts from Roger Schultz and Rob Eichman.
- July 11, 2006: City Commission approves Resolution Nos. 071106-H & I, requesting the Board of Pottawatomie County Commissioners to make positive findings regarding the requested island annexation of Heritage Square North and Heritage Square South.
- July 27, 2006: Board of Pottawatomie County Commissioners makes positive findings regarding the island annexations of Heritage Square North and Heritage Square South.
- August 15, 2006: City Commission approves first reading of ordinances annexing Heritage Square North and Heritage Square South; and, approves Resolution No. 081506-A, requesting the Board of Pottawatomie County Commissioners to make positive findings regarding the island annexation of that portion of the US 24 rights-of-way that adjoins Heritage Square.
- August 18, 2006: City of Manhattan receives Consent to Annexation from the Kansas Department of Transportation for that portion of the U.S.-24 Highway right-of-way that adjoins Heritage Square South, consisting of 6.791 acres.
- August 21, 2006: Board of Pottawatomie County Commissioners makes positive findings regarding the island annexation of that portion of U.S.-24 Highway rights-of-way that adjoins Heritage Square South.
- October 16, 2006; Manhattan Urban Area Planning Board holds public hearing and recommends approval (7-0), of the rezoning the proposed Heritage Square South and the U.S.-24 Highway -of-way from County - CH, Highway & Commercial Corridor District, to PUD, Commercial Planned Unit Development District.
- November 7, 2006 City Commission approved first reading of an ordinance annexing the 6.8-acre portion of the U.S.-24 Highway right-of-way adjoining the Heritage Square South development; and, approved first reading of an ordinance rezoning the proposed Heritage Square South development and the adjoining portion of U.S.-24 Highway right-of-way, to PUD, Planned Unit Development District.

*Attachment No. 1*

- February 6, 2007 City Commission approves Ordinance No. 6606 annexing proposed Heritage Square North, proposed Heritage Square South and the 6.8-acre portion of the U.S.-24 Highway rights-of-way that adjoins Heritage Square South; and, approved Ordinance No.6607 rezoning the Heritage Square South and the adjoining portion of U.S.-24 Highway right-of-way, to PUD, Commercial Planned Unit Development District.
- March 5, 2007 Manhattan Urban Area Planning Board approves the Final Development Plan (Lots 1, 6, and 9) and Final Plat of the Heritage Square South Addition (Lots 1-10).
- March 15, 2007 City Commission accepts the easements and rights-of-way as shown on the Final Plat of Heritage Square South Addition.
- July 17, 2007 City Commission approves first reading of an ordinance renaming Heritage South Road to South Port Road, and Heritage Square Drive to South Port Drive, in Heritage Square South P.U.D. Addition.
- August 14, 2007 City Commission approves Ordinance No. 6651 renaming Heritage South Road to South Port Road, and Heritage Square Drive to South Port Drive, in Heritage Square South P.U.D. Addition.

Tractor Supply, Heritage Commons, and Fastenal were built in 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 consistent with Ordinance No. 6607, and the approved PUD, the Manhattan Zoning Regulations, and PUD requirements of the Manhattan Zoning Regulations. The amendment process is required before development of Lot 3 can proceed. The amendment process insures the PUD conforms to the requirements of all regulations.

*Attachment No. 1*

Lot 3 is shown of the Preliminary Flood Plain maps in the 100 Year Flood Plain. The lowest enclosed floor will be elevated to at least one-foot above the proposed BFE to conform to future flood plain requirements.

**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 gain to the public that denial would accomplish. Denial of the rezoning may be a hardship to the owner.

**11. ADEQUACY OF PUBLIC FACILITIES AND SERVICES:** Adequate street, sanitary sewer, and water services are available to serve the development.

The dedicated drainage easement along the east side of Lot 3 will be vacated and dedicated as a utility easement in order to allow the parking lot surfacing, which would not be allowed in the drainage easement. A petition was submitted to the Public Works Department to vacate the drainage easement and dedicate a utility easement in which the underground storm water pipe is located. The Public Works Department does not oppose the vacation and dedication, which is subject to a public notice and public hearing process conducted by the City Commission.

**12. OTHER APPLICABLE FACTORS:** There are no other applicable factors.

**13. STAFF COMMENTS:** All provisions of Ordinance No. 6607 that are not in conflict with this amendment shall remain in force.

City Administration recommends approval of the proposed amendment of Ordinance No. 6607, and the approved Preliminary Development Plan of Lot 3, Heritage Square South Commercial Planned Unit Development, to be known as the Final Development Plan of Lot 3, Heritage Square South Commercial Planned Unit Development.

**ALTERNATIVES:**

1. Recommend approval of the proposed amendment of Ordinance No. 6607 and the approved Preliminary Development Plan of Lot 3, Heritage Square South Commercial Planned Unit Development, to be known as the Final Development Plan of Lot 3, Heritage Square South Commercial Planned Unit Development, stating the basis for such recommendation.

*Attachment No. 1*

2. Recommend approval of the proposed amendment of Ordinance No. 6607 and the approved Preliminary Development Plan of Lot 3, Heritage Square South Commercial Planned Unit Development, to be known as the Final Development Plan of Lot 3, Heritage Square South Commercial Planned Unit Development, stating the basis for such recommendation.
3. Recommend denial of the proposed amendment of Ordinance No. 6607 and the approved Preliminary Development Plan of Lot 3, Heritage Square South Commercial Planned Unit Development, to be known as the Final Development Plan of Lot 3, Heritage Square South Commercial Planned Unit Development, stating the specific reasons for denial.
4. 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 Ordinance No. 6607 and the approved Preliminary Development Plan of Lot 3, Heritage Square South Commercial Planned Unit Development, to be known as the Final Development Plan of Lot 3, Heritage Square South Commercial Planned Unit Development, based on the findings in the Staff Report.

**PREPARED BY:** Steve Zilkie, AICP, Senior Planner

**DATE:** January 17, 2013.

13003}SR}PUDAmendmentLot3HeritageSqSouth



## **INTER-OFFICE MEMORANDUM**

**DATE:** January 25, 2013

**TO:** Manhattan Urban Area Planning Board

**MEETING DATE:** February 4, 2013

**FROM:** Steve Zilkie, AICP, Senior Planner

**RE:** Amend Manhattan Zoning Regulations, Article IV, District Regulations, to Add Cultural Facility as a Permitted Use in the C-3, Aggieville Business District; C-4, Central Business District; and, C-5, Highway Service Commercial District

### **BACKGROUND**

The term Cultural Facility is defined in the Manhattan Zoning Regulations and means,

“A facility operated by a non-profit organization for the providing of activities of a historic, educational, or cultural nature, such as museums, art galleries, or performing arts.”

Cultural Facility is a Permitted Use in the C-1, Restricted Business District, and was added to the Manhattan Zoning Regulations to allow the Manhattan Arts Center at 1520 Poyntz Avenue. Cultural Facility is not listed as a Permitted or Conditional Use in any other zoning district. However, the term “Museums” is listed as a Permitted Use in the Ordinance creating the Downtown Entertainment District Commercial PUD, specifically for the Discovery Center.

Mid-West Educational Center Inc, dba Wonder Workshop (*letter attached*), a non-profit children’s museum, contacted City Administration about establishing Wonder Workshop at 506 S. 4<sup>th</sup> Street, which is on the south part of the Bethel A.M.E. Church’s property. Wonder Workshops’ location is proposed in a residential designed structure, which at one time was pastor’s home. The church and Wonder Workshop’s proposed location are zoned C-5, Highway Service Commercial District.

*Attachment No. 2*

No Permitted Use or Conditional Use in C-5 District was applicable to Wonder Workshop. To facilitate Wonder Workshop establishing a non-profit museum at 506 S. 4<sup>th</sup> Street, City Administration recommended a text amendment to add Cultural Facility as Permitted Use in the C-5 District.

Until this request, no inquiry has been made to allow cultural facilities in other zoning districts other than C-1. Since 2003, the Comprehensive Plan has noted “cultural” uses as appropriate in the Central Core land use category (Central Core designation is shown for the Aggieville and Downtown areas). Central Core areas described in the Comprehensive Plan include the C-3 and C-4 Districts. Because Cultural Facility is not listed as a use in either zone, and because the Central Core category is an area in which cultural activities should locate, City Administration added Cultural Facility to the text amendment request and proposed the term added as a Permitted Use in the C-3 and C-4 Districts.

**AMENDMENTS TO THE TEXT OF THE ZONING REGULATIONS**

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

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

The general 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 protect property values.

The intent of the C-3, C-4, and C-5 Districts (*District regulations attached*) are:

C-3. Aggieville Business District. This district is designed to provide for a relatively broad range of retail shopping facilities and services which primarily consist of specialty shops and stores.

C-4. Central Business District. This district is the primary commercial center of the community and is designed to provide for a broad range of retail shopping facilities, services, and cultural activities.

C-5. Highway Service Commercial District. This district is designed to provide for businesses offering accommodations, supplies, or services to motorists, and for certain specialized activities which require access to major streets and highways.

The proposed text amendment is consistent with the general intent and purposes of the Zoning Regulations and adds a land use to allow a broader opportunity for locations within zoning districts. The addition of Cultural Facility in the C-3, C-4, and C-5 Districts expand opportunities to benefit the public welfare, while requiring the land use to meet the district requirements for lot size, off-street parking and other regulations applicable to all permitted uses. There does not appear to be any essential characteristic about a Cultural Facility, which would adversely affect property values in any of the three commercial zoning districts.

The C-3 and C-4 Districts are described in the Comprehensive Plan as the Central Core commercial, civic and cultural areas in the City. The proposed amendment to add Cultural Facility is consistent with the intent of C-3 and C-4 Districts. The C-5 District offers specialized activities, some of which include entertainment value. Locating “museums, art galleries, or performing arts” centers along major streets is consistent with the general character of the C-5 District, intended to serve the motoring public.

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

C-3 and C-4 districts located in the Aggieville and Downtown areas, respectively. The C-3 and C-4 Districts are unique zones found only in the two commercial areas in which they are located. The C-5 District, however, is located along major streets including Ft. Riley Boulevard from S. 17<sup>th</sup> Street to the intersection of Seth Child Road and Ft. Riley Boulevard, and including the area in and around the Seth Child Road intersection. C-5 District extends to the north along Seth Child Road to the Anderson Avenue and Seth Child Road intersection area, and in the areas east of the southern part of Tuttle Creek Boulevard, and south of McCall Road.

A permitted use in C-5 is also a permitted use in the LM-SC, Light Manufacturing-Service Commercial District, which for development purposes, extends along the north and south sides of Ft. Riley Boulevard from 17<sup>th</sup> street to the Depot.

No adverse affect on any of the zones is expected. Each zone will have expanded opportunities for cultural activities.

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

*Attachment No. 2*

The proposed location of Wonder Workshop, a Cultural Facility, as defined in the Manhattan Zoning Regulations cannot be accommodated in the C-5 District because Cultural Facility is not a use allowed in C-5 District. The C-3 and C-4 Districts are intended to allow cultural uses but the land use is not listed in either district and should be a permitted use in both districts.

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

The Comprehensive Plan identifies areas zoned C-5 District as Community Commercial (CC), which is generally located at the intersection of one or more major arterial streets. C-5 District may also be located along major street corridors. Land uses in CC are primarily large national chains, grocery, apparel, lumber, appliances and other retail uses. Smaller complimentary uses include restaurants, computer stores, professional offices and health services. The C-5 District allows specific entertainment venues such as amusement parks, theaters, and bowling alleys. Cultural Facility does not appear to be inconsistent with the general nature of “entertainment” options available in C-5 District. With the CC designation located along major streets, the addition of Cultural Facility to C-5 District is in general conformance with the Comprehensive Plan. The proposed Wonder Workshop location is adjacent to the intersection of Ft. Riley Boulevard and S. 4<sup>th</sup> Street, a major arterial street and collector street, respectively.

C-3 and C-3 Districts are categorized as Central Core and intended for cultural, civic, retail, professional office and financial land uses. The addition of Cultural Facility as a permitted use to both C-3 and C-4 districts conforms to the Comprehensive Plan.

**ALTERNATIVES**

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

1. Recommend approval of the proposed amendment to the City Commission.
2. Recommend denial of the proposed amendment to the City Commission.
3. Modify the proposed amendment 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 amendment to the Manhattan Zoning Regulations to amend Article IV, District Regulations, to add Cultural Facility as a permitted use to the C-3, Aggieville Business District; C-4, Central Business District; and, C-5, Highway Service Commercial District.

**POSSIBLE MOTION**

The Manhattan Urban Area Planning Board recommends approval of the amendment to the Manhattan Zoning Regulations to amend Article IV, District Regulations, to add Cultural Facility as a permitted use to the C-3, Aggieville Business District; C-4, Central Business District; and, C-5, Highway Service Commercial District, based on the findings in the Staff Memorandum.

13008

## STAFF REPORT

### AMENDMENT OF AN ORDINANCE AND AN APPROVED FINAL DEVELOPMENT PLAN

**REQUEST:** Amend Ordinance No. 6951 and the approved Final Development Plan of Lot 4, Downtown Entertainment District Commercial PUD.

The applicant and owner has requested an amendment of the approved Final Development Plan of Lot 4, Downtown Entertainment District Commercial PUD, in order to convert the first floor of the approved mixed use commercial and residential building to a residential building only. The ground floor commercial space of the four story building is proposed to be converted to apartments. The approved building has a total of 24 dwelling units (apartments) on floors two through four, consisting of five, one-bedroom apartments and three, two-bedroom apartments, per floor. The proposed building will have a total of 32 apartments with the first floor designed for five, one bedroom apartments, and three, two-bedroom apartments, or a total within the building of 20, one-bedroom apartments, and twelve, two-bedroom apartments.

**REASONS FOR THE PROPOSED AMENDMENT:** The proposed changes are considered substantial modifications of the PUD requirements (Article IX, Section 9-108 (C) (1) (2) (1)(2) and (3)):

*“(C) Substantial modifications shall include:*

- (1) Changes or additions to land use from those approved with the PUD; The change of use of the first floor converts the 8,887 square feet of first floor commercial space to eight residential dwelling units consisting of five, one-bedroom units and three, two-bedroom dwelling units;*
- (2) An increase in the net residential density of more than 5%; Net increase within the approved building is approximately 7%.*
- (3) An increase in floor area of a residential building of more than 10%.” The increase in floor area of a residential floor building is more than 10%. Net floor area increase of residential floor area within the approved building is approximately 28%. When compared to the entire PUD, net residential floor space increase is approximately 17 %.*

*Attachment No. 3*

**SPECIAL NOTE:** Currently, there is an approved Final Development Plan for Lot 4, Downtown Entertainment District Commercial PUD; however, the legal description of Lot 4 was revised after approval of the Final Development Plan of Lot 4. A Lot Split Plat of Lot 4 was submitted and approved to facilitate refinancing of the Hilton Garden Inn hotel. Lot 4 was split into what is now known as Lot 1 and Lot 2, Hilton Garden Inn Downtown Entertainment District Commercial Planned Unit Development.

***The proposed Final Development Plan will be known as Lot 1 and Lot 2, Hilton Garden Inn, Downtown Entertainment District Commercial PUD.***

Currently, the improvements on Lot 1 and Lot 2 consist of:

- Lot 1: Existing Hilton Garden Inn, 111 off-street parking spaces, and other improvements such as signs, landscaping, light poles and other improvements such as internal sidewalks.
- Lot 2: Approved undeveloped mixed use building site, 31 off-street parking spaces, parking lot improvements, utility structure, and landscaping.

**APPLICANT/OWNER:** The applicant/owner is HCW-Manhattan, LLC - Richard E. Huffman, Managing Member.

**ADDRESS:** The applicant/owner's address is 153 S. Payne Stewart Drive, Branson, MO, 66516.

**LEGAL DESCRIPTION:** Lot 1 and Lot 2, Hilton Garden Inn Downtown Entertainment District Commercial Planned Unit Development, an addition to the City of Manhattan, Riley County, Kansas,

**LOCATION:** Together, Lot 1 and Lot 2 are on the southeast corner of S. 4<sup>th</sup> Street and Colorado Street. Lot 1 is furthest from the intersection with Lot 2 at the intersection of the two streets. Lot 2 is an open green space located at the southeast corner of S. 4<sup>th</sup> Street and Colorado Street.

**AREA:** Lot 1 is 105,743 square feet in area or 2.43 acres. Lot 2 is 38,772 square feet in area or 0.89 acres.

**DATE OF NEIGHBORHOOD MEETING:** January 8, 2013.

**DATE OF PUBLIC NOTICE PUBLICATION:** Monday, January 14, 2013.

**DATE OF PUBLIC HEARING: PLANNING BOARD:** Monday, February 4, 2013.

**CITY COMMISSION:** Tuesday, February 19, 2013.

**APPROVED FINAL DEVELOPMENT PLAN FOR LOT 4 AND  
EXISTING DOWNTOWN ENTERTAINMENT DISTRICT PUD**

**PUD Ordinances Affecting the Final Development Plan of approved Lot 4**

Approved Lot 4 is in the Downtown Entertainment District Commercial Planned Unit Development and subject to Ordinance No. 6804, dated December 15, 2009, and Ordinance No. 6951 approved June 19, 2012.

Ordinance No. 6804's conditions of approval:

1. Permitted uses shall include all of the Permitted Uses of the C-4, Central Business District, City Park, Museum, Conference Center, and Parking Garage.
2. Landscaping and irrigation shall be provided pursuant to a Landscaping Performance Agreement between the City and the owner, which shall be entered into prior to issuance of a building permit. Except that, if the City is also the owner of the property, landscaping, and irrigation shall be provided in compliance with the process established by the governing body to develop the property.
3. All landscaping and irrigation shall be maintained in good condition.
4. Signage shall be provided as proposed in the application documents, and shall allow for exempt signage described in Article VI, Section 6-104 (A)(1),(2),(4),(5),(7) and (8); and Section 6-104 (B)(2), of the Manhattan Zoning Regulations.
5. Signage for Lot 5 and Lot 6 shall conform to the requirements of the C-4, Central Business District, of the Manhattan Zoning Regulations.
6. The hotel's canopy, which extends over South 3<sup>rd</sup> Street right-of-way, shall be permitted subject to the Uniform Building Code, as adopted by the City of Manhattan.
7. A dense hedge row shall be planted at a minimum height of 30-inches at the time of planting along the hotel's South 4<sup>th</sup> Street and Colorado Street parking lot frontages.
8. Provide landscape trees and vegetated screen along Fort Riley Boulevard on the south side of the parking garage.

Ordinance No. 6951's conditions of approval:

1. Signs shall be provided as proposed in the application documents, and shall allow for exempt signage described in Article VI, Section 6-104 (A)(1),(2),(4),(5),and (7); and, Section 6-104 (B)(2) and B(5), of the Manhattan Zoning Regulations.

The amendment site is within the South Project Area of the Downtown Redevelopment Plan. The Downtown Redevelopment-Entertainment District Design Guidelines (*attached*) apply to the proposed development.

#### **Original Approved Uses and Buildings on Lot 4**

The existing use and structure on Lot 4 is a four-story Hilton Gardens Inn approximately 46 feet in height fronting on S. 3<sup>rd</sup> Street between Colorado Street and the Conference Center. Exterior materials are a combination of brick, limestone veneer and EFIS; and an approved mixed use residential/commercial building. The hotel's main entrance is off S. 3<sup>rd</sup> Street with a second entrance off the west side of the hotel adjacent to the hotel's parking lot. Current room count is 133 rooms with a future expansion on the north end of the hotel for 48 +/- rooms. The hotel floor space includes a dining room, fitness area, meeting rooms, and administrative and mechanical rooms. The parking lot located to the west of the hotel has curb cuts off Colorado Street and S. 4<sup>th</sup> Street and 142 constructed off-street parking spaces, which it shares with the approved four story mixed use building. Pedestrian walkways and sidewalks connect to the hotel entrances from all streets.

#### **Amended Final Development Plan Lot 4**

The approved amended Final Development Plan for Lot 4 consists of the existing 133 room Hilton Garden hotel, and a mixed use, four-story, ground floor commercial, with floors two through four for 24 apartment, and 142 off-street parking spaces serving the combined hotel and mixed use building.

#### **Permitted Uses and Existing and Future Development/Construction in the Downtown Entertainment District PUD**

The Permitted Uses of the PUD include all of the Permitted Uses of the C-4, Central Business District (C-4 District allows a broad range of retail, services and residential uses), a City Park, Conference Center, Parking Garage, and Museum. A drive-in restaurant, restricted to a coffee and bakery restaurant use, is permitted in the east end of the mixed-use building on Lot 3, Downtown Entertainment District PUD, Unit Three.

Existing development in the PUD includes the Hilton Garden hotel, conference center, parking garage, Discover Center, Blue Earth Park, and an office building at S. 4<sup>th</sup> Street and Pierre Street. Two mixed use commercial/residential buildings are proposed, one yet to be approved by Final Development Plan at Colorado Street and S. 4<sup>th</sup> Street, and the second at Blue Earth Place and S. 3<sup>rd</sup> Street (building permit was issued January 25, 2013.) Of the two hotels approved with the amendment of Lot 9, the Comfort Suite hotel is under construction. The Holiday Inn is future construction subject to a Final Development Plan approval. Additional improvements in the entire PUD include public and private off-street, landscaping, signage and other improvements.

## **PROPOSED AMENDMENT**

### **Proposed Use and Building:**

Lot 1. No changes to the hotel. One hundred ten off-street parking spaces are on Lot 1 and will serve the hotel only.

Lot 2. As described above under **REQUEST** and **REASONS FOR THE PROPOSED AMENDMENT**, changes in land use on the first floor from commercial to residential for eight additional dwelling units; an increase in net density of dwelling units within the building; and, an increase in residential floor area. The proposed four-story residential building is generally along the S. 4<sup>th</sup> Street and Colorado Street frontages and is set back 25 feet from the S. 4<sup>th</sup> Street property line due to a 25 foot utility easement and set back 35 feet from the Colorado Street property line due to a 35 foot utility easement.

The building is approximately 46 feet in height to the roof cornice with an additional three and one-half feet of height for loft height for 4<sup>th</sup> floor units. Exterior materials are brick, a mixture of metal and composite metal panels on the second through fourth floors, stucco and cast stone bands. Each dwelling unit has a balcony with extensive window space and a patio area for first floor apartments.

Large landscaped yards are on the north, west, and east sides of the building, with a shallower landscape yard on the south side of the building. Landscaping is also proposed behind the edge of the sidewalks. The landscape/green space on the east side of the building is an area to walk pets.

A bike rack is located opposite the southwestern entrance to the residential stairwell.

**PROPOSED SIGNS:** Two internally illuminated approximate 36 square foot wall signs are proposed on the north and south facades of the building to identify the name of the building, “4th Street Lofts.”

**PROPOSED LIGHTING:** Exterior lights are wall luminaries on the first floor with the balance of lighting from existing parking lot lights.

### **Design Guidelines for Downtown Redevelopment**

The proposed Final Development Plan is within the South Project Area of the Downtown Redevelopment Plan. The Downtown Redevelopment-Entertainment District Design Guidelines (*attached*) apply to the proposed development.

The Design Guidelines for Downtown Redevelopment set 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 guidelines. The Guidelines are not regulations. 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.

A letter (attached) from Patrick Schaub, AIA, LEED AP BD&C, Bowman Bowman Novick Inc., dated January 28, 2013, is a review of the amendment based on the Design Guideline with comments.

The Guidelines are generally intended to provide a mix of uses and a pedestrian and bicycle friendly commercial area with connection to the downtown core and residential neighborhoods; increase the economic and cultural vitality of the downtown; incorporate sustainable design; and, other development intents.

Overall, the intent of the Guidelines is met. In response to the five comments, the building placement is limited by a 25 foot utility easement on S. 4<sup>th</sup> Street and a 35 foot utility easement on Colorado Street. Building orientation and facades are limited in meeting Design Guidelines due to the utility easement. The applicant modified the landscape plan to create a “street wall” of landscaping along the two streets, primarily shrubs, which will grow and create a short wall. The proposed approximate 36 square foot wall signs, approximately 72 square feet in total, are less than the square footage requirements of the C-4 District, which may allow as little as a total of 110 square feet of signage, and conform to the requirements of the C-4 District.

### **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 proposed amendment is consistent with the intent and purpose of the approved PUD, which envisions an extension of the C-4 District with a broad range of mixed use retail and residential buildings, free standing retail and residential buildings, professional offices, museum, conference center, parking garage, and hotels. The proposed amendment will promote the efficient development and preservation of the entire PUD by allowing a more efficient and economically beneficial use of off-street parking spaces for the existing hotel and proposed residential apartment building than the approved Final Development Plan of Lot 4, which, as approved, allows for the sharing of 142 off-street parking spaces between the hotel, 24 apartment units, and commercial floor space. The amendment also adds a quality building and landscaping consistent with the Design Guidelines for the Downtown Entertainment District.

**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 indicates that, “The proposed change is due to the economy. The owners have tried since the original approval to lease the retail space on the main floor without success. Therefore the change from retail to residential on the main floor which will bring additional patrons to the Downtown District on a daily basis.”

**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:**

The proposed amendment should result in a relative gain to the public health, safety, convenience or general welfare by providing additional residential apartment units in the downtown area. No special benefit is conferred by the proposed amendment as the public at large will benefit from the additional residential apartments in the downtown area.

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

**1. LANDSCAPING:** Landscaping consists primarily of foundation and border shrubs and perennials, ornamental trees, and fescue sod spaces. Underground irrigation will be provided for watering landscape space. “Street wall” landscaping is proposed along S. 4<sup>th</sup> Street and Colorado Street consisting primarily of shrubs, which will grow to create a short wall.

**2. SCREENING:** A six foot four inch gated trash enclosure is proposed near the northeast corner of the building constructed of brick and cast stone with metal gates matching the buildings color.

**3. DRAINAGE:** The site is proposed to drain to the south to the Kansas River through existing storm inlets and storm water sewer pipe improvements. Adequate inlets and improvements will be provided to assure the drainage system is functional. A comprehensive drainage plan for the entire PUD, the Downtown Entertainment District Drainage Impact Study, was reviewed and accepted by the City Engineer with the rezoning to PUD in December, 2009.

**4. CIRCULATION:** The proposed internal circulation plan provides for safe, convenient and efficient movement of goods, motorists, and pedestrians. Conflicts between motorists, bicyclists and pedestrians are minimized. Sidewalks within the amendment site connect to public sidewalks. The site will be accessed from the surrounding street system and a curb cut off S. 4<sup>th</sup> Street and Colorado Street and public sidewalk from the surrounding neighborhood.

#### Off-Street Parking

Currently, there are 142 off-street parking spaces constructed and intended to serve the hotel and approved mixed use building, with one parking space intended for each of the 24 apartment units, and the balance, 118, for the hotel and first floor commercial uses in the mixed use building. The proposed modification to the mixed use building, proposes one parking space per apartment (as did the previously approved amendment) or 32 off-street parking spaces, and the balance 110, exclusively for the hotel.

The approved Final Development Plan of Lot 4 recognized that there are an additional 436 parking spaces available in the parking garage within the PUD that can be used. It was found that there will be times when peak demand exceeds existing parking within the PUD. Parking is also available on adjoining public streets and in public parking lots located in the surrounding area to the northwest at S. 5<sup>th</sup> Street and Pierre Street, recently constructed parking on the southwest corner of Houston Street and S. 4<sup>th</sup> Street, and at the Manhattan Town Center parking lot. Some overflow during peak times may encroach to the west into what is largely a commercial neighborhood between S. 4<sup>th</sup> Street and S. 5<sup>th</sup> Street, and it is less likely that overflow would extend onto Colorado Street west of S. 4<sup>th</sup> Street because the street is one way east from S. 5<sup>th</sup> to S. 4<sup>th</sup> Streets.

Using Manhattan Zoning parking ratios for the existing hotel and proposed residential building would generate the following standard parking spaces:

- Hotel 133 rooms: 1 per room plus 2 or 135 required off-street parking spaces.
- 20, one bedroom units: 2 per unit or 40 required off-street parking spaces.
- 12, two bedroom units: 3 per unit or 36 required off-street parking spaces.

### **Staff Analysis**

The Manhattan Zoning Regulations do not require off-street parking for any use in the C-4 Central Business District. The standard ratios would require 211 off-street parking spaces for the hotel and proposed residential building. The approved amendment of Lot 4 allowed 142 off-street parking spaces for the hotel, and mixed use building. The hotel and commercial floor space shared demand for the approved 118 off-street parking spaces, which may have demanded 179-180 off-street parking spaces for the two uses. As proposed, the hotel will have exclusive use of the 110 off-street parking spaces. Off-street parking should be adequate for the hotel and the proposed 32 unit apartment building, which is consistent with the previous approval of the Final Development Plan of Lot 4, which maximized parking on the amendment site.

**5. OPEN SPACE/LANDSCAPED AND COMMON AREA:** The owner will be responsible for maintenance of landscaped and open space around the building and in the parking lot.

**6. CHARACTER OF THE NEIGHBORHOOD:** Lot 1 and Lot 2 are within a predominately commercial area commonly known as the Downtown Entertainment District in which a conference center, parking garage, a city park, museum, hotels, and mixed use commercial-residential ground level and upper floor residential uses are located. Major street corridors are nearby including Ft. Riley Boulevard to the south and S. 3<sup>rd</sup> Street to the east. Further south are commercial and industrial uses. To the west of S. 4th Street is a mix of single-family, two-family, multiple-family, including two 47 dwelling unit, four and five story apartment buildings, service commercial and retail uses further to the northwest and southwest. Residential uses increase to the west of S. 5<sup>th</sup> Street. To the north are Pierre Street and a mix of uses including a hotel, Manhattan Town Center and Manhattan's C-4 District.

### **MATTERS TO BE CONSIDERED WHEN REZONING**

**1. EXISTING USE:** An open green space within the approved Final Development Plan of Lot 4, subject to Ordinance No. 6951.

**2. PHYSICAL AND ENVIRONMENTAL CHARACTERISTICS:** Generally flat with existing drainage to the east and south to storm sewer inlets. The site is located in a 500 Year Flood Plain and is not subject to flood plain development regulations. Lot 2 is grass covered with landscaping shrubs on the northern and western property lines and several trees on the perimeter of the site. Lot 1 is the Hilton Garden hotel, off-street parking, landscaping and other improvements.

### **3. SURROUNDING LAND USE AND ZONING:**

**(a.) NORTH:** Colorado Street, hotel, Pierre Street, Manhattan Town Center and the Central Business District.; C-5, Highway Business District with RDO, Redevelopment District Overlay and C-4 District.

**(b.) SOUTH:** Conference center, parking garage, retail and Ft. Riley Boulevard; Downtown Entertainment District Commercial PUD, and LM-SC, Light manufacturing Service Commercial District.

**(c.) EAST:** Hilton Garden hotel, parking lot, S. 3<sup>rd</sup> Street, Discovery Center, Blue Earth Park, public parking lot, hotels, mixed use building; Downtown Entertainment District Commercial PUD.

**(d.) WEST:** S. 4<sup>th</sup> Street, single-family, two family and multiple-family buildings ( a four story and five story apartment building with 47 dwelling units per building), auto sales and service, and other service commercial uses; PUD, R-M, Four-Family Residential District, and C-5, Highway Service Commercial District, C-4 District.

**4. GENERAL NEIGHBORHOOD CHARACTER:** See above under Review Criteria for Planned Unit Development, number 6, **CHARACTER OF THE NEIGHBORHOOD.**

**5. SUITABILITY OF SITE FOR USES UNDER CURRENT ZONING:** Lot 1 and Lot 2 are suitable for the approved Hilton Garden Inn, an approved mixed use building, and 142 off-street parking spaces to be shared by all of the uses.

**6. COMPATIBILITY OF PROPOSED DISTRICT WITH NEARBY PROPERTIES AND EXTENT TO WHICH IT MAY HAVE DETRIMENTAL AFFECTS:** The proposed amendment and Final Development Plan are consistent with the commercial and residential nature of the approved PUD and developed properties in the PUD. Expected increases in traffic, light, and noise will be consistent with the predominately commercial and residential character of the neighborhood. Residential properties to the west of Lot 1 and Lot 2 are the smallest part of the neighborhood to the west, which is separated by S. 4<sup>th</sup> Street, a major two-way north/south street. Minimal impacts on adjacent properties are anticipated and detrimental effects are not expected. Some overflow parking may occur in the largely commercial neighborhood to the west during peak event times in the PUD, but should not be the common occurrence.

Historic property potentially impacted by the proposed project is the Downtown Manhattan Historic District was administratively reviewed by City Administration (attachment), who reviewed and contacted the State Historic Preservation Officer (SHPO).

*Attachment No. 3*

The SHPO states in a letter (attached), dated January 18, 2013, that, “The SHPO has determined the proposed project will not encroach upon, damage, or destroy any listed historic property or its environs. As far as this office is concerned, the project may proceed.” No detrimental effects on historic properties are expected, based on local and state review of the proposed rezoning.

**7. CONFORMANCE WITH COMPREHENSIVE PLAN:** The Manhattan Urban Area Comprehensive Plan shows the site as Central Core District (CCD), which is a special purpose designation for the Downtown Core. The amendment site is also designated as a primary redevelopment area for expansion of the Central Business District, in Downtown Tomorrow – A Redevelopment Plan for Downtown Manhattan, Kansas, adopted in May 2000.

The proposed amendment conforms to the Comprehensive Plan.

**8. ZONING HISTORY AND LENGTH OF TIME VACANT AS ZONED:**

November 6, 2009: Manhattan Urban Area Planning Board conducts the public hearing on the proposed Downtown Entertainment District from C-4, Central Business District; C-5, Highway Service Commercial District with RDO, Redevelopment District Overlay; and, LM-SC, Light Manufacturing-Service Commercial District, to PUD, Commercial Planned Unit Development District, with eight conditions of approval. The Planning Board recommended approval of the rezoning on a vote of 7-0. In a separate action, the Planning Board approved the Final Plat of the Downtown Entertainment District Addition on a vote of 7-0.

December 1, 2009 City Commission approves first reading of an ordinance rezoning the proposed Downtown Entertainment District from C-4, Central Business District; C-5, Highway Service Commercial District with RDO, Redevelopment District Overlay; and, LM-SC, Light Manufacturing-Service Commercial District, to PUD, Commercial Planned Unit Development District.

December 15, 2009 City Commission approves Ordinance No. 6804 rezoning the proposed Downtown Entertainment District from C-4, Central Business District; C-5, Highway Service Commercial District with RDO, Redevelopment District Overlay; and, LM-SC, Light Manufacturing-Service Commercial District, to PUD, Commercial Planned Unit Development District; and accepts the easements and rights-of-way as shown on the Final Plat of the Downtown Entertainment District Addition.

*Attachment No. 3*

- January 20, 2010 Manhattan Urban Area Planning Board approves the Final Development Plan for Lots 1-4 of the Downtown Entertainment District Commercial PUD on a vote of 4-0.
- February 18, 2010 Manhattan Urban Area Planning Board sets aside the Final Plat approved on November 6, 2009, and approves the revised Final Plat of the Downtown Entertainment District Addition.
- February 23, 2010 City Commission accepts the rights-of-ways and easements of the Downtown Entertainment District Addition.
- August 2, 2011 City Commission and HCW-Manhattan LLC sign agreement to delay construction of the entire off-street parking lot for the Hilton Garden hotel.
- May 7, 2012 Manhattan Urban Area Planning Board recommends approval, on a vote of 7-0, of proposed amendments of Ordinance No. 6804 and the Final Development Plan of Lot 4 for modifications to the existing Hilton Garden Inn's off-street parking lot including reduction of the number of off-street parking spaces and landscape plan and the addition of a proposed four-story mixed use building.
- June 5, 2012 City Commission approves first reading of an ordinance amending Ordinance No. 6804 and the Final Development Plan of Lot 4 for modifications to the existing Hilton Garden Inn's off-street parking lot including reduction of the number of off-street parking spaces and landscape plan and the addition of a proposed four-story mixed use building.
- June 19, 2012 City Commission approves Ordinance No. 6951 amending Ordinance No. 6804 and the Final Development Plan of Lot 4, Downtown Entertainment District Commercial Planned Unit Development District, based on the findings in the Staff Report, with the one condition recommended by the Manhattan Urban Area Planning Board.
- Nov. 28, 2012 Lot Split Plat of Lot 1 and Lot 2, Hilton Garden Inn, Downtown Entertainment District Commercial Planned Unit Development, approved by City Administration.

The building permit for the Hilton Garden hotel was issued on August 26, 2010, and the Certificate of Occupancy was issued on December 20, 2011.

**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 amendment and Final Development Plan are consistent with the intent and purposes of the Zoning Regulations, and the intent of the PUD Regulations.

The PUD is an extension of the C-4 District, which is the primary commercial center of the community and is designed to provide for a broad range of retail shopping facilities, services, and cultural activities, including residential with no off-street parking requirements.

Proposed Amendment

The proposed changes are consistent with the Downtown Entertainment District and consistent with the intent and purpose of the Manhattan Zoning Regulations and the Downtown Entertainment PUD.

**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. Minimal impact on the public is expected as a result of traffic generated by the residential building, as well as storm water due to increase in impervious surface of the already approved building. Although overall a minimal, an increase in green space will occur on Lot 2. Denial of the amendment would be a hardship on the owner because no adverse effects on the public are expected.

**11. ADEQUACY OF PUBLIC FACILITIES AND SERVICES:** Adequate public streets, sanitary sewer and storm sewer, fire hydrants, streets, and sidewalks are provided.

**12. OTHER APPLICABLE FACTORS:** There are no other applicable factors.

**13. STAFF COMMENTS:** All provisions of Ordinance No. 6804 and Ordinance no. 6951, are not in conflict with this amendment shall remain in force.

City Administration recommends approval of a proposed amendment of Ordinance No. 6951 and the Final Development Plan of Lot 4, Downtown Entertainment District Commercial Planned Unit Development District to be known as the Final Development Plan of Lot 1 and Lot 2, Hilton Garden Inn, Downtown Entertainment District Commercial Planned Unit Development.

**ALTERNATIVES:**

1. Recommend approval of the proposed amendment of Ordinance No. 6951 and the Final Development Plan of Lot 4, Downtown Entertainment District Commercial Planned Unit Development District to be known as the Final Development Plan of Lot 1 and Lot 2, Hilton Garden Inn, Downtown Entertainment District Commercial Planned Unit Development, stating the basis for such recommendation.
2. Recommend denial of the proposed amendment of Ordinance No. 6951 and the Final Development Plan of Lot 4, Downtown Entertainment District Commercial Planned Unit Development District to be known as the Final Development Plan of Lot 1 and Lot 2, Hilton Garden Inn, Downtown Entertainment District Commercial Planned Unit Development, 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 Ordinance No. 6951 and the Final Development Plan of Lot 4, Downtown Entertainment District Commercial Planned Unit Development District to be known as the Final Development Plan of Lot 1 and Lot 2, Hilton Garden Inn, Downtown Entertainment District Commercial Planned Unit Development, based on the findings in the Staff Report.

**PREPARED BY:** Steve Zilkie, AICP, Senior Planner.

**DATE:** January 29, 2013.