A Capital City Government Working For You…

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City Council Agenda

City Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

December 4, 2007
6:00 PM

City Manager: Norton N. Bonaparte, Jr.

Mayor: William W. Bunten

Councilmembers

Lana Kennedy	**District No. 1**	**Deborah Swank**	**District No. 6**
John Alcala	**District No. 2**	**Brett Blackburn**	**District No. 7**
Sylvia E. Ortiz	**District No. 3**	**Jeff Preisner**	**District No. 8**
Jack Woelfel	**District No. 4**	**Richard Harmon**	**District No. 9**
Bill Haynes	**District No. 5**		

Addressing the Council: No person shall address the Council during a Council Meeting, unless they have notified the City Clerk by 5:00 P.M. on the day of any Council Meeting of their desire to speak on a specific matter on the published meeting agenda or during the public comment portion of the Council Meeting. This limitation shall not apply to items added during the course of a meeting. The Council does not take action with respect to any subject not on the agenda unless added to the agenda by a two-thirds vote of the Council

Persons addressing the City Council will be limited to four (4) minutes of public address on a particular agenda item. Debate, question/answer dialogue or discussion between Councilmembers will not be counted towards the four (4) minute time limitation. The Chair may extend time with the unanimous consent of the Council or the Council by affirmative vote of five (5) members may extend the four (4) minute limitation.

Persons will be limited to addressing the City Council one (1) time on a particular matter unless otherwise allowed by an affirmative vote of five (5) members of the City Council.

Citizens wishing to offer Public Comment may sign up by phoning the City Clerk's office at 368-3940.

(Agendas are available on Thursday afternoon in the City Clerk's office, 215 SE 7th – Room 166 and on the City's web site at http://www.topeka.org)

INVOCATION:

PLEDGE OF ALLEGIANCE:

1. PROCLAMATIONS:
"Human Rights Day"

2. PRESENTATIONS:
"Introduction of Law Enforcement Partnership Panel"

3. ROLL CALL:

4. CONSENT AGENDA:

A. MINUTES of the regular meeting of November 27, 2007

B. APPLICATIONS:

5. PUBLIC HEARINGS:

A. Public Hearing and Ordinance - Hy-Vee, Inc. (V07E/15) ATTACHMENTS

A PUBLIC HEARING relating to vacation request V07E/15 by Hy-Vee, Inc., requesting to vacate a portion of a drainage easement and a sanitary sewer easement located west of SW Wanamaker Road between SW 29th Street and SW 30th Terrace in Wanamaker West Subdivision No. 3, City of Topeka, Shawnee County, Kansas.

AN ORDINANCE introduced by City Manager, Norton N. Bonaparte, Jr., relating to the vacation of a portion of a sanitary sewer easement and a portion of a drainage easment in Wanamaker West Subdivision No. 3 located west of SW Wanamaker Road between SW 29th Street and SW 30th Terrace, City of Topeka, Shawnee County, Kansas. Final Reading. *(V07E/15) (Council District No. 8)*

(Approval would vacate a portion of a sanitary sewer easement and a portion of a drainage easement.)

6. NEW BUSINESS:

A. Resolution - Programs and Initiatives for the City of Topeka ATTACHMENTS

A RESOLUTION introduced by Mayor Bill Bunten on behalf of the Governing Body and the City Manager concerning programs and initiatives for the City.

(The resolution is a summary of action taken at a governing body meeting held on October 27, 2007, wherein the governing body identified needs and priorities for the City of Topeka.)

B. Resolution - Trafficway Improvement Project No. 70196-02 - Setting Public Hearing ATTACHMENTS

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr. setting the public hearing for Improvement Project No. 70196-02 which provides for the construction of MacVicar Avenue from SW 6th Street to Interstate 70. *(Council District No. 1)*

(The Public Hearing is scheduled for January 8, 2008. Approval would increase the Federal Funding in the project budget by $1,374,312. The revised project budget in the amount of $6,879,212 would provide for the construction of MacVicar Avenue from SW 6th Street to Interstate 70.)

C. Communication - Contract for lease purchase of a helicopter for the Police Department ATTACHMENTS

THE COMMUNICATION from Councilmembers Brett Blackburn, Lana Kennedy, Deborah Swank, Jeff Preisner and Jack Woelfel, approving the lease purchase of a helicopter for the Police Department and authorizing the City Manager to enter into the lease purchase contract on behalf of the City of Topeka.

(Approval would authorize a 5-year lease purchase agreement for a second Robinson R-44 Police Helicopter with total payments in the amount of $820,371.90.)

7. FIRST READINGS:

A. Ordinance - Administrative Hearings for Enforcement and Abatement of Violations ATTACHMENTS

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Section 112-71 concerning administrative hearings and specifically repealing said original section. First Reading.

(Establishes an administrative hearing process to address housing code violations.)

B. Ordinance - Fidelity State Bank and Trust Company (Z07/25) ATTACHMENTS

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 901 SW Topeka Boulevard from "O&I-2" Office and Institutional District TO "C-2" Commercial District. First Reading. *(Z07/25) (Council District No. 1) (Planning Commission recommended approval 5-2-0.) (Planning Department recommended disapproval.)*

(Approval would allow development of the property for neighborhood commercial use.)

C. Ordinance - K-Air, Inc. (Z07/26) ATTACHMENTS

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 518 and 522 SW 39th Street and property located at the southwest corner of SW Topeka Boulevard and SW 39th Street from "R-1" Single Family Dwelling District TO "C-4" Commercial District. First Reading. *(Z07/26) (Council District No. 5) (Planning Commission recommended approval by a vote of 7-0-0.) (Planning Department recommended approval.)*

(Approval of the rezoning and corresponding plat would allow the property to develop for an automobile sales lot in conjunction with the vacant properties to the north.)

8. MISCELLANEOUS:

-

9. PRESENTATIONS BY THE CITY MANAGER, MAYOR AND MEMBERS OF THE COUNCIL:

-

10. PUBLIC COMMENT:

-

11. ADJOURNMENT:

-

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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

October 5, 2007

Back Print

DATE:	**December 4, 2007**		
CONTACT PERSON:		**DOCUMENT #:**	
SECOND PARTY/SUBJECT:		**PROJECT #:**	
CATEGORY/SUBCATEGORY			
CIP PROJECT:	**No**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available

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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

October 5, 2007

Back Print

DATE:	**December 4, 2007**		
CONTACT PERSON:		**DOCUMENT #:**	
SECOND PARTY/SUBJECT:		**PROJECT #:**	
CATEGORY/SUBCATEGORY			
CIP PROJECT:	**No**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available

Item #2

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

October 5, 2007

DATE:	**December 4, 2007**		
CONTACT PERSON:		**DOCUMENT #:**	
SECOND PARTY/SUBJECT:		**PROJECT #:**	
CATEGORY/SUBCATEGORY			
CIP PROJECT:	**No**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

"Human Rights Day"

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available

Item #3

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

October 5, 2007

Back Print

DATE:	**December 4, 2007**		
CONTACT PERSON:		**DOCUMENT #:**	
SECOND PARTY/SUBJECT:		**PROJECT #:**	
CATEGORY/SUBCATEGORY			
CIP PROJECT:	**No**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

"Introduction of Law Enforcement Partnership Panel"

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available

Item #4

A Capital City Government Working For You...

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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

October 5, 2007

← Back Print

DATE: December 4, 2007

CONTACT PERSON:

DOCUMENT #:

SECOND PARTY/SUBJECT:

PROJECT #:

CATEGORY/SUBCATEGORY

CIP PROJECT: No

ACTION OF COUNCIL:

JOURNAL #:

PAGE #:

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available

Item #5

A Capital City Government Working For You…

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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

October 5, 2007

Back Print

DATE:	**December 4, 2007**		
CONTACT PERSON:		**DOCUMENT #:**	
SECOND PARTY/SUBJECT:		**PROJECT #:**	
CATEGORY/SUBCATEGORY			
CIP PROJECT:	**No**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available

Item #6

A Capital City Government Working For You…

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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

October 5, 2007

DATE:	**December 4, 2007**		
CONTACT PERSON:		**DOCUMENT #:**	
SECOND PARTY/SUBJECT:		**PROJECT #:**	
CATEGORY/SUBCATEGORY			
CIP PROJECT:	**No**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available

Item #7

A Capital City Government Working For You…

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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 20, 2007

Back Print

DATE:	**December 4, 2007**		
CONTACT PERSON:	**David Thurbon/Bill Fiander**	**DOCUMENT #:**	**N/A**
SECOND PARTY/SUBJECT:	**Hy-Vee, Inc.**	**PROJECT #:**	**V07E/15**
CATEGORY/SUBCATEGORY	**014 Ordinances – Non-Codified / 006 Vacations**		
CIP PROJECT:	**No**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

A PUBLIC HEARING relating to vacation request V07E/15 by Hy-Vee, Inc., requesting to vacate a portion of a drainage easement and a sanitary sewer easement located west of SW Wanamaker Road between SW 29th Street and SW 30th Terrace in Wanamaker West Subdivision No. 3, City of Topeka, Shawnee County, Kansas.

AN ORDINANCE introduced by City Manager, Norton N. Bonaparte, Jr., relating to the vacation of a portion of a sanitary sewer easement and a portion of a drainage easment in Wanamaker West Subdivision No. 3 located west of SW Wanamaker Road between SW 29th Street and SW 30th Terrace, City of Topeka, Shawnee County, Kansas. Final Reading. *(V07E/15) (Council District No. 8)*

(Approval would vacate a portion of a sanitary sewer easement and a portion of a drainage easement.)

POLICY ISSUE:

N/A.

STAFF RECOMMENDATION:

The Planning Department recommends **APPROVAL** of the proposed vacation.

BACKGROUND:

- The Kansas Statutes and Topeka Code Section 130-476(b) requires a public hearing in conjunction with proposed vacation petitions which have been filed in accordance with a prescribed procedure.
- The property is being redeveloped to accommodate a Hy-Vee super market. The vacations are sought to allow construction of a sign in a drainage easement and a building in a sanitary sewer easement.
- The Engineering Division's comments have been satisfied.
- Approval of the vacation should not be construed to imply support for existing or subsequent land development.

BUDGETARY IMPACT:

N/A.

Item #8

SOURCE OF FUNDING:

N/A.

ATTACHMENTS:

Site Plan details

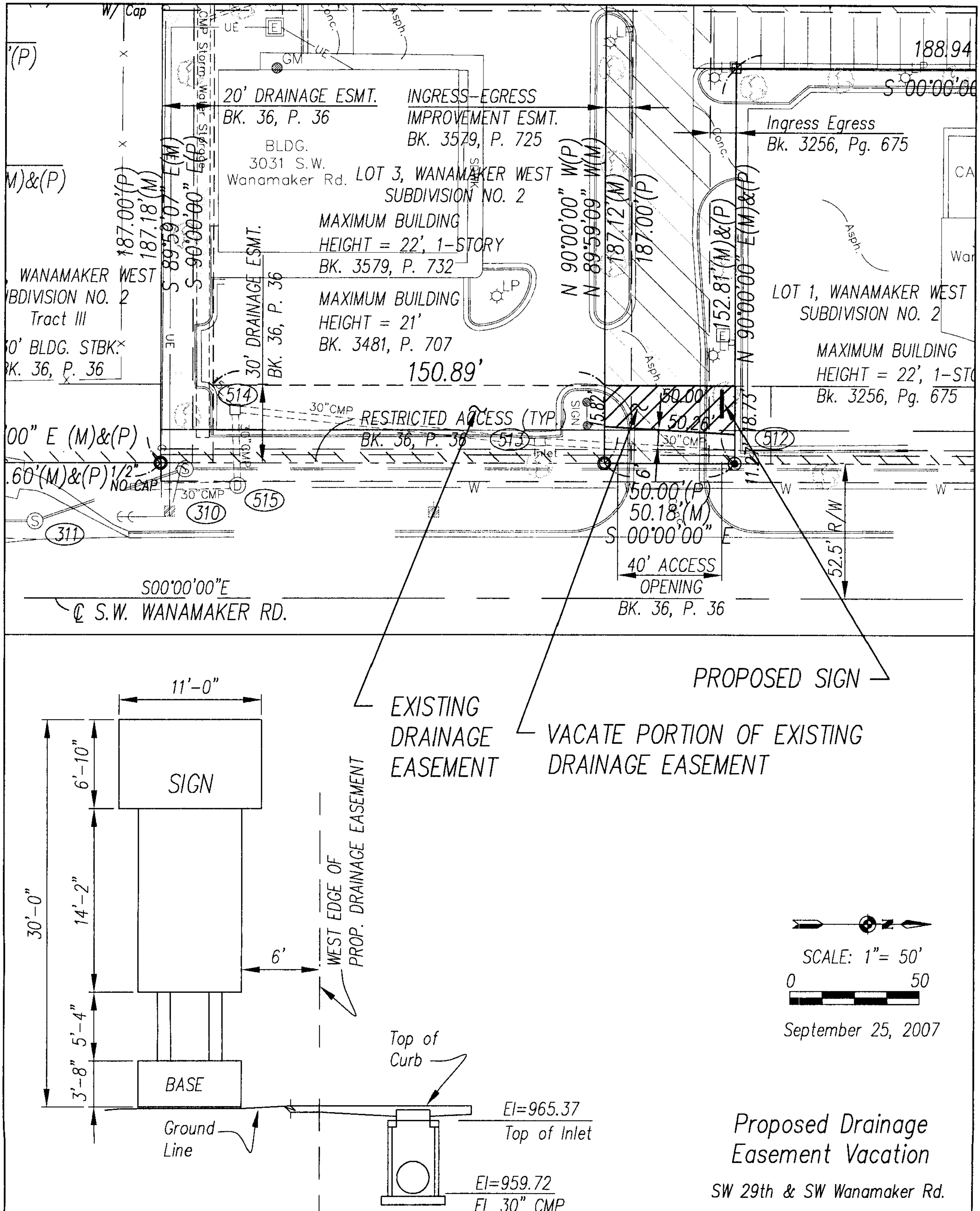
Application

Check-Off Page

Aerial

Ordinance

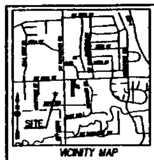
Legal Advertisement



Proposed Drainage
Easement Vacation

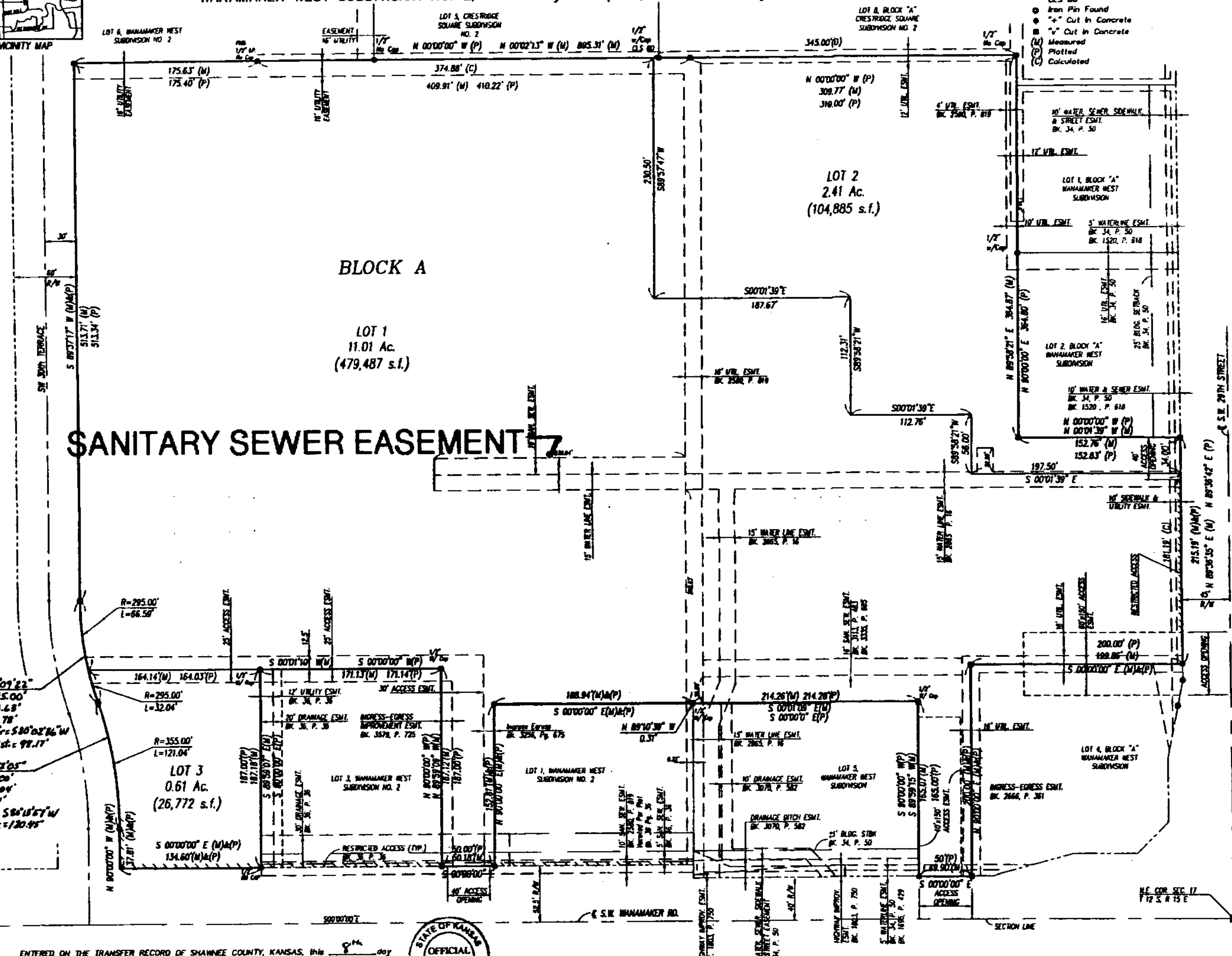
SW 29th & SW Wanamaker Rd.

CFS
Cook, Flatt & Strobel
ENGINEERS, P.A.
2930 SW WOODSIDE DR. TOPEKA, KS 66614
(785)272-4706 FAX (785)272-4736



WANAMAKER WEST SUBDIVISION NO. 3

A MINOR REPLAT of a track of land in the Northeast Quarter of Section 17, Township 12 South, Range 15 East of the 6th P.M., being a replat of Lot 3, Block A, WANAMAKER WEST SUBDIVISION and Lots 2, 4 and 5, Block A, WANAMAKER WEST SUBDIVISION NO. 2, in the City of Topeka, Shawnee County, Kansas.



BOOK 42 **PAGE** 36

7724

LEGAL DESCRIPTION: A replat of Lot 3, Block A, WANAMAKER WEST SUBDIVISION and Lots 2, 4 and 5, Block A, WANAMAKER WEST SUBDIVISION NO. 2, in the City of Topeka, Shawnee County, Kansas.

The above described tract of land contains 14.03 acres, more or less.
(Error of closure 1:796.422)

DEDICATION: The undersigned proprietor of the above described tract of land has caused the same to be subdivided in the manner shown on the accompanying plat, which subdivision shall be known as MINOR PLAT #1 of WANAMAKER WEST SUBDIVISION NO. 2.

EASEMENTS: Easements are hereby granted to the public as follows: "Utility Easements" to locate, construct and maintain or authorize the location, construction, maintenance and use of conduits for all and any purpose, water, gas, sewer mains, poles and wires or any or all of them over, under and along the strips marked "Utility Easements". A temporary construction easement of 12 feet adjacent to the side of utility easement is dedicated for the use of the public utilities while construction is in progress.

GENERAL DRAINAGE EASEMENTS: Drainage easements are hereby established as shown to provide for the unobstructed overland flow of surface water and/or the construction and maintenance of pipe, flume, ditch, or any or all improvements for the drainage of said water, all as may be determined and/or approved by the Director of applicable Department of Public Works. Property owners shall not place any permanent or semi-permanent obstruction in said easement. All maintenance within the general drainage easement (GDE) shall be the right, duty and responsibility of the property owner(s) of the property in which the easement is so located, however, if maintenance is neglected or subject to other circumstances and is determined to be a hazard or threat to public safety by the Director of the Applicable Department of Public Works, corrective maintenance may be performed by the governing jurisdiction with the costs assessed to and borne upon said property owner(s). Officers representing the applicable department of public works shall have the right to enter upon the easement for purposes of periodic inspection and/or corrective maintenance.

STREETS: Streets shown on this plat and not heretofore dedicated to public use are hereby so dedicated.

IN TESTIMONY THEREOF: Wanamaker Twenty-Nine, L.C., 3501 SW Fairlawn Rd., Topeka, Kansas, has authorized its Manager, Nancy C. Seitz, to sign these presents this 24 day of February, 2006.

Nancy C. Seitz, Vice President
MRV, Inc.; Manager of Wanamaker Twenty-Nine, L.C.

STATE OF KANSAS ss
COUNTY OF SHAWNEE ss

BE IT REMEMBERED, That on this 24th day of February A.D., 2006, before me the undersigned, a Notary Public, in and for the County and State aforesaid, came Nancy C. Seitz, Vice President of MRV, Inc., a Kansas corporation; Manager of Wanamaker Twenty-Nine, L.C., a Kansas Limited Liability Company, duly organized, incorporated and existing under and by virtue of the laws of the State of Kansas, who is personally known to me to be such person who executed, as such Manager, the within instrument of writing on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

IN TESTIMONY THEREOF, I have hereunto set my hand, and affixed my seal the day and year last above mentioned.

October 5, 2009
Term Expires

MARCIA D. WITTMAN NOTARY PUBLIC STATE OF KANSAS

Notary Public

CERTIFICATE OF SURVEYOR: I hereby certify the details of this plat to be correct to the best of my knowledge and belief, that all boundary corners of this subdivision of land have been monumented, that iron pins are set as shown on the attached plat this 24th day of February 2006.

COOK, FLATT & STROBEL, ENGINEERS, P.A.
2930 SW Woodside Drive, Topeka, Kansas 66614

Michael A. Adams L.S. 1126

GENERAL NOTES

1. No building permits shall be issued until arrangements for the installation of water mains and/or connection charges have been made with the City Water Department.
2. Sewers: Lots in this subdivision shall be served by a public sewer system.
3. All utilities shall be placed underground pursuant to the City's right-of-way management standards.
4. All lot lines are either parallel or perpendicular to street lines unless otherwise noted.
5. Easements shown on plat are centered on lot lines unless otherwise noted.
6. Property owners shall be admonished from placing any permanent or semi-permanent obstruction in permanent easements. This includes, but is not limited to trees, shrubs, fences, retaining walls, buildings, or other miscellaneous obstructions that interfere with access and egress of maintenance vehicles and equipment for the operation and maintenance of the utilities or pipe lines located in the easement. Any permanent or semi-permanent obstruction located in the permanent sewer easement may be removed by personnel representing the City of Topeka, to provide for the proper operation and maintenance of that utility line, without cost or obligation for replacement. Cost of removal and/or replacement shall be the responsibility of the property owner.
7. Notice: In the event there are other owners or those holding any proprietary interest in any land contained in this subdivision whom do not appear and duly acknowledge this plat prior to the time of recording in the office of the Register of Deeds, the plat shall be null and void.
8. The subject property lies within Zone C, (Areas of minimal flooding) according to Federal Emergency Management Agency, Flood Insurance Rate Map No. 200331 0095 C with an effective date of June 1, 1982.
9. Restricted Access: Vehicular access shall not be permitted from SW 29th Street or SW Wanamaker Rd., except at locations shown on plat.
10. Basis of bearings: Assumed S 00°00'00" E along the East line of the Northeast Quarter of Section 17, Township 12 South, Range 15 East as shown on the plats of Wanamaker West Subdivision and Wanamaker West Subdivision No. 2.
11. The access easements shown on this plat are for the purpose of access, ingress and egress by vehicular and pedestrian traffic including emergency vehicles, and are for the mutual non-exclusive benefit of every owner of the real property described herein, their respective successors, assigns, tenants, contractors, employees, agents, customers, licensees, and invitees.
12. All easements and building setback lines described on Final Plat of Wanamaker West Subdivision (Book 34 Page 50) and Final Plat of Wanamaker West Subdivision No. 2 (Book 36 Pages 36 & 37) lying within the legal description of this Final Plat of Wanamaker West Subdivision No. 3 are hereby vacated.

ENTERED ON THE TRANSFER RECORD OF SHAWNEE COUNTY, KANSAS, this 8th day of March, 2006.

STATE OF KANSAS OFFICIAL SEAL SHAWNEE COUNTY

Cynthia A. Beck, County Clerk

FILED FOR RECORD IN THE OFFICE OF THE SHAWNEE COUNTY REGISTER OF DEEDS this 8th day of March, 2006, at 2:50 o'clock P.M.

Marilyn L. Nichols, Register of Deeds

REGISTER OF DEEDS OFFICIAL SEAL KANSAS SHAWNEE COUNTY

REVIEWED BY SHAWNEE COUNTY SURVEYOR, this 2nd day of March, 2006.

Rule A. Seymour LS 834

CERTIFICATES OF APPROVAL:

Approved by City of Topeka Planning Director this 6th day of March, 2006.

David F. Thurbon
Planning Director

Approved by City of Topeka Public Works Director this 7th day of March, 2006.

Mike Teply
Public Works Director

CFS Cook, Flatt & Strobel
ENGINEERS, P.A.
2930 SW WOODSIDE DR. TOPEKA, KS 66614
(785)272-4706 FAX (785)272-4736

Wanamaker West Subd. No. 3 05-627

TOPEKA PLANNING DEPARTMENT

620 SE Madison Street-3rd Floor
Topeka, Kansas 66607
Office: (785) 368-3728
Fax: (785) 368-2535

PLANNING OFFICE USE ONLY	
Date Submitted 10-11-07	Date Advertised
Application No. V07E/15	Date of Public Hearing
TO BE COMPLETED BY CITY CLERK'S OFFICE	
Filing Fee $ 200.00	Receipt No. 17708

APPLICATION

City Vacation of Streets, Alleys and Easements

1. Applicant(s): Hy-Vee Inc.
2. Applicant's Mailing Address: 5820 Westown Parkway
   City West Des Moines State: Iowa Zip: 50266
3. Telephone: Area Code: 515 No.: 267-2947
4. Legal description of property requested to be vacated as prepared by the City of Topeka Department of Public Works: Tracts within Lot 1, Block A, Wanamaker West Subd. No. 3 (See attached legal descriptions of tracts to be vacated)
5. Check type of vacation: Street____ Alley____ Easement XX Other____
6. Legal description of property owned by the applicant which adjoins the street, alley or easement to be vacated:

   Lots 1 Block No. A
   In Wanamaker West Subdivision No. 3

Metes and Bounds Description, if unplatted:

RECEIVED
CITY CLERK
2007 OCT 10 A 8:59
TOPEKA, KANSAS

7. Are there other owners of land who own property adjoining the subject street, alley or easement proposed to be vacated who, pursuant to K.S.A. 12-504, would be a property party to the petition to vacate?

Yes__________ No XX

If yes, please list said owner's name(s) and mailing address.

8. Briefly, describe the proposed development of the subject property and your reasons for vacating the property: Property has been redeveloped to accommodate a new super market. The easements need to be relocated to accommodate the development.

9. Will the area proposed for vacation preclude, restrict, hamper or lessen ingress-egress to other similarly abutting properties? No

10. Do you concur with the retention of the subject area as an easement should the reviewing utility or public agency request such to cover existing or proposed utility lines? Yes

11. Will any permanent structures be constructed within the area proposed for vacation? Yes

12. Will the area proposed for vacation create any unique, adverse or undesirable traffic conditions? No

13. How are adjoining properties used? Commercial and office

14. In your opinion, would the proposed vacation injure or endanger any private rights? No

15. **In your opinion, would the public suffer any loss or inconvenience should the petition to vacate be approved?** No

16. **In the event this proposed vacation is to vacate street or alley right-of-way, are you aware of the applicability of the district zoning on the subject property? Please briefly explain:** N/A

Signature of Applicant(s) Hy-Vee, Inc.
Dennis A. Ausenhus
Dennis A. Ausenhus
Sr. VP Real Estate / Eng.
10·1·07

(Please Attach Any Additional Information)

If the owner(s) of record is to be represented by legal counsel or an authorized agent, please complete the following so that communications pertaining to this application may be forwarded to the appropriate individual.

Name of Representative Cook, Flatt & Strobel Engineers, P.A.
Street Address 2930 SW Woodside Drive
City Topeka **State** Kansas **Zip Code** 66614
Telephone No. (785) 272-4706 **Fax No.** (785) 272-4736

STREET/ALLEY/EASEMENT/SUBDIVISION VACATION

Case No.: V07E/15 Location: West of SW Wanamaker Road between SW 29th Street & SW 30th Terrace

DEPARTMENTS:

- ***Water Division***: _X_ No Objection ______ Objection
- ***Engineering:*** _X__ No Objection ______ Objection
  Comments: Drainage easement vacation – no objection.
  Sanitary sewer easement vacation – Project to construct manhole over existing sewer and truncate active sewer within remaining easement should be completed before vacation.
- ***County Refuse:*** _X_ No Objection ______ Objection
- ***Fire Department:*** _X_ No Objection ______ Objection
- ***Police Department:*** _X_ No Objection ______ Objection

UTILITY COMPANIES:

- ***AT&T:*** _X_ No Objection ______ Objection
- ***Westar:*** _X_ No Objection _____ Objection
- ***Kansas Gas Service:*** _X_ No Objection ______ Objection
- ***Cox Communications:*** _X_ No Objection ______ Objection

Cindy Johnson, Planner I

September 14, 2007

V07E/15 Hy-Vee, Inc.

(Published in the Topeka Metro News ______________________________)

ORDINANCE NO.

AN ORDINANCE introduced by City Manager, Norton N. Bonaparte, Jr., relating to the vacation of a portion of a platted sanitary sewer easement and a portion of a drainage easement located west of SW Wanamaker Road between SW 29th Street and SW 30th Terrace in Wanamaker West Subdivision No. 3, City of Topeka, Shawnee County, Kansas. **(V07E/15) (Council District No. 8)**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That pursuant to the requirements of K.S.A. 12-504 as amended, a petition by Hy-Vee, Inc., as property owners, has been filed with the office of the City Clerk, requesting the vacation of the following described portion of a platted sanitary sewer easement and a portion of a drainage easement located within the City of Topeka, Shawnee County, Kansas:

Sanitary Sewer Easement:
A portion of a platted 16 feet wide sanitary sewer easement on Lot 1, Block A in Wanamaker West Subdivision No. 3 in the City of Topeka, Shawnee County, Kansas, described as: Commencing at the Northwest corner of Lot 1, Block A in Wanamaker West Subdivision No 2; thence on an assumed bearing of South 0°00’00” West on the West line of the last said Lot 1, 6.22 feet to an intersection with the South line of a platted 16 feet wide utility easement; thence North 90°00’00” West on the South line of said utility easement, 225.83 feet; thence South 0°00’00” East, 123.64 feet to the point of beginning; thence continuing on South 0°00’00” East, 115.00 feet to the point of termination.

Drainage Easement:
A portion of a platted 30 feet wide drainage easement on Lot 1, Block A in Wanamaker West Subdivision No. 3 in the City of Topeka, Shawnee County, Kansas, described as: Commencing at the Southeast corner of Lot 1, Block A in Wanamaker West Subdivision No 2, said corner being on the West line of SW Wanamaker Road; thence on an assumed bearing of North 90°00’00” West on the South line of the last said Lot 1, 11.27 feet the point of beginning; thence South 3°18’48” West, 50.26 feet to a point on the North line of Lot 3, Block A in Wanamaker West Subdivision No. 2; thence North 90°00’00” West on the North line of Lot 3, 15.82 feet to an intersection with the West line of said drainage easement; thence North 0°00’00” East on the West line of said drainage easement, 50.00 feet to the South line of the last said Lot 1; thence North 90°00’00” East on the South line of the last said Lot 1, 18.73 feet to the point of beginning.

Section 2. That said petition has been duly published for two (2) consecutive weeks in a newspaper of general circulation and on December 4, 2007, the petition is ready for determination by the Council of the City of Topeka, Kansas.

Section 3. That the Council of the City of Topeka, after being duly informed and hearing the evidence presented finds that:

a. Legal notice was given as required by K.S.A. 12-504 as amended.

b. No private rights will be injured or endangered by such vacation.

c. The public will suffer no loss or inconvenience by such vacation.

Section 4. That the Council of the City of Topeka does hereby find that justice requires the petition of vacation be granted and does hereby order the vacation of the below described portion of a platted sanitary sewer easement and a portion of a drainage easement located within the City of Topeka, Kansas:

Sanitary Sewer Easement:
A portion of a platted 16 feet wide sanitary sewer easement on Lot 1, Block A in Wanamaker West Subdivision No. 3 in the City of Topeka, Shawnee County, Kansas, described as: Commencing at the Northwest corner of Lot 1, Block A in Wanamaker West Subdivision No 2; thence on an assumed bearing of South 0°00'00" West on the West line of the last said Lot 1, 6.22 feet to an intersection with the South line of a platted 16 feet wide utility easement; thence North 90°00'00" West on the South line of said utility easement, 225.83 feet; thence South 0°00'00" East, 123.64 feet to the point of beginning; thence continuing on South 0°00'00" East, 115.00 feet to the point of termination.

Drainage Easement:
A portion of a platted 30 feet wide drainage easement on Lot 1, Block A in Wanamaker West Subdivision No. 3 in the City of Topeka, Shawnee County, Kansas, described as: Commencing at the Southeast corner of Lot 1, Block A in Wanamaker West Subdivision No 2, said corner being on the West line of SW Wanamaker Road; thence on an assumed bearing of North 90°00'00" West on the South line of the last said Lot 1, 11.27 feet the point of beginning; thence South 3°18'48" West, 50.26 feet to a point on the North line of Lot 3, Block A in Wanamaker West Subdivision No. 2; thence North 90°00'00" West on the North line of Lot 3, 15.82 feet to an intersection with the West line of said drainage easement; thence North 0°00'00" East on the West line of said drainage easement, 50.00 feet to the South line of the last said Lot 1; thence North 90°00'00" East on the South line of the last said Lot 1, 18.73 feet to the point of beginning.

<u>Section 5</u>. This vacation shall not affect any other underlying easements or restrictions whether platted or by instrument.

<u>Section 6</u>. The City Clerk is hereby directed to certify a copy of this ordinance to the Shawnee County Register of Deeds Office for appropriate recording.

<u>Section 7</u>. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

PASSED AND APPROVED by the Council of the City of Topeka _________________, 2007.

____
William W. Bunten, Mayor

ATTEST:

____
Brenda Younger, City Clerk

To Be Codified __

Not To Be Codified <u>X</u>

Please have the attached published in the Topeka Metro News in the Legal Advertising Section on November 14, 2007 and again on November 21, 2007.

IN THE MATTER OF THE PROPOSED VACATION OF:

A portion of a drainage easement and a sanitary sewer easement located west of SW Wanamaker Road between SW 29th Street and SW 30th Terrace in Wanamaker West Subdivision No. 3, City of Topeka, Shawnee County, Kansas. **(V07E/15) (Council District No. 8)**

NOTICE OF PUBLIC HEARING

(Pursuant to K.S.A. 12-504 et seq.)

To Whom It May Concern:

Public notice is hereby given that a petition has been filed by Hy-Vee, Inc., owners of the concerned property, which includes a portion of a drainage easement and a sanitary sewer easement and praying that the easements located on said property, be vacated.

The petition will be presented to the Council of the City of Topeka for hearing on December 4, 2007, at 6:00 P.M. or as soon thereafter as the same may be heard in the City Council Chambers, Municipal Building, 2nd Floor, 8th and Monroe Streets, Topeka, Kansas, at which time and place all interested persons may appear and be heard, either for or against granting the prayer of said Petition.

**BY THE GOVERNING BODY,
CITY OF TOPEKA, KANSAS**

A Capital City Government Working For You…

www.topeka.org

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 14, 2007

Back Print

DATE:	**December 4, 2007**		
CONTACT PERSON:	**Celeste Benton**	**DOCUMENT #:**	
SECOND PARTY/SUBJECT:	**Governing Body**	**PROJECT #:**	
CATEGORY/SUBCATEGORY	**020 Resolutions / 005 Miscellaneous**		
CIP PROJECT:	**No**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

A RESOLUTION introduced by Mayor Bill Bunten on behalf of the Governing Body and the City Manager concerning programs and initiatives for the City.

(The resolution is a summary of action taken at a governing body meeting held on October 27, 2007, wherein the governing body identified needs and priorities for the City of Topeka.)

POLICY ISSUE:

Please see the attached resolution.

STAFF RECOMMENDATION:

The Governing Body is recommending the adoption of the Resolution.

BACKGROUND:

In a meeting of the Deputy Mayor, Mayor and City Manager on October 23, 2007, it was agreed upon to hold a meeting of the Governing Body to identify needs and priorities for the City, programs and initiatives to address those needs and funding for their implementation. The attached Resolution is a summary of the Governing Body Meeting held on October 27, 2007 and the decisions that were agreed to.

BUDGETARY IMPACT:

None.

SOURCE OF FUNDING:

None.

ATTACHMENTS:

Resolution - governing body retreat

Item #9

RESOLUTION NO. ___________

A RESOLUTION of the Governing Body of the City of Topeka, Kansas regarding programs and initiatives of the City of Topeka.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF TOPEKA that it met on Saturday, October 27, 2007, in open meeting, to discuss and address certain areas of community concern, the continuation and/or initiation of programs to address those concerns and how best to fund those programs.

The areas of concern discussed were:

1) Cleanliness of the city and the desire for it to be, at all times and in all areas of the city, well cared for;
2) To assure the safety of our citizens to the greatest extent possible;
3) To encourage business development and business expansion in the city;
4) Insure our parks, large and small, meet high standards of care;
5) Insure the Topeka City Zoo be operated and maintained at or above accreditation standards.

Programs and initiatives proposed by the Governing Body to address those goals are:

1) Cleanliness
    a. Continue to support the Project Takeover/Makeover neighborhood cleanup program;
    b. Continue to support, and expand if possible, the inmate work crew program;
    c. Continue to support the removal of unnecessary public signage as determined by the city Traffic Engineer;

d. Support legislation to encourage landlords to comply with city property codes, and seek ways to speed up the process of compliance;

e. Support, subject to availability of funds, the establishment of an Environmental Court that would promptly hear code violation appeals;

f. Amend code ordinances that would make grass growing over curbing into gutters a violation of the city code;

g. Examine the possibility of creating NIA benefit districts to allow neighborhoods to address problems within their boundaries, the funds collected to be matched by private or public entities; and

h. Consider the reimplementation of the empowerment program.

2) Safety

a. Continue to support vigorous anti-gang and anti-drug efforts;

b. Support cooperation between all law enforcement agencies, including the City of Topeka Police Department, the Shawnee County Sheriffs Department, USD 501 Security Department, Washburn University Security Department, the Capital Area Police, Stormont-Vail Security Department, KBI, FBI, & ATF officers in an effort to use all available resources together in a cooperative effort to reduce crime in our city; and

c. Continue support of the Citizens' Patrol Coalition and Neighborhood Watch programs

3) Business Friendly

a. Seek to reduce developer fees;

b. Seek to reduce licensing fees;

c. Allow variances in distressed or blighted areas to encourage investment in older areas of the city;

d. Support downtown revitalization and other areas throughout the city;

e. Continue to do business with local firms wherever possible;

f. Support combining the City and County Planning Commission;

g. Review down zoning of commercial properties; and

h. Continue to support Riverfront Development

4) Parks and Recreation

a. Continue to support inmate work crew programs, and expand when possible;

b. Study the benefits and negatives of privatization of the maintenance of smaller parks;

c. Insure our parks, large and small, meet high standards of care;

d. Study installation of water sprays in smaller parks; and

e. Examine a cooperative effort with USD 501 and other entities to provide after-school activities for students

5) Funding

a. Support a one half of one percent increase in the City of Topeka sales tax, raising it from one percent to one and one half percent, to be submitted to the voters of the city for their approval or disapproval. The primary use of proceeds from such tax would be used for infrastructure maintenance and repairs, with other uses to be determined by the City Council.

Be it further resolved that it is requested by members of the Governing Body of the city that timely reports be made to them by the City Manager as to progress in achieving the goals and addressing the needs as described herein.

ADOPTED and APPROVED by the City Council _________________________.

CITY OF TOPEKA, KANSAS

____
William W. Bunten, Mayor

ATTEST:

____
Brenda Younger, City Clerk

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 19, 2007

DATE:	**December 4, 2007**		
CONTACT PERSON:	**Jeff Hunt**	**DOCUMENT #:**	
SECOND PARTY/SUBJECT:	**Trafficway Improvement**	**PROJECT #:**	**70196-02**
CATEGORY/SUBCATEGORY	**018 Public Hearings / 011 Other**		
CIP PROJECT:	**Yes**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr. setting the public hearing for Improvement Project No. 70196-02 which provides for the construction of MacVicar Avenue from SW 6th Street to Interstate 70. *(Council District No. 1)*

(The Public Hearing is scheduled for January 8, 2008. Approval would increase the Federal Funding in the project budget by $1,374,312. The revised project budget in the amount of $6,879,212 would provide for the construction of MacVicar Avenue from SW 6th Street to Interstate 70.)

POLICY ISSUE:

N/A

STAFF RECOMMENDATION:

Hearing to be held in the Council Chambers at 6:00 PM on January 8, 2008. Listen to all concerns/comments in regard to the method of assessment and the apportionment of costs between the improvement district and the City at Large for this project. Close the Hearing and then approve the Resolution of Advisability and Authorization.

BACKGROUND:

This project will provide for the construction of MacVicar Avenue from SW 6th Street to Interstate 70. The proposed improvement will include grading and surfacing for a 5-lane roadway with concrete curb and gutter, sidewalks, storm sewers, utility relocation, and other appurtenances needed for a complete project.

BUDGETARY IMPACT:

TOTAL COST & APPORTIONMENT OF COSTS:
Total Cost of Project: $6,879,212.00
(Increase of $1,374,312.00 from Federal Funds)

City of Topeka General Obligation Bonds:	$1,994,606.00
Assessment District:	$1,994,606.00
Federal Highway Act Surface Transportation Funds:	$2,590,000.00
State Economic Development Development Funds:	$ 300,000.00

Item #10

SOURCE OF FUNDING:

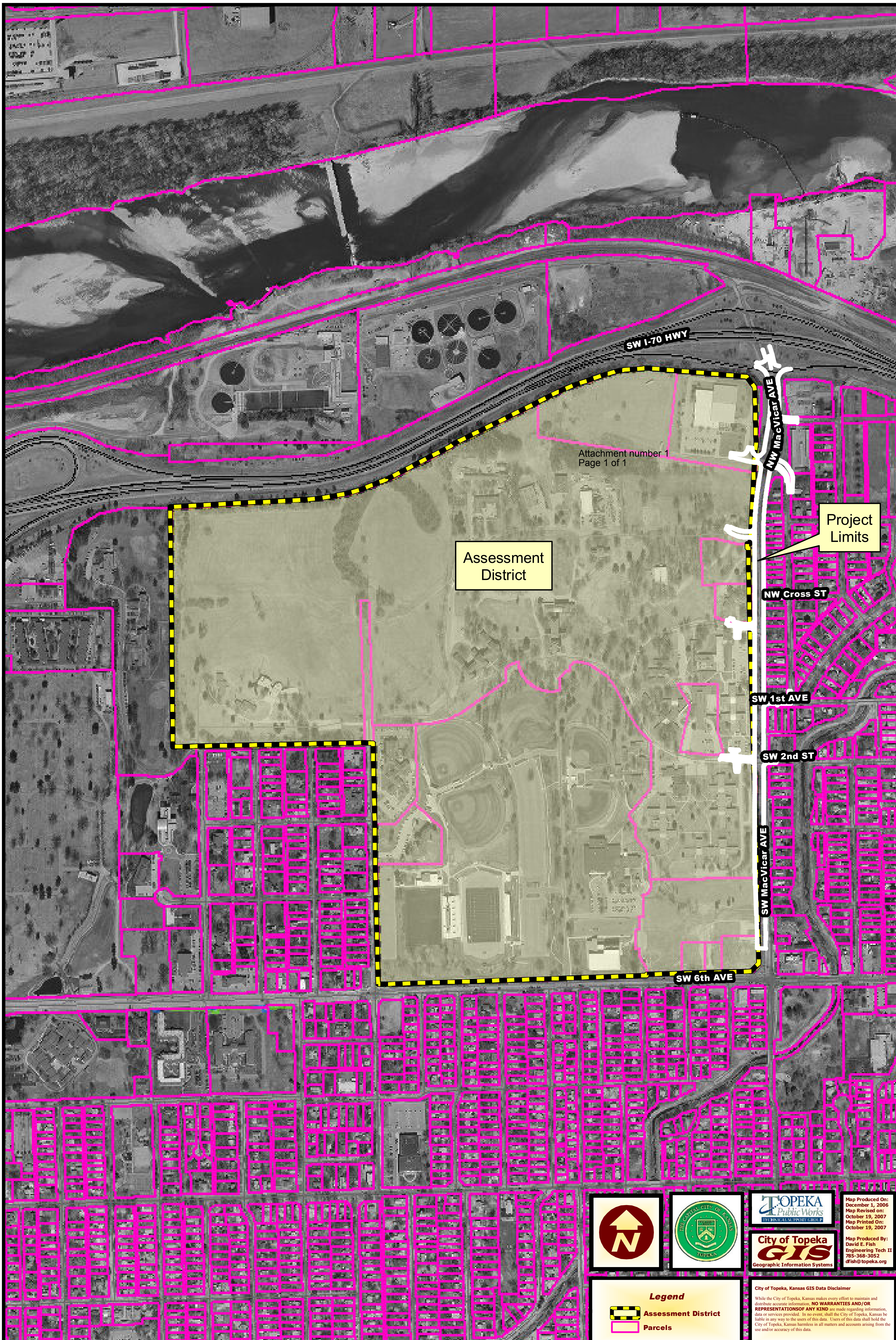
Apportioned between the Assessment District, the City at Large, and Federal and State Funds.

ATTACHMENTS:

Vicinity Map

Resolution

SW MacVicar Ave 6th ST to I-70 Project # 70196-02



(Published in the Topeka Metro News ____________________________________)

RESOLUTION NO. _____________

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr. setting the public hearing for Improvement Project No. 70196-02 which provides for the construction of MacVicar Avenue from SW 6th Street to Interstate 70.

BE IT RESOLVED by the Council of the City of Topeka, Kansas, that a public hearing shall be held by the Governing Body of the City of Topeka, Kansas, on the advisability of the following: IMPROVEMENT PROJECT NO. 70196-02, said hearing to be held on January 8, 2008, in the City Council Chambers of City Hall, 214 E. 8th Street, at 6:00 p.m., as provided by K.S.A. 12-6a01 *et seq*.

BE IT FURTHER RESOLVED that the City Clerk shall publish the following notice of such public hearing in the official city newspaper in the manner provided by K.S.A. 12-6a01 *et seq.*

NOTICE OF PUBLIC HEARING

Notice is hereby given that the Council of the City of Topeka, Kansas, will meet for the purpose of holding a public hearing as provided by K.S.A. 12-6a01 *et seq.,* in the City Council Chambers of City Hall, 214 E. 8th Street, at 6:00 p.m. on January 8, 2008, to consider the advisability of the following:

A. GENERAL NATURE OF IMPROVEMENT:

This Project provides for the construction of MacVicar Avenue from SW 6th Street to Interstate 70. The proposed improvement will include grading and surfacing for a 5-lane roadway with concrete curb and gutter, sidewalks, storm sewers, utility relocation and other appurtenances needed for a complete project.

B. PROPOSED IMPROVEMENT DISTRICT:

Begin at the intersection of the west right of way line of SW MacVicar Avenue and the north right of way line of SW Sixth Avenue; thence westerly on said north line of Sixth Avenue for a distance of 2635.14 feet to the east right of way line of Oakley Avenue; thence northerly on said east right of way of Oakley Avenue to the north right of way line of Third Street, when extended from the west; thence westerly on said north line of Third Street for a distance of 1330 feet to the west line of Arlington Heights Addition; thence northerly on said west line extended for a distance of 1616 feet to the south right of way line of Interstate Highway Route No. 70; thence easterly following said right of way line to the east line of Section 26, Township 11 South, Range 15 East of the Sixth P.M.; thence easterly 40 feet, more or less, to the west right of way line of NW MacVicar Avenue, thence southerly following the west right of way line of NW MacVicar Avenue to the south line of First Street; thence south on the west line of SW MacVicar Avenue to the north right of way line of SW Sixth Avenue and the point of beginning.

C. ESTIMATED OR PROBABLE COST:

$6,879,212.00

D. PROPOSED METHOD OF ASSESSMENT:

On a square foot of area basis for all lots, parcels or tracts which are included in the described improvement district.

E. APPORTIONMENT OF COSTS:

City of Topeka General Obligation Bonds	$1,994,606.00
Assessment District	$1,994,606.00
Federal Highway Act Surface Transportation Funds	$2,590,000.00
State Economic Development Funds	$ 300,000.00
Total	$6,879,212.00

The hearing may be adjourned from time to time and until the City Council shall have made findings by resolution as to the advisability of the improvement, the nature of the improvement, the estimated cost, the boundaries of the improvement district, the method of assessment and the apportionment of costs between the improvement district and the City at Large, all as finally determined by the City Council.

All persons desiring to be heard with reference to the proposed improvement shall be heard at this hearing.

ADOPTED and APPROVED by the City Council____________________________.

CITY OF TOPEKA, KANSAS

____
William W. Bunten, Mayor

ATTEST:

____
Brenda Younger, City Clerk

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 13, 2007

DATE:	**December 4, 2007**		
CONTACT PERSON:	**Councilmembers Blackburn, Kennedy, Swank, Preisner and Woelfel**	**DOCUMENT #:**	
SECOND PARTY/SUBJECT:	**Police Helicopter**	**PROJECT #:**	
CATEGORY/SUBCATEGORY	**006 Communication / 005 Other**		
CIP PROJECT:	**No**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

THE COMMUNICATION from Councilmembers Brett Blackburn, Lana Kennedy, Deborah Swank, Jeff Preisner and Jack Woelfel, approving the lease purchase of a helicopter for the Police Department and authorizing the City Manager to enter into the lease purchase contract on behalf of the City of Topeka.

(Approval would authorize a 5-year lease purchase agreement for a second Robinson R-44 Police Helicopter with total payments in the amount of $820,371.90.)

POLICY ISSUE:

Whether to authorize the City Manager to enter into a contract for the lease purchase of a second Robinson R-44 Police Helicopter.

STAFF RECOMMENDATION:

Approve the Communication.

BACKGROUND:

The Police Department purchased its first Robinson helicopter using some of the insurance proceeds after a crash destroyed a Schweizer 300. The Robinson helicopter had been identified as a far superior airship at a comparable operating cost.

The Robinson had been approved in the 2007 Capital Improvement Budget. The purchase of a second Robinson helicopter will allow the department to operate two same model aircraft and provide better and safer law enforcement services.

BUDGETARY IMPACT:

Purchase price: $678,892.52 @ 3.84% interest rate

$820,371.90 over 5 year lease purchase agreement
- principal: $740,000.00
- interest: $80,371.90

Item #11

SOURCE OF FUNDING:

Funding will come from the Police Department's operating budget. The annual lease payment for five years will be $164,074.38 beginning in 2008.

ATTACHMENTS:

Master Lease Agreement

Payment Schedule #2 under Master Lease Agreement

⌉ 'ER MUNICIPAL LEASE AND OPTION AGREEMEN⌉

Lessor: Municipal Services Group, Inc.
5125 South Kiping Parkway
Suite 300
Littleton, CO 80127

CITY OF TOPEKA
Contract No. 37728

Lessee: City of Topeka
215 SE 7th Street
Topeka, KS 66603

This Master Municipal Lease and Option Agreement (the "Agreement") is entered into between Municipal Services Group, Inc. (together with any assignee thereof collectively referred to herein as "Lessor") and City of Topeka ("Lessee"), a municipality duly organized and existing under the laws of the state of Kansas ("State");

WITNESSETH:

WHEREAS, Lessee desires to finance the Equipment pursuant to the terms of this Agreement; and

WHEREAS Lessor desires to lease certain Equipment (referred to collectively as the "Equipment" or "Unit(s) of Equipment") to Lessee, and Lessee desires to lease the Equipment from Lessor, subject to the terms and conditions of and for the purposes set forth in this Agreement; and

WHEREAS, Lessor, simultaneously with the execution and delivery of this Agreement, may enter into an escrow agreement (the "Escrow Agreement") with an escrow agent designated by Lessor (the "Escrow Agent") whereby Lessor, or its assignee, if any, shall deposit monies sufficient to finance the Equipment to be leased hereunder; and

WHEREAS, Lessee is authorized under the Constitution and laws of the State to enter into this Agreement for the purposes set forth herein;

NOW, THEREFORE, for and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

ARTICLE 1
COVENANTS OF LESSEE

Lessee represents, covenants and warrants, for the benefit of Lessor and its assignees, as follows:

(a) Lessee is a public body, corporate and politic, duly organized and existing under the Constitution and laws of the State.

(b) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic.

(c) Lessee is authorized under the Constitution and laws of the State to enter into this Agreement, all Individual Payment Schedules (as defined below) and the transaction contemplated hereby, and to perform all of its obligations hereunder subject to the termination provisions contained herein.

(d) Lessee has been duly authorized to execute and deliver this Agreement and each of the Individual Payment Schedules under the terms and provisions of the ordinance, resolution, or communication of its governing body, attached hereto as Exhibit A, and by other appropriate official approval, and further represents and warrants that all requirements have been met, and procedures have occurred in order to insure the enforceability of this Agreement, and Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment hereunder. Lessee shall cause to be executed an opinion of its counsel substantially in the form attached hereto as Exhibit B.

(e) During the term of this Agreement, the Equipment will be used by Lessee only for the purpose of performing one or more governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority and will not be used in a trade or business of any person or entity other than Lessee.

(f) Each lease of specific Equipment or Unit(s) of Equipment hereunder shall be evidenced by an Individual Payment Schedule executed by Lessor and Lessee describing specific personal property, and setting forth provisions relating to the rent, the term of lease, disposition of Equipment upon the expiration of the lease term and other details with respect to it. The lease for each Unit of Equipment shall become effective on the Accrual Date, as defined below, and the Individual Payment Schedule for the Unit or Unit(s) of Equipment shall specify such date as the effective date of the lease. The original term (the "Original Term") of each Individual Payment Schedule shall commence on the Accrual Date as indicated therein and shall terminate the last day of Lessee's then current fiscal year. The term of the lease will be automatically renewed at the end of the Original Term or any renewal term (the "Renewal Term") for an additional one (1) year, unless the governing body of Lessee fails to appropriate sufficient funds for the making of rental payments for the next occurring Renewal Term as provided in Section 4 of this Agreement. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term except that the rental payments shall be as provided in the specific exhibit attached to the applicable Individual Payment Schedule.

(g) During the period this Agreement is in force, Lessee will annually provide, if requested by Lessor, current financial statements, budgets, proof of appropriation for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue this Agreement as may be reasonably requested by Lessor or its assignee.

(h) Each Unit of Equipment acquired under this Agreement will have a useful life in the hands of Lessee that is substantially in excess of the Original Term and all Renewal Terms specifically relating to it.

(i) All Equipment subject to this Agreement is, and during the period this Agreement is in force shall remain personal property.

(j) This Agreement applies to all items of personal property acquired, or to be acquired, by Lessee as evidenced by the execution of Individual Payment Schedules from time to time as may be required to fu essee's equipment needs.

ARTICLE 2
DEFINITIONS

The following terms will have meanings indicated below unless the context clearly requires otherwise:

"Acceptance Certificate" means the Acceptance Certificate attached hereto as Exhibit F relating to the applicable Unit(s) of Equipment whereby Lessee acknowledges receipt of the applicable Unit of Equipment in good condition.

"Accrual Date" is the date when the term of the Individual Payment Schedule begins and Lessee's obligation to pay rent accrues. The lease for each Unit of Equipment shall become effective on the Accrual Date, which shall be the Dated Date specified in Exhibit(s) E hereto.

"Acquisition Cost(s)" means the total cost of acquiring, including any delivery charges, and preparing the Equipment for Lessee's use.

"Adjusted Base Interest Rate" means the Base Interest Rate as adjusted and as described in the Individual Payment Schedules.

"Base Interest Rate" means the interest rate as set forth in the respective Individual Payment Schedule(s).

"Individual Payment Schedule(s)" means the schedules which identify specific Units of Equipment, the Accrual Dates of the lease and terms thereof (which are treated as separate leases) which may become a part of this Agreement from time to time. Each Individual Payment Schedule(s) shall consist of at least, substantially the forms attached hereto as Exhibit(s) A, Exhibit(s) B, Exhibit(s) C, Exhibit(s) D, Exhibit(s) E, and Exhibit(s) F, including an original invoice and any other documents needed to perfect a security interest in the Equipment by Lessor.

"Lease Term" means collectively the Original Term and all Renewal Terms provided for in this Agreement.

"Non-appropriation means the failure of Lessee, Lessee's governing body or, if applicable, the governmental entity from which Lessee obtains its operating and/or capital funds, to appropriate money for any fiscal year sufficient for the continued performance by Lessee of all of Lessee's obligations under this Agreement.

"Purchase Price" means the amount which Lessee shall pay to Lessor in order to purchase the Equipment, as set forth in Exhibit(s) E hereto, or as set forth in any applicable Individual Payment Schedule.

"Rental Payments" means the rental payments payable by Lessee for each Unit of Equipment pursuant to the provisions of this Agreement and any applicable Individual Payment Schedule during the Lease Term, payable in consideration of the right of Lessee to use the Equipment during the Lease Term. Rental Payments shall be payable by Lessee to Lessor or its assignee in the amounts and at the times during the Lease Term, as set forth in the Individual Payment Schedules made a part of this Agreement.

"Vendor" means (i) the manufacturer/contractor of the Equipment, as well as the agents or dealers of the manufacturer, from whom Lessor purchased or is purchasing the Equipment or (ii) Lessor, if so designated as herein above.

ARTICLE 3
DEPOSIT OF MONIES; ACQUISITION AND LEASE OF EQUIPMENT

Section 3.01. <u>Deposit of Monies, Transfers Upon Acceptance.</u> In the event an Escrow Agreement is entered into pursuant to this Agreement, Lessor shall cause to be deposited in the Acquisition Fund created under such Escrow Agreement and held by the Escrow Agent, monies sufficient to acquire the Equipment to be leased hereunder.

Upon the expiration of three years from the Accrual Date, unless notified earlier by Lessor and Lessee, the Escrow Agent shall apply any monies in the Acquisition Fund representing the contract price to have been paid to the Vendor(s) for any portion of the Equipment and related equipment for which Lessee has not executed an Acceptance Certificate to the reduction of the unpaid principal balance, by paying such monies directly to Lessor. The remaining Rental Payments shall be amended to reflect such prepayment of principal. Lessee shall execute a revised Exhibit E to acknowledge such change.

Section 3.02. <u>Lessee is Agent - Acquisition of the Equipment.</u> Lessor hereby appoints Lessee as its agent solely for the purpose of acquiring the Equipment, and Lessee hereby accepts such appointment. Lessee and Lessor will do all things necessary to effect the acquisition of the Equipment free and clear of any encumbrances and subject the same to the security interests contemplated hereunder. Lessor agrees to acquire the Equipment pursuant to Lessee's specifications. Lessor shall not be responsible for the obligations of Vendor, and a failure by the Vendor to perform shall not affect Lessee's obligation to make Rental Payments under this Agreement. Lessee agrees that the Equipment will be acquired in accordance with the terms, conditions and specifications therefor and on file with Lessor.

Upon completion of acquisition of the Equipment satisfactory to Lessee and after authorization by Lessor, but in any event not later than thirty (30) days following completion of such acquisition, Lessee shall deliver to the Escrow Agent an executed Acceptance Certificate.

Section 3.03. <u>Payment of Acquisition Costs.</u> Payment to the Vendor(s) of the Acquisition Cost(s) of acquiring the Equipment shall be made from the monies deposited with the Escrow Agent, as provided in Section 3.01, which shall be disbursed for that purpose in accordance with and upon compliance with Article 2 of the Escrow Agreement. In the event such monies are insufficient to pay all Acquisition Costs, Lessee shall pay the remaining Acquisition Costs from its own funds.

ARTICLE 4
LEASE TERM

Section 4.01. <u>Lease of Equipment.</u> Lessor hereby demises, leases and lets to Lessee, and Lessee rents, leases and hires from Lessor, the Equipment in accordance with the provisions of this Agreement, to have and to hold for the Lease Term.

Section 4.02. Commencement o[illegible] Term. The Original Term of any Individual Payment Sch[illegible] shall commence on the Accrual Date and shall terminate on December 31, of that year. The Lease [illegible] will be automatically renewed at the end of the Original Term or any Renewal Term for an additional one year December 31 of the year in which the Original Term or Renewal Term commenced, unless Lessee gives written notice to Lessor not less than ninety (90) days prior to the end of the Original Term or Renewal Term then in effect, or such other notice as may be provided in Article 6 hereof, of Lessee's intention to terminate this Agreement at the end of the Original Term or Renewal Term upon receipt by Lessor of the Rental Payment due plus the applicable Purchase Price pursuant to Articles 9 or Article 11, as the case may be. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in the applicable Individual Payment Schedule.

Section 4.03. Termination of Lease Term. The Lease Term as it pertains to any Individual Payment Schedule will terminate upon the earliest of any of the following events:

(a) the expiration of the Original Term or any Renewal Term of the applicable Individual Payment Schedule and the non-renewal of such Individual Payment Schedule in the event of non-appropriation of funds pursuant to Section 6.06 hereof;

(b) the exercise by Lessee of the option to purchase the Equipment granted under the provisions of Articles 9 or 11 hereof;

(c) a default by Lessee and Lessor's election to terminate this Agreement under Article 13; or

(d) the payment by Lessee of all Rental Payments, late payment charges, past due finance charges, monies due to release liens of any kind whatsoever, or other taxes and utilities authorized or required to be paid by Lessee hereunder or under any Individual Payment Schedule.

This Agreement will automatically terminate in whole upon the last day of the last Renewal Term with respect to any Individual Payment Schedule(s) outstanding, provided any other outstanding charges as set forth herein have been paid.

ARTICLE 5
ENJOYMENT OF EQUIPMENT

Lessor hereby covenants to provide Lessee during the Lease Term with quiet use and enjoyment of the Equipment, and Lessee shall during the Lease Term, peaceably and quietly have and hold and enjoy the Equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Agreement.

Lessor shall have the right with reasonable prior notice given to Lessee to enter into and upon the property of Lessee for the purpose of inspecting the Equipment.

ARTICLE 6
RENTAL PAYMENTS

Section 6.01. Rental Payments Constitute a Current Expense of Lessee. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments hereunder and under each Individual Payment Schedule shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of Lessee. Rental Payments shall be in consideration of Lessee's use of the Equipment during the year in which such payments are due. For the purpose of the Kansas Cash Basis Law, the amount financed in Individual Payment Schedule No. 1 is $3,340,428.00. Further, the Base Interest Rate for Individual Payment Schedule No. 1 is 3.83% per annum. In accordance with K. S. A. 10-1116c(d)(3), the amount included in the Rental Payments for service, maintenance, insurance or other charges exclusive of the capital cost and interest cost, relative to Individual Payment Schedule No. 1, is $0.00.

Section 6.02. Payment of Rental Payments. Lessee shall pay Rental Payments exclusively from legally available monies from its general fund and such other legally available funds as may be designated by Lessee in lawful money of the United States of America to Lessor or, in the event of assignment by Lessor, to its assignee, in the amounts and no later than the dates set forth in the applicable Individual Payment Schedule(s). In the event Lessor or its assignee does not receive Rental Payments within such period of time, then and in such event, a $50 late charge will be assessed

Section 6.03. Interest and Principal Components. A portion of each Rental Payment payable hereunder is paid as, and represents payment of, interest, and the balance of the Rental Payment payable hereunder is paid as, and represents payment of, principal. Exhibit(s) E hereto and each Individual Payment Schedule set forth the interest component and the principal component of each Rental Payment during the Original Term and all Renewal Terms of the respective Individual Payment Schedules.

Section 6.04. Rental Payments to be Unconditional. The obligations of Lessee to make payment of the Rental Payments required under this Article 6 and other sections of this Agreement, and to perform and observe the covenants and agreements contained herein, shall be absolute and unconditional in all events, except as expressly provided under this Agreement. Notwithstanding any dispute between Lessee and Lessor, any Vendor or any other person, Lessee shall make all Rental Payments when due and shall not withhold any Rental Payments, nor shall Lessee assert any right of withholding, set-off or counterclaim against its obligation to make such payments required under this Agreement. Lessee's obligation to make Rental Payments during the Original Term or any Renewal Term shall not be abated through accident or unforeseen circumstances.

Section 6.05. Continuation of Lease Term by Lessee. Lessee intends, subject to the provisions of Section 6.06 below, to continue the lease of the Equipment and all Units thereof through the Original Term and all of the Renewal Terms of each Individual Payment Schedule and to make the Rental Payments as the same shall become due hereunder and under each Individual Payment Schedule. . Lessee further intends to do all things reasonably necessary, including making provision for such payments to the extent necessary in each biennial or annual budget submitted and adopted in accordance with applicable provisions of the laws of the State, to have such portion of the budget approved.

Section 6.06. Non-appropriation. In the event sufficient funds are not available to be appropriated the Rental Payments required to be paid in the next occurring Renewal Term, then Lessee may terminate this Agreement in whole only by terminating any or all of the Individual Payment Schedules at the end of the then current Original Term or Renewal Term of the respective Individual Payment Schedules, and Lessee shall not be obligated to make payment of the Rental Payments provided for in this Agreement or the Individual Payment Schedules beyond the then current Original or Renewal Term, which will be tied to the City's fiscal year. Lessee agrees to deliver notice to Lessor of such termination at least ninety (90) days prior to the end of the then current Original or Renewal Term. If this Agreement is terminated under the provisions of this Section 6.06, Lessee agrees peaceably to deliver the Unit or Units of Equipment subject to the Individual Payment Schedule or Schedules so terminated to Lessor at the location or locations specified by Lessor. TO THE EXTENT LAWFUL, Lessee agrees that if funds are appropriated to make Rental Payments for a succeeding fiscal year, it will not terminate this Agreement or any Individual Payment Schedule during such fiscal year, and that if this Agreement or any Individual Payment Schedule is terminated pursuant to this provision by non-appropriation prior to the making of all Rental Payments due hereunder, Lessee will not replace the Equipment with the same or similar property or retain others to provide the same or similar services until after the date on which the next occurring Renewal Term of the applicable Individual Payment Schedule or Schedules would have ended. In the event of non-appropriation, Lessor shall have the right to recover the interest which shall have accrued on the principal balance outstanding as of the preceding Rental Payment due date, as set forth in the Exhibit E attached to the applicable Individual Payment Schedule.

ARTICLE 7
TITLE TO EQUIPMENT; SECURITY INTEREST

Section 7.01. Title to the Equipment. During the term of this Agreement, title to the Equipment and any and all additions, repairs, replacements or modifications shall vest in Lessee, subject to the rights of Lessor hereunder. Following an event of default as set forth in Section 13.01 or an event of non-appropriation as set forth in Section 6.06, or upon other termination of this Agreement for any reason other than Lessee's rights under Section 4.03, (b), title to the Equipment shall immediately vest in Lessor, and Lessee will reasonably surrender possession of the Equipment to Lessor.

Section 7.02. Security Interest. To the extent permitted by applicable laws of the State, to secure the payment of all Rental Payments and Lessee's other obligations under this Agreement, Lessee grants to Lessor a continuing, first priority security interest in and to the Equipment and on all repairs, replacements, additions, attachments, accessions and substitutions thereto, and on any proceeds therefrom and in the Escrow Account (if any). Lessee hereby authorizes Lessor to prepare and file such documents, including financing statements, affidavits, notices and similar instruments, in form satisfactory to Lessor, and once during the term of the Agreement, including any renewal terms, to pay all fees required to establish and maintain Lessor's valid first lien and perfected security interest, and upon assignment, the security interest of any assignees of Lessor, in the Equipment. Any document showing the perfected security interest shall also contain language that shows that the State of Kansas' Cash Basis Law is applicable to said security interest.

ARTICLE 8
MAINTENANCE; MODIFICATION; TAXES;
INSURANCE AND OTHER CHARGES

Section 8.01. Maintenance of Equipment by Lessee. Lessee agrees that at all times during the Lease Term, at Lessee's own cost and expense, to cause maintenance to be performed in such a way so as to make all necessary and proper repairs, replacements and renewals of such component parts as may from time to time be required and to maintain, preserve and keep the Equipment in good repair, working order and condition. To the extent of the provisions of this Agreement and except as may otherwise be agreed to, neither Lessor nor any of its assignees shall have responsibility in any of these matters, or for the making of improvements or additions to the Equipment.

Section 8.02. Taxes, Other Governmental Charges and Utility Charges. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Equipment will be exempt from all taxes presently assessed and levied with respect to personal property. In the event that the use, possession or acquisition of the Equipment is found to be subject to taxation in any form (except for income taxes of Lessor), Lessee will pay during the Lease Term, as the same respectively come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Equipment and any equipment or other property acquired by Lessee in substitution for, as a renewal or replacement of, or a modification, improvement or addition to the Equipment; provided that, with respect to any governmental charges that may lawfully be paid in installments over a period of years, Lessee may elect to pay only such installments as have accrued during the time this Agreement is in effect.

Section 8.03. Provisions Regarding Insurance. At its own expense Lessee shall cause casualty, public liability and property damage insurance to be carried and maintained, or shall demonstrate to the satisfaction of Lessor that adequate self-insurance is provided based upon actuarially sound insurance criteria as are consistent with generally accepted insurance industry standards with respect to the Equipment, sufficient to protect the Full Insurable Value (as that term is hereinafter defined) of the Equipment, and to protect Lessor from liability in all events, and which name Lessor and/or its assignee as additional named insured and as a Lender Loss Payee thereunder. All insurance proceeds from casualty losses shall be payable as hereinafter provided in this Agreement. Lessee shall furnish to Lessor Certificates evidencing such coverage throughout the Lease Term and for each Individual Payment Schedule.

Lessee shall notify Lessor within five (5) business days of any event of damage to or destruction of the Equipment.

The term "Full Insurable Value" as used herein shall mean the full replacement value of the Equipment but in no event less than the applicable Purchase Price.

Any insurance policy pursuant to this Section 8.03 shall be so written or endorsed as to make losses, if any, payable to Lessee and Lessor as their respective interests may appear. The Net Proceeds (as defined in Section 9.01) of the insurance required in this Section 8.03 shall be applied as provided in Article 9 hereof. Each insurance policy provided for in this Section 8.03 shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interest of Lessor without first giving written notice thereof to Lessor at least 30 days in advance of such cancellation.

Section 8.04. Advances. In the event Lessee shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep the Equipment in good repair and operating condition, Lessor may (but shall be under no obligation to) purchase the required policies of insurance and pay the premiums on the same or may cause to be made such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by Lessor shall become additional rent for the then current Original Term or Renewal Term for the applicable Individual Payment Schedule or Schedules, which amounts, together with interest thereon at the rate of 5% per annum, Lessee agrees to pay.

Section 8.05. Tax Covenants. essee will not make or direct any use of the proceeds of th gation provided herein or any other funds of Lessee which will cause such obligation to be an "a. age bond" within the meaning of Section 148 of the Code, "federally guaranteed" within the meaning of Section 149 of the Code, or to be a "private activity bond" within the meaning of Section 141 (a) of the Code. To that end, so long as any Rental Payments are unpaid, Lessee, with respect to such proceeds and such other funds, will comply with all requirements of such Code sections and all regulations of the United States Department of the Treasury issued thereunder to the extent that such requirements are, at the time, applicable and in effect. Lessee covenants that the Equipment will be used only for the purpose of performing one or more governmental or proprietary functions of Lessee, and the Equipment will not be used in a trade or business of any person or entity other than Lessee on a basis different from the general public. Lessee will not use or permit the use of the Equipment by any person for a "private business use" within the meaning of Section 141 (b) of the Code in such manner or to such extent as would result in the inclusion of interest received hereunder in gross income for federal income tax purposes under Section 103 of the Code.

Lessor and Lessee shall at all times do and perform all acts and things permitted by law which are necessary or desirable in order to assure that the interest component of the Rental Payments will not be included in the gross income of Lessor for federal income tax purposes.

ARTICLE 9
DAMAGE, DESTRUCTION AND CONDEMNATION: USE OF NET PROCEEDS

Section 9.01. Damage and Destruction. Unless Lessee shall have exercised its option to purchase the Equipment or any Unit thereof by making payment of the Purchase Price as provided herein or in the applicable Individual Payment Schedule, if prior to the termination of the Lease Term (a) the Equipment or any Unit or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty, Lessee and Lessor will cause the Net Proceeds (as defined below) of any insurance claim or condemnation awarded to be applied to the prompt repair, restoration, modification or improvement of the Equipment. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee.

For purposes of Section 8.03 and this Article 9, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses incurred in the collection of such claim or award.

Section 9.02. Insufficiency of Net Proceeds. Subject to Lessee's right to terminate this Agreement or any Individual Payment Schedule under Section 6.06 hereof, if the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 9.01 hereof, Lessee shall either (a) complete the repair or replacement of damaged property and pay any costs in excess of the amount of Net Proceeds or (b) pay to Lessor the amount of the applicable unpaid balance, applying Net Proceeds to such payment.

ARTICLE 10
DISCLAIMER OF WARRANTIES; VENDOR'S WARRANTIES; USE OF THE EQUIPMENT

Section 10.01. Disclaimer of Warranties. AS BETWEEN LESSOR AND LESSEE, DELIVERY OF EQUIPMENT TO LESSEE AND EXECUTION BY LESSEE OF AN ACCEPTANCE CERTIFICATE WITH RESPECT THERETO SHALL CONSTITUTE LESSEE'S ACKNOWLEDGEMENT THAT THE EQUIPMENT IS IN GOOD ORDER AND CONDITION AND IS OF THE MANUFACTURE, DESIGN AND CAPACITY SELECTED BY LESSEE, THAT LESSEE IS SATISFIED THAT THE SAME IS SUITABLE FOR ITS PURPOSE, AND THAT FOR PURPOSES OF THIS AGREEMENT LESSOR'S ASSIGNEES MAKE NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED WITH RESPECT TO EQUIPMENT, INCLUDING WITHOUT LIMITATION, ITS VALUE, DESIGN, CAPACITY, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS INTENDED FOR USE OF THE EQUIPMENT, OR WARRANTY WITH RESPECT THERETO AND LESSOR AND ITS ASSIGNEES HEREBY DISCLAIM ALL SUCH REPRESENTATIONS AND WARRANTIES. THIS SECTION IS INTENDED TO APPLY BETWEEN LESSOR AND LESSEE ONLY TO THE EXTENT OF THE FINANCING CONTEMPLATED HEREIN AND IN NO EVENT IS INTENDED TO AFFECT THE WARRANTIES OR REPRESENTATIONS CONTAINED IN OR INCLUDED WITHIN ANY CONTRACT ENTERED INTO FOR THE ACQUISITION OF THE EQUIPMENT EITHER WITH LESSOR, OR ANY OTHER VENDOR. NOTWITHSTANDING THE FOREGOING, IN THE EVENT LESSOR IS A VENDOR, LESSEE SHALL BE ENTITLED TO ALL APPLICABLE VENDOR WARRANTIES AS TO THE EQUIPMENT, PROVIDED THAT SUCH RIGHTS SHALL PERTAIN SOLELY TO LESSOR AS VENDOR, AND NOT TO ANY SUCCESSORS OR ASSIGNS OF LESSOR UNDER THIS AGREEMENT. In no event shall an assignee, if any, of Lessor be liable for any incidental, direct, indirect, special or consequential damage in connection with or arising out of the manufacture, design, function or condition of the equipment purchased under this Agreement or the existence, furnishing, functioning or Lessee's use of any item or products or services provided for in this Agreement.

Section 10.02. Vendor's Warranties. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default hereunder, to assert from time to time whatever claims and rights, including warranties of the Equipment, which Lessor may have against the Vendor of the Equipment. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor of the Equipment, and not against Lessor or an assignee, if any, of Lessor, nor shall such matter have any effect whatsoever on the rights and obligations of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that an assignee, if any, of Lessor makes, and has made, no representation or warranties whatsoever as to the existence or availability of such warranties of the Vendor of the Equipment.

Section 10.03. Use of the Equipment. Lessee will not use, operate or maintain the Equipment or cause the Equipment to be used, operated or maintained improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Lessee shall provide or cause to be provided all permits and licenses, if any, necessary for the operation of the Equipment; provided, however, that Lessee may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Lessor, adversely affect the estate of Lessor in and to any of the items of the Equipment or its interest or rights under this Agreement.

Lessee shall notify Lessor within a reasonable period of time, not to exceed thirty (30) days if there are any claims or lawsuits arising in connection with the Equipment or use thereof.

ARTICLE 11
OPTION TO PURCHASE

Lessee is hereby granted the option to prepay all or a portion of its obligations under this Agreement (if partial prepayment, Lessee shall have the option to prepay once during the Original Term and once during each Renewal Term) and purchase the Equipment or any Unit thereof for the Purchase Price set forth in Exhibit(s) E hereto or on any applicable Individual Payment Sch s). At the request of Lessee, Lessor's security interest in th pment will be terminated and this Agreement shall terminate:

(a) at the end of the Lease Term, upon payment in full of Rental Payments due hereunder, plus all past due charges and other amounts hereunder then due and owing, if any; or

(b) at any regularly scheduled payment due date by making the Rental Payment plus the corresponding Purchase Price as set forth in the applicable Individual Payment Schedule, plus all past due charges and other amounts hereunder then due and owing, if any; or

(c) at any time prior to the end of the Original Term by paying the first Rental Payment due plus the Purchase Price, or, in the event Lessee wishes to exercise its option following the Original Term or any Renewal Term, but prior to the due date of the next Rental Payment by paying the preceding Purchase Price as set forth in the applicable Individual Payment Schedule plus accrued interest on the outstanding principal balance at the Base Interest Rate thereon to the date of settlement thereof, plus all past due charges and other amounts hereunder then due and owing, if any; or

(d) if the Lease Term is terminated pursuant to Article 9 of this Agreement, in the event of total damage, destruction or condemnation of the Equipment or any Unit thereof and, if Lessee is not on such date in default under this Agreement, upon payment of the then applicable Purchase Price to Lessor plus all past due charges and other amounts hereunder then due and owing, if any, subject to Lessee's right to terminate this Agreement or any Individual Payment Schedule under Section 6.06 hereof.

In the event Lessee purchases less than all of the Equipment, the related Individual Payment Schedule(s) shall be amended to reflect such prepayment of principal and the remaining Rental Payments shall be adjusted accordingly. Further, Lessee agrees to execute such revised Individual Payment Schedule(s).

ARTICLE 12
ASSIGNMENT, SUBLEASING, INDEMNIFICATION MORTGAGING AND SELLING

Section 12.01. Assignment by Lessor. This Agreement, and Lessor's right to receive payments hereunder, may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor at any time subsequent to this execution, without the necessity of obtaining the consent of Lessee; provided, however, that no such assignment or reassignment shall be effective against Lessee unless and until (i) Lessee shall have received notice of the assignment or reassignment disclosing the name and address of the assignee or subassignee, and (ii) in the event that such assignment or reassignment is made to a bank or trust company as trustee for holders of certificates or other evidence representing interest in this Agreement, or rights to receive amounts hereunder, such bank or trust company agrees to maintain, or cause to be maintained on behalf of and as agent for Lessee, a book-entry system by which a record of the names and addresses of such holders as of any particular time is kept and agrees, upon request of Lessee, to furnish such information to Lessee. Upon receipt of notice of assignment, Lessee agrees to reflect in a book entry the assignee designated in such notice of assignment, and to make all payments to the assignee designated in the notice of assignment, notwithstanding any claim, defense, set-off or counterclaim whatsoever (whether arising from a breach of this Agreement or otherwise) that Lessee may from time to time have against Lessor, or the assignee. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements which may be reasonably requested by Lessor or its assignee to protect their interests in the Equipment and in this Agreement. Any assignment shall be governed by the State of Kansas Cash Basis Law, as shown by such statement on the security interest documents.

Section 12.02. No Sale, Assignment or Subleasing by Lessee. This Agreement and the interest of Lessee in the Equipment may not be sold, assigned or encumbered by Lessee without the prior written consent of Lessor, which consent shall not be unreasonably withheld., taking into account Lessor's right to refuse consent based on the entity not qualifying for tax-exempt treatment or based on an entity's creditworthiness.

Section 12.03. Release and Indemnification Covenants. Except for the intentional or negligent acts of Lessor or any of its employees or agents thereof arising out of 1) entering into this Agreement, and/or 2) any liability, obligation, loss, claim or damage arising out of or in connection with any misstatement of a material fact or failure to make a statement of material fact by Lessor or any assignee thereof (other than a misstatement by Lessee) in connection with any offer, sale or other transfer of this Agreement or any interest herein, to the extent permitted by the laws and Constitution of the State, Lessee shall protect, hold harmless, and indemnify Lessor from and against any and all liability, obligations, losses, claims, damages, and expenses in connection therewith, including, expenses, penalties and interest directly arising out of or as the result of the breach of the Terms, conditions, covenants, and other obligations of Lessee under this Agreement. Lessee's agreement to protect, hold harmless, and indemnify Lessor under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason, for a period of two years from termination.

ARTICLE 13
EVENTS OF DEFAULT AND REMEDIES

Section 13.01. Events of Default Defined. The following shall be "events of default" under this Agreement and the terms "event of default" and "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein; and

(b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in Section 13.01(a) or 13.01(c), for a period of 30 days after written notice, specifying such failure and requesting that it be remedied as given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action deemed appropriate by Lessor in its sole discretion, is instituted by Lessee within the applicable period and diligently pursued until the default is corrected; and

(c) Failure by Lessee to maintain insurance on the Equipment in accordance with Section 8.03 hereof; and

(d) A determination by a court of competent jurisdiction that Lessee knowingly made a misrepresentation of a material fact which Lessor reasonably and actually relied upon in entering into this Agreement.

The foregoing provisions of this Section 1_ . are subject to (i) the provisions of Section 6.06; and (ii) if by . _on of force majeure Lessee is unable in whole or in part to carry out its agreement on its part herein contained, other than the obligations on the part of Lessee contained in Article 6 and Section 8.03 hereof, Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God, strikes, lockouts or other industrial disturbances; acts of public enemies, orders or restraints of any kind of the government of the United States of America or of the state wherein Lessee is located or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; or explosions.

Section 13.02. Remedies on Default. To the extent permitted by applicable laws of the State, whenever any event of default referred to in Section 13.01 hereof shall have happened and be continuing for a period of ten business days, Lessor shall have the right, at its sole option without further demand or notice, to take one or any combination of the following remedial steps:

(a) With or without terminating this Agreement, require Lessee to assemble, pack, return and pay the costs of returning the Equipment, within ten (10) days, to a specified State location. In the event of default, the lessee agrees to be responsible for the actual liquidated damages incurred by the Lessor directly arising from the from the lessee's breach of the agreement; and

(b) Take whatever action at law or in equity may appear necessary or desirable to enforce its rights as Lessor of the Equipment.

Section 13.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. Any repossession or subsequent sale or lease by Lessor of any item or Unit of Equipment shall not bar an action against Lessee for a deficiency, and the bringing of any action against or the entry of judgment against Lessee shall not bar Lessor's right to repossess any or all Units of Equipment. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

ARTICLE 14
MISCELLANEOUS

Section 14.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at their respective places of business. Lessor shall make notice to the City of Topeka, City Clerk, 215 SE 7th Street, Topeka, KS 66603, with a copy to the City Controller, City of Topeka, 215 SE 7th Street, Room 358, Topeka, KS 66603.

Section 14.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 14.03. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, and the invalid or unenforceable provision shall be reformed and revised to be enforceable to the full extent permissible under the laws of the State.

Section 14.04. Amendments. The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by Lessor and Lessee, nor shall any such amendment that affects the rights of Lessor's assignee be effective without such assignee's consent.

Section 14.05. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 14.06. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Kansas.

Section 14.07. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 14.08. Entire Agreement. This Agreement constitutes the entire agreement between Lessor and Lessee as to the matters herein described. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing signed by both parties, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, representations or warranties, express or implied, not specified herein regarding this Agreement or the Equipment leased hereunder. Any terms and conditions of any purchase order or other document submitted by Lessee in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on Lessor and will not apply to this Agreement. Lessee by the signature below of its authorized representative acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

[BALANCE OF PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, Lessor has executed this Agreement in its corporate name and attested by its duly authorized officers, and Lessee has caused this Agreement to be executed in its corporate name and attested by its duly authorized officers. This document is dated as of the Accrual Date, whether or not executed as of such date.

LESSEE: City of Topeka

Attest:

By: Brenda Younger
Brenda Younger

Title: City Clerk

By: Norton N. Bonaparte, Jr.

Title: City Manager & CEO

Date: 9-21-07

LESSOR. Municipal Services Group, Inc.

Attest:

By: Konnie Olson

Title: Mgr. Contract Admin.

By: Susan Harbaugh

Title: Vice President

Date: 9-27-07

SEAL OF TOPEKA
CAPITAL CITY
INCORPORATED
FEB. 14, 1857
KANSAS

APPROVED AS TO FORM & LEGALITY
JRD
SEP 21 2007
CITY ATTORNEY'S OFFICE

INDIVIDUAL PAYMENT SCHEDULE #2

TO

MASTER MUNICIPAL LEASE AND OPTION AGREEMENT NUMBER 1712

Entered into November 8, 2007 (the "Dated Date"), by and between Lessor and Lessee, this Individual Payment Schedule #2 is made a part of Master Municipal Lease and Option Agreement Number 1712 and hereby incorporates all terms and conditions of said Agreement with respect to Lessee's and Lessor's rights in the personal property described in this Schedule.

<u>This Individual Payment Schedule consists of:</u>

Exhibit A	Communication by Governing Body
Exhibit B	Opinion of Lessee's Counsel
Exhibit C	Certificate as to Arbitrage
Exhibit D	Description of Equipment
Exhibit E	Schedule of Payments
Exhibit F	Acceptance Certificate
Exhibit G	Insurance Coverage Requirements
Supplements:	8038-G IRS Filing

LESSOR: Municipal Services Group, Inc.	LESSEE: City of Topeka
By: ______________________________	By: ______________________________
Title: ____________________________	Title: ____________________________
Date: ____________________________	Date: ____________________________

EXHIBIT A

COMMUNICATION BY GOVERNING BODY

EXHIBIT B

OPINION OF COUNSEL

(On Attorney's Letterhead)

Municipal Services Group, Inc.
5125 South Kipling Parkway
Suite 300
Littleton, CO 80127

Ladies and Gentlemen:

As Counsel for City of Topeka ("Lessee"), we have examined duly executed originals of Individual Payment Schedule No. 2 ("Schedule No. 2") and the Master Municipal Lease and Option Agreement No. 1712 (the "Agreement") by and between Lessee as lessee and Municipal Services Group, Inc. ("Lessor") as lessor, the proceedings taken by Lessee to authorize and execute the Agreement together with the other related documents, and the Constitution and laws of the state of Kansas (the "State") as presently enacted and construed. Based upon said examination and upon such other examination as we have deemed necessary or appropriate, it is our opinion that:

1. Lessee was duly organized and validly exists under the Constitution and laws of the State as a political subdivision of the State.

2. The Agreement and Schedule No. 2 have been duly authorized, executed and delivered by Lessee, pursuant to Constitutional, statutory and/or home rule provisions that authorized this transaction and the Communication attached as Exhibit A to Schedule No. 2 to the Agreement.

3. The Agreement and Schedule No. 2 are the legal, valid and binding obligation of Lessee, enforceable in accordance with their terms. To the extent lawful, in the event Lessor obtains a judgment against Lessee in money damages, as a result of an event of default under the Agreement, Lessee will be obligated to pay such judgment.

4. Applicable public bidding requirements have been complied with.

5. To the best of my knowledge, no litigation is pending or threatened in any court or other tribunal, state or Federal, in any way questioning or affecting the validity of the Communication or the Agreement.

6. The signatures of the officers of Lessee that appear on Schedule No. 2 are true and genuine; I know said officers and know them to hold the offices set forth below their names.

7. The Equipment leased pursuant to Schedule No. 2 constitutes personal property under applicable law and when subjected to use by Lessee will not be construed as a fixture.

8. Lessee is a political subdivision within the meaning of Section 103 of the Internal Revenue Code and the related regulations and rulings.

This Opinion of Counsel may be relied upon by any assignee(s) of Municipal Services Group, Inc.

Attorney for Lessee

____

EXHIBIT C

CERTIFICATE AS TO ARBITRAGE

I, the undersigned officer of City of Topeka in the state of Kansas (the "Lessee") being the person duly charged, with others, with responsibility of issuing Lessee's obligation in the form of Individual Payment Schedule No. 2 and Master Municipal Lease and Option Agreement Numbered 1712 (the "Agreement") by and between Lessee and Municipal Services Group, Inc. as lessor (the "Lessor") HEREBY CERTIFY that:

1. The Agreement was executed and delivered by Lessee under and pursuant to existing law to finance the acquisition of the Equipment as described in the Agreement.

2. Pursuant to the Agreement, Lessee is entitled to the use and possession of the Equipment in consideration for the obligations of Lessee under and pursuant to the Agreement. The Equipment will be used in furtherance of the public purposes of Lessee and only for the performance of one or more governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority.

3. Lessee does not intend to sell the Equipment during the term of the Agreement. Lessee will not receive any monies, funds or other "proceeds" as a result of the execution or delivery of the Agreement other than as described in Paragraph 6 hereof.

4. Lessee has not established any sinking fund from which it intends to make payment under the Agreement, and no monies are pledged other than amounts annually appropriated from the General Fund or other legally available funds of Lessee in amounts equal to the required payments under the Agreement. The remaining general funds of Lessee are not reasonably expected to be used to make such payments, and no other monies, except as set forth herein, are pledged to the payments due under the Agreement or reasonably expected to be used to pay principal and interest payments due under the Agreement.

5. Lessee certifies that the Equipment (as defined in the Agreement) is or will be owned and operated by Lessee and will not be used in the trade or business of any person on a basis different from the general public.

6. The proceeds to be derived from the Agreement by Lessor or its assignee on the date hereof ($______________) together with anticipated investment earnings thereon ($_______________) are expected to pay the costs of the acquisition of the Equipment ($_______________) and the financing and legal costs in respect of the execution and delivery of the Agreement. Accrued interest from the Accrual Date not to exceed the interest for a period of six (6) months, in the amount of ($_______________), shall be retained by Lessor or its assignee, if any. The proceeds derived from the sale of an interest in rights to receive Rental Payments under the Agreement, together with anticipated investment earnings thereon, will not exceed the amount necessary for the purpose of the Agreement. It is anticipated that the acquisition of the Equipment will proceed with due diligence to completion by __________________and that all of the proceeds derived from the Agreement will be spent within the eighteen (18) months following the execution and delivery of the Agreement and this certificate.

7. Within thirty (30) days after the anniversary of the date of the execution and delivery of the Agreement, Lessor shall calculate the amount of required arbitrage rebate, if any, due to the United States government under Section 103 and 148 (f) (2) of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations promulgated thereunder, and shall provide said calculations to Lessee. Lessee shall pay the required arbitrage rebate amounts to the United States of America from time to time as required by the Code, but not less frequently than once each five (5) years after the date of the execution and delivery of the Agreement, in an amount equal to 90% of the required arbitrage rebate amount earned during such period (and not previously paid to the United States of America) and not later than sixty (60) days after making the final Rental Payment under the Agreement, 100% of the required arbitrage amount. The required arbitrage rebate payments are to be made to the United States government from legally available funds regardless of whether there are any remaining proceeds or other funds attributable to the Agreement that are available for that purpose. Notwithstanding the foregoing, Lessee is obligated to at all times provide for the determination and payment of arbitrage rebate in conformity with all applicable federal statues and regulations as the same may be amended from time to time.

8. Lessee has not received notice that its Certificate may not be relied upon with respect to its own issues, nor has it been advised that any adverse action by the Commissioner of Internal Revenue is contemplated.

9. Lessee is qualified to designate and hereby designates the obligation represented by the Agreement as a “qualified tax-exempt obligation” pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

To the best of my knowledge, information, and belief the expectations herein expressed are reasonable and there are no facts, estimates or circumstances other than those expressed herein that would materially affect the expectations.

LESSEE: City of Topeka

By: ____________________________________

Title: __________________________________

Date: __________________________________

Agreement No. 1712-2

EXHIBIT D

DESCRIPTION OF EQUIPMENT

The Equipment which is the subject of the Individual Payment Schedule No. 2 to the Master Municipal Lease and Option Agreement is as follows:

One (1) 2008 Robinson Model R44 Helicopter

Together with all additions, accessions and replacements thereto.

Lessee hereby certifies that the description of the Equipment set forth above constitutes an accurate description of the "Equipment", as defined in the attached Master Municipal Lease and Option Agreement applicable Individual Payment Schedule.

LESSEE: City of Topeka

By: ____________________________________

Title: __________________________________

Address of Equipment Upon Delivery and Acceptance:

____

____

EXHIBIT E

SCHEDULE OF PAYMENTS

Base Interest Rate: 3.84%

U. S. Treasury Note Yield: 3.24%

U. S. Treasury Note Index Percent: 118.52%

Dated Date: November 8, 2007

PMT #	Payment Date	Payment	Principal Portion	Interest Portion	Purchase Price
1	8-May-2008	$ 82,037.19	$ 67,829.19	$ 14,208.00	$ 678,892.52
2	8-Nov-2008	82,037.19	69,131.51	12,905.68	609,069.69
3	8-May-2009	82,037.19	70,458.84	11,578.35	537,906.26
4	8-Nov-2009	82,037.19	71,811.65	10,225.54	465,376.50
5	8-May-2010	82,037.19	73,190.43	8,846.76	391,454.16
6	8-Nov-2010	82,037.19	74,595.69	7,441.50	316,112.52
7	8-May-2011	82,037.19	76,027.92	6,009.27	239,324.32
8	8-Nov-2011	82,037.19	77,487.66	4,549.53	161,061.78
9	8-May-2012	82,037.19	78,975.42	3,061.77	81,296.61
10	8-Nov-2012	82,037.19	80,491.69	1,545.50	-
Totals:		$ 820,371.90	$ 740,000.00	$ 80,371.90	

LESSEE: City of Topeka

By: ____________________________________

Title: __________________________________

EXHIBIT F

ACCEPTANCE CERTIFICATE

The undersigned, as Lessee under the Master Municipal Lease and Option Agreement (the "Agreement") numbered 1712, with Municipal Services Group, Inc. ("Lessor"), acknowledges receipt in good condition of the Equipment described in Individual Payment Schedule No. 2 to the Agreement this _________ day of _____________________ and certifies that Lessor has fully and satisfactorily performed all of its covenants and obligations required under the Agreement.

Lessee confirms that it will commence payments in accordance with Article 6 of the Agreement or the provisions of the applicable Individual Payment Schedule.

The undersigned officer of Lessee hereby reaffirms in all respects the Certificate as to Arbitrage attached as Exhibit C to the Agreement, and represents that, to the best of his or her knowledge, information and belief, the expectations therein expressed were reasonable as of the Accrual Date on which they were made, and are reasonable as of this date, and that there were, and are as of this date, no facts, estimates or circumstances other than those expressed therein that would materially affect the expectations expressed therein.

LESSEE: City of Topeka

By: _____________________________________

Title: ___________________________________

EXHIBIT G

INSURANCE COVERAGE REQUIREMENTS

TO: Municipal Services Group, Inc.
5125 South Kipling Parkway
Suite 300
Littleton, CO 80127

FROM: City of Topeka
215 SE 7th Street
City of Topeka, KS 66603

SUBJECT: INSURANCE COVERAGE REQUIREMENTS

1. In accordance with Section 8.03 of the Master Municipal Lease and Option Agreement No.1712, we have instructed the insurance agent named below (please fill in name, address, and telephone number)

____

____

____

____

to issue:

a. All Risk Physical Damage Insurance on the leased Equipment or Unit thereof (as defined in the Agreement) evidenced by a Certificate of Insurance and Long Form **Loss Payable Clause naming Lessor "and/or its assigns" Lender Loss Payee.**

b. Public Liability Insurance evidence by a Certificate of Insurance naming "Lessor and/or its assigns" as an Additional Insured.

Minimum Coverage Required:
$500,000.00 per person
$500,000.00 aggregate bodily injury liability
$300,000.00 property damage liability

OR

2. Pursuant to Section 8.03 of the Agreement, we are self-insured for all risk physical damage and public liability and will provide proof of such self-insurance in letter form together with a copy of the statute authorizing this form of insurance.

3. Proof of insurance coverage will be provided to Lessor prior to the time that the Equipment or Unit thereof is delivered to us.

LESSEE: City of Topeka

By: ____________________________________

Title: __________________________________

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www.topeka.org

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

October 22, 2007

DATE:	**December 4, 2007**		
CONTACT PERSON:	**Mike McGee**	**DOCUMENT #:**	
SECOND PARTY/SUBJECT:	**Ordinance - Administrative Hearings for Enforcement / Abatement of Violations**	**PROJECT #:**	
CATEGORY/SUBCATEGORY	**013 Ordinances - Codified / 002 Administration**		
CIP PROJECT:	**No**		
ACTION OF COUNCIL:	**Approve and Adopt**	**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code Section 112-71 concerning administrative hearings and specifically repealing said original section. First Reading.

(Establishes an administrative hearing process to address housing code violations.)

POLICY ISSUE:

City of Topeka Code 112-71 outlines procedure for designation of hearing officer and penalty for failure to comply with administrative order.

STAFF RECOMMENDATION:

Approve and Adopt

BACKGROUND:

The current process to correct housing violations requires the use of Municipal Court for violators who do not correct the noted deficiencies after proper notification. Unfortunately the authority of the court is limited to fines or jail. The court cannot order someone to correct their property deficiencies. Many housing violators are owner/residents who simply do not have the financial capability to correct the problems that reduce the value of the property and create eyesores within the neighborhood. Fines and or jail time will not correct the problems in most cases and outstanding warrants for no shows in court continue to be a problem as well. Thus a new approach is needed. After consultation with the Municipal Court Judge and legal staff, it was concluded that we should pursue violators through an administrative process using the Administrative Hearing Officer (AHO) and an evening court type setting to improve attendance. The AHO is better equipped to develop solutions by working with the property owner given the particular circumstances surrounding the property owners financial and physical capabilities to correct the property deficiencies. This ordinance change is required so that attendance at an administrative hearing can be ordered. The capability does not currently exist in the property maintenance code. While moving to an administrative hearing process will certainly not guarantee the correction of every housing violation, it will reduce the backlog in the court and facilitate a more open working relationship with the property owner. Habitual violators or others who simply defy the violation notice but have the capability to correct the deficiency remain as candidates for Municipal Court action.

Item #12

BUDGETARY IMPACT:

None for this action

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

Ordinance

(Published in the Topeka Metro News ______________________________________)

ORDINANCE NO. ____________

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code § 112-71 concerning administrative hearings and specifically repealing said original section.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That City of Topeka Code Chapter 112, Division 5, Appeal Procedures, is hereby amended to read as follows:

Division 5

~~Appeal Procedures~~Administrative Hearings

Section 2. That City of Topeka Code § 112-71, Designation of hearing officer; procedures, penalty for failure to comply with administrative order, is hereby amended to read as follows:

Designation of hearing officer; procedures, penalty for failure to comply with administrative order.

(a) For purposes of this article, the city shall designate an administrative hearing officer who shall have the duty and authority to hear and enter such administrative orders as are necessary to the enforcement of this chapter.

(b) The owner, occupant, PUC or agent may request an administrative hearing within the time specified in the notice of violation. Additionally, the public works director may request an administrative hearing to seek enforcement or abatement of violations contained in the notice of violation. The administrative hearing officer shall schedule a hearing within three (3) working days of receipt of the hearing request. Written notice of the hearing date and time shall be provided to the person requesting the hearing as well as the other party by first class mail. At the hearing, the owner, occupant, PUC or agent shall be given the opportunity to present information relevant to the violation notice. The public works director also shall be given the opportunity to present information relevant to the violation notice. The hearing may be continued to a later time in exceptional cases where additional information is needed, as determined by the hearing officer.

(c) The administrative hearing officer shall review the notice of violation and all relevant information. If the hearing officer determines after such review that: 1) a violation exists; 2) no request for a hearing has been made by the owner, occupant, PUC or taxpayer/agent; and 3) the condition remains unabated, then the hearing officer shall enter an administrative order. The administrative order shall contain: (1) a finding of whether the city properly sent notice to the owner, occupant, PUC or agent in accordance with provisions herein; (2) a finding of the violation conditions which exist; (3) the failure of the owner, occupant, PUC or agent to abate or otherwise remove the violated conditions and (4) an administrative monetary penalty for failure to correct the violations.

(d) If, after any order of the administrative hearing officer has become final, the person to whom such order is directed shall fail, neglect, or refuse to obey such order, the public works director may cause such person to be prosecuted in Municipal Court for violations of this chapter.

(e) The administrative hearing officer shall provide the option of daytime or ~~telephone~~evening administrative hearing times.

(f) The administrative hearing officer may grant variances from the provisions of this chapter or from applicable rules and regulations issued by the public works director when not inconsistent with the intent of this chapter.

Section 3. That original City of Topeka Code § 112-71 is hereby specifically repealed.

Section 4. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

PASSED AND APPROVED by the City Council ___________________________.

CITY OF TOPEKA, KANSAS

____
William W. Bunten, Mayor

ATTEST:

____
Brenda Younger, City Clerk

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Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 9, 2007

← Back Print

DATE:	**December 4, 2007**		
CONTACT PERSON:	**Bill Fiander/David Thurbon**	**DOCUMENT #:**	**Z07/25**
SECOND PARTY/SUBJECT:	**Fidelity State Bank and Trust Company**	**PROJECT #:**	
CATEGORY/SUBCATEGORY	**014 Ordinances – Non-Codified / 007 Zoning**		
CIP PROJECT:	**No**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 901 SW Topeka Boulevard from "O&I-2" Office and Institutional District TO "C-2" Commercial District. First Reading. *(Z07/25) (Council District No. 1) (Planning Commission recommended approval 5-2-0.) (Planning Department recommended disapproval.)*

(Approval would allow development of the property for neighborhood commercial use.)

POLICY ISSUE:

Request for "C-2" Commercial District is inconsistent with the land use principles of the Old Town Neighborhood Plan element of the Comprehensive Plan which discourages further commercial strip development along a gateway to Downtown and one of the city's major arterials. In addition, the proposal is inconsistent with the character of the Capital Plaza area office uses and several nearby historic properties.

STAFF RECOMMENDATION:

The Planning Commission recommended this proposal be **APPROVED** by a vote of **5-2-0** at their November 19, 2007 meeting as referenced in their attached minutes. The Planning Department recommended that this request be **DISAPPROVED** as referenced in the attached staff report.

BACKGROUND:

- See Staff Report.
- City Council options:
  - **Adopt** the recommendation of the Planning Commission by Ordinance. *(The property is located in the Capital Area Plaza Authority area. If City Council approves, the ordinance must then be approved by the Capital Area Plaza Authority in order to take effect.);*
  - **Override** the Planning Commission's recommendation by a two-thirds majority (6 votes) of the City Council membership; or,
  - **Return** such recommendation to the Planning Commission with a statement specifying the basis for the City Council's failure to approve or disapprove.

Item #13

BUDGETARY IMPACT:

N/A

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

Ordinance

Staff Report

Old Town Map

Aerial Large

Aerial

Zoning Map

Application (4 pages)

(Published in the Topeka Metro News ___________________________________)

ORDINANCE NO. _______________________

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 901 SW Topeka Boulevard from "O&I-2" Office and Institutional District **TO** "C-2" Commercial District. **(Z07/25) (Council District No. 1)**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, be, and the same is hereby amended, by classifying the following described property:

Lots 289, 291 and 293 on Topeka Avenue, in the City of Topeka, Shawnee County, Kansas.

from "O&I-2" Office and Institutional District **TO** "C-2" Commercial District.

Section 2. This Ordinance Number shall be fixed upon the "District Map".

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

PASSED AND APPROVED by the Council of the City of Topeka, ______________________, 2007.

____
William W. Bunten, Mayor

ATTEST:

____
Brenda Younger, City Clerk

To Be Codified _______

Not To Be Codified ___X___

November 19, 2007
Agenda Item #G-4

ZONING REPORT

CITY OF TOPEKA PLANNING DEPARTMENT

CASE NO: Z07/25 **by: Fidelity State Bank and Trust Company**

PROPOSAL: Amend the District Zoning Classification from "O&I-2" Office and Institutional District, **TO** "C-2" Commercial District.

LOCATION: 901 SW Topeka Boulevard.

PARCEL ID NUMBER: 1093103009001000.

PRESENT USE: The property is an approximate 11,250 square foot tract, which had been the site of a branch of the Fidelity State Bank and Trust Company. The property is now vacant.

PROPOSED USE: The applicant is seeking the rezoning to accommodate redevelopment of the property for commercial retail uses.

CHARACTER OF NEIGHBORHOOD: The surrounding area is predominately office uses. The subject property fronts a major arterial street (SW Topeka Boulevard) and is across from the Docking State Office Building with the Senate Luxury Suites immediately to the west across the alley. The site is located on the eastern edge of the Old Town Neighborhood and the western edge of the Downtown District.

ZONING CLASSIFICATION AND USE OF SURROUNDING PROPERTIES:

	ZONING CLASSIFICATION	PRESENT LAND USE
North:	"O&I-2" Office and Institutional District	Office
South:	"O&I-2" Office and Institutional District	Parking Lot
East:	"O&I-2" Office and Institutional District	Docking State Office Building
West:	"M-3" Multiple-Family Dwelling District	Senate Luxury Suites

LENGTH OF TIME PROPERTY HAS REMAINED VACANT AS ZONED OR USED FOR ITS CURRENT USE UNDER PRESENT CLASSIFICATION: The current bank building dates from 1964. The property was formerly zoned "E" Multiple-Family Dwelling District. In 1994 when the current zoning designations were adopted property classified as "E" Multiple-Family Dwelling District was converted to either the current "M-3" Multiple-Family Dwelling District or "O&I-2" Office and Institutional District depending on which classification was most appropriate based on the then existing land use.

SUITABILITY OF PROPERTY FOR USES TO WHICH IT HAS BEEN RESTRICTED: The site's present classification is consistent with the established pattern of zoning and land use in the area. Accepted planning principles dictate that established patterns of land use must be recognized as a basic factor which strongly influences rezoning decision. Based upon the character of the area and the surrounding uses, the subject property is suited to the uses to which it has been restricted.

CONFORMANCE TO COMPREHENSIVE PLAN: The subject property is located within the boundaries of the Old Town Neighborhood Plan. The plan's Future Land Use designation for the subject property is for *Downtown* land uses, (see area outlined in red on partial portion of the Old Town Future Land Use map). The plan states these *"...land uses, zoning districts, and densities are the "maximum recommended" and do not preclude lower-intensity land uses, zoning districts, or densities from being appropriate."* The Old Town Neighborhood Plan recognizes the mixed-use nature and higher intensity of the area between Tyler Street and Topeka Boulevard, the plan also indicates that "*Topeka Boulevard, as described in the Downtown Topeka Redevelopment Plan, is envisioned to return as the classic urban "address" for office space and downtown dwellers alike. To that end, this classification should promote taller buildings, new apartment/condominium houses, pedestrian-oriented retail, etc. as part of a high density mixed use corridor.*" Any retail envisioned by the plan should be part of a mixed use development with office or living units above the retail on the ground floor which caters to the pedestrian.

The proposed "C-2" Commercial District would allow by right the establishment of free-standing retail uses such as "drive-in" and/or "carry-out" type restaurants offering goods or services directly to customers in motor vehicles. These types of uses are viewed as being inappropriate for this location. Rezoning the property for commercial uses would only serve to disrupt and threaten the integrity of a node of established office uses located within the environs of several historic properties. Such action would also promote further commercial strip development along a gateway to Downtown and one of the city's major arterials which the Comprehensive Plan discourages. The proposal is therefore, found by staff to be inconsistent with the established goals and objectives of the Old Town Neighborhood Plan element of the Comprehensive Plan.

THE EXTENT TO WHICH REMOVAL OF THE RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES: The removal of present restrictions would permit the subject property to develop for commercial uses which are found to be inconsistent with Old Town Neighborhood Plan element of the Comprehensive Plan and accepted planning principles which dictate that established patterns of land use must be recognized as a basic factor which strongly influences rezoning decision.

The only commercially zoned property in the immediate area is the parking lot that lies northwest of the subject site. This property was originally zoned "E" Multiple-Family Dwelling District and was the site of the historic "*Horner House*". In 1984 this property was rezoned with a resolution of intent to "G" Commercial to facilitate the adaptive reuse of this historic home for use as a restaurant. Subsequent to this property being rezoned, the "*Horner House*" was demolished and the current parking lot was established on the property which is now used by the Senate Luxury Suites. In 1994 when the current zoning designations were adopted a "G" Commercial designation converted to the current "C-4" Commercial classification by virtue of the parking lot use activating the ROI. It is therefore, only by default that this site is zoned commercial. The nearest retail uses exist at the intersection of two arterials (SW 8th Street and SW 10th Avenue) a block away in a nodal development pattern.

The subject property lies within the environs of several historic properties; the "*Women's Club Building*", the "*Dillon House*" (both of which front onto SW 9th Street) and are located northeast of the subject property and the "*Gem Building*" (which fronts onto SW 10th Avenue) and is located south of the subject property within the same block. In addition, the Senate Luxury Suites (ca. 1928) lies immediately to the west across the alley and is proposed as a preservation overlay district in the Old Town Neighborhood Plan. The plan states: *"This overlay District is intended to recognize the special character of structures within certain districts and protect their viability."*

The property is also in direct view of the State Capitol Building which lies east of the subject property on SW 9th Street. Any development on the subject site would have an impact along this viewing corridor which must be considered. Given the rich historic nature of this area any redevelopment of the subject site should be compatible in design with the established character of the area. Any development should not only enhance but preserve the character and flavor of Old Town and the neighboring Downtown area with careful consideration given to the architectural character of any building in order to provide the desired gateway to Downtown and in proximity to the Capitol Complex. Any development of the subject site therefore, takes on added significance with regard to the sites design as stated in the Old Town Neighborhood Plan: "*Parking should be hidden from Topeka Boulevard and elegant streetscapes incorporated into this new gateway to Downtown.*" The Old Town Neighborhood Plan further states: "*Design guidelines and performance standards should follow recommendations found with the Downtown Plan.*"

THE RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE BY THE DESTRUCTION OF THE VALUE OF THE OWNER'S PROPERTY AS COMPARED TO THE HARDSHIP IMPOSED UPON THE INDIVIDUAL LANDOWNER: The site's present classification was established in 1994 when the current zoning designations were adopted. The property under the old designation "E" was classified as Multiple-Family Dwelling District, this was converted to either the current classification "M-3" Multiple-Family Dwelling District or "O&I-2" Office and Institutional District depending on which classification was most appropriate based on the then existing land use. The subject property is quite suitable as currently zoned and there would appear to be no particular gain to the public health, safety, and welfare in removing the present restrictions. On the contrary, if the present restrictions were removed the property could develop for commercial retail uses that are inconsistent with the surrounding uses, the adopted Old Town Neighborhood Plan, and accepted planning principles.

AVAILABILITY OF PUBLIC SERVICES: All essential public utilities, services and facilities are presently available to this area and will not be overburdened by this proposal. Any development of the site should however, consider eliminating the existing access on Topeka Boulevard or if retained, limiting it to a right-in only.

COMPLIANCE WITH ZONING AND SUBDIVISION REGULATIONS:

Application: **Complete**.

Minimum Lot Area: **Compliant**.

Setbacks: **Compliant**.

Platting: **Compliant** – Lots 289, 291 and 293 Original Town.

CONCERNS OF STAFF AND REVIEWING AGENCIES: This request has been submitted to all applicable reviewing agency staff for consideration and comment. A concern expressed by reviewing staff relative to code compliance or the provisions of public services was the site's ability to accommodate a new commercial building or drive-through on such a small corner lot given setback, parking, access and landscaping requirements. If the site is converted for a high-traffic use such as a restaurant, it is recommended that full access to SW Topeka Boulevard be prohibited.

ADDITIONAL FACTORS:

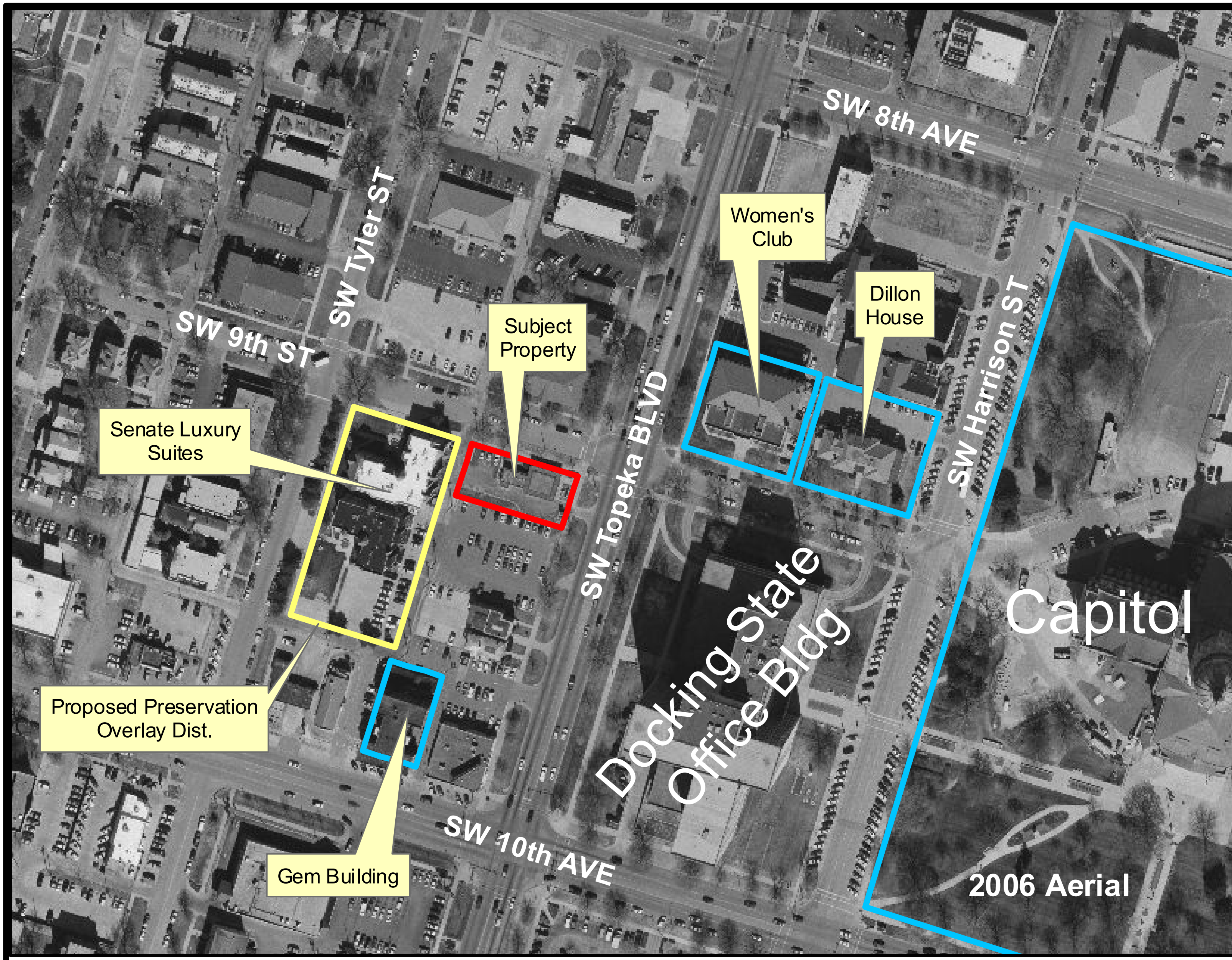
1. Neighborhood Improvement Association:	Old Town. (No response received as of November 5, 2007)
2. Capitol Plaza Area:	Subject property is within the jurisdiction of the Capitol Plaza Authority which also is required to approve any rezoning upon City Council action.
3. Flood Hazard Area:	Not Applicable.
4. Airport Hazard Area:	Not Applicable.
5. Historic Properties:	Subject property is within the environs of "*Women's Club Building*", *Dillon House*" and "*Gem Building*".

STAFF RECOMMENDATION:

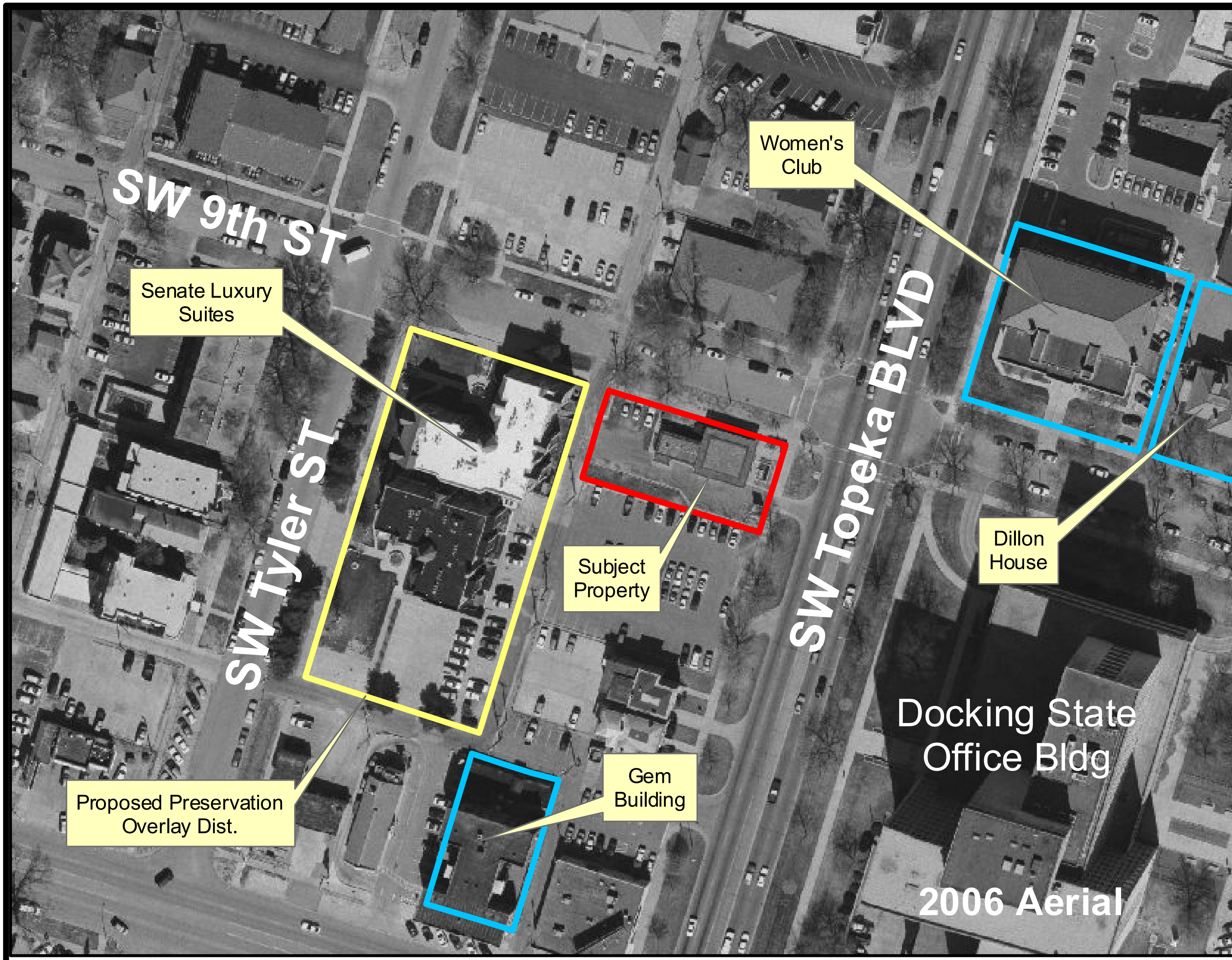
Based upon the above findings and analysis Planning Staff recommends **DISAPPROVAL** of this proposal. The Planning Department could support a mixed use project as discussed in the Old Town Neighborhood Plan.

Prepared by: Dean W. Diediker
Planner II

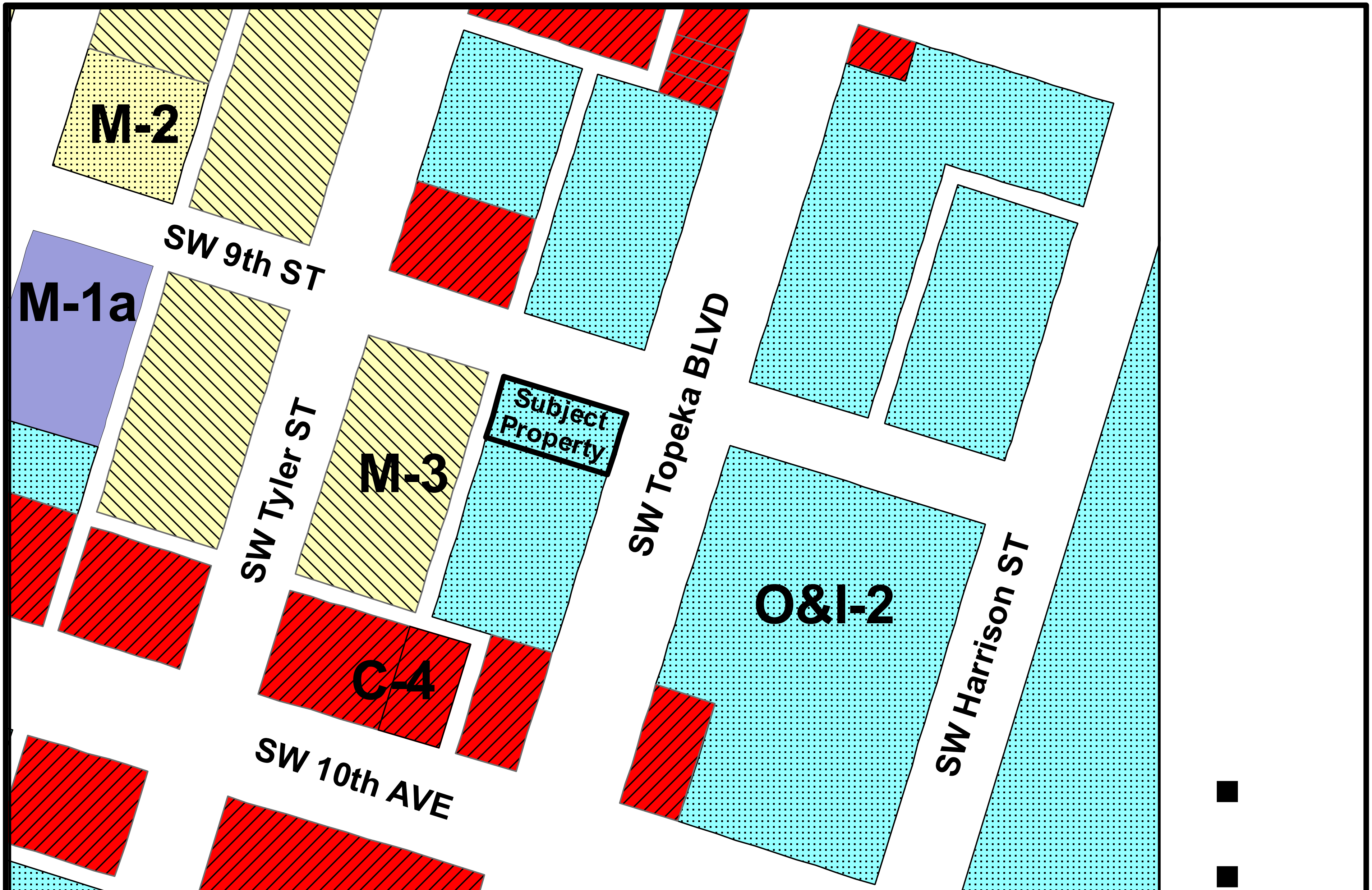
Z07/25 by Fidelity State Bank and Trust Co.



Z07/25 by Fidelity State Bank and Trust Co.



Z07/25 by Fidelity State Bank and Trust Co.



Z07/25 by Fidelity State Bank and Trust Co.

Application Form
Re-Zoning or Conditional Use Permit

City of Topeka Planning Department
620 SE Madison, 3rd Floor
Topeka, KS 66607
Phone 785-368-3728 Fax 785-368-2535

Applicant Information

Property Owner(s): Fidelity State Bank and Trust Company
Anderson Chandler

Street Address: 600 S. Kansas Avenue

City: Topeka State: KS Zip: 66603 E-mail: awc@fidelitytopeka.com

Business phone: (785) 295-2100 Home phone: ____ Fax: (785) 233-7571

Authorized Owner Representative (if any): Henry McClure

Street Address: 214 SW 6th Street Suite 300

City: Topeka State: KS Zip: 66603 E-mail: mcre@cox.net

Business phone: 235.3353 Home phone: 357.7980 Fax: 234.5729

Authorized Professional Agent (Engineer, Architect, Attorney, etc.) – if different from above

Street Address: ____

City: ____ State: ____ Zip: ____ E-mail: ____

Business phone: ____ Home phone: ____ Fax: ____

Authorization

I (we) am (are) the owner(s) of record for the subject property and hereby authorize filing of this application and posting of signage on the property by the City of Topeka for the requested zoning change. I (we) declare that all required materials are submitted along with this application and that the information submitted is complete and accurate. I (we) hereby acknowledge that all appropriate procedures, policies and regulations have been reviewed and understood, including authorization of any agent as listed in this application.

Owner 1 Name: Fidelity State Bank + Trust Co Topeka Kansas

Owner 1 Signature: Anderson Chandler Chm + Pres **Date:** Oct 5, 2007

Owner 2: ____

Owner 2 Signature: ____ **Date:** ____

Requested Action and Site Information

Address of Property to be Re-Zoned (or if vacant, describe general location): 901 S Topeka Blvd
Topeka, Kansas 66612

Legal Description of Property: *lot(s)*____ *block*____ *subdivsion* Attached
(if unplatted, attach metes and bounds description)

Total Area (acres/square feet): 11,250

Type of Application:
1. *Re-zoning from:* O & I 2 *to:* C 2
2. *Conditional Use Permit proposed use:*

Existing Use (# of dwelling units, square feet, etc.): 1,755

How long has the existing use been on the property? 43 years

Proposed Use (# of dwelling units, square feet, etc.): Commercial / Retail

Was a Pre-Application Meeting or Zoning Inquiry completed with Staff? Yes **If Yes, when?** 10/4/07

FOR OFFICE USE ONLY

Date submitted: 10/5/07
Application no.: Z07/25
Filing fee: 650.00 **Receipt no.:** 11642
Quarter section map no.: F-9

Date notice sent: 10/26/07
Date advertised: 10/26/07
Date of hearing: 11/19/07
Council district: #1

CHECK YES OR NO

Capital Plaza Area: Yes ✓ No____
100 yr Floodplain: Yes____ No ✓
Airport Hazard Area: Yes____ No ✓

Within Historic Site Environs: Yes ✓ No____
If Yes, what is it?: Womens Club Building, Dillon House, Gem Building
National/State Historic Register: Yes____ No____
Local Historic Resource: Yes____ No ✓
Neighborhood Association: Yes ✓ No____
Name of N.I.A./N.A: Old Town NIA.

Applicant Justification

For re-zoning applications:

This section is intended to provide you with the opportunity to present information in support of your request. It is important to bear in mind that the presumption of validity rests with the present zoning and use of the property. It is the burden of the applicant to demonstrate that the proposed change in zoning classification or proposed conditional use permit is appropriate.

Please attach additional sheets if necessary.

1. **Why is the land not suitable for the uses to which the property is currently zoned?**

The zoning is obsolete.

The evolution of this area likens itself to more of an intensive zoning. The success of Walgreens, pizza hut and other retailers in the area prove the need for these uses in the area. The decline of the existing business and the two offices to the south show the market for office uses are obsolete.

2. **What effect would the proposed zone change have on the character of the neighborhood and surrounding properties?**

No.

A retail or commercial use will enhance the area. This will serve the state employees, the guests at the Senate Suites, Topeka High students, any of the 36,000 day time population downtown and any future additions too the area.

3. **How does this request relate to any adopted neighborhood/land use plans by the City?**

Perfect.

The future land use as shown in Map # 6 of the adopted Old Town Neighborhood Plan contemplates "Downtown" uses.

Infrastructure Availability

Please consult the Engineering Division of Topeka Public Works Department for information below (368-3842)

1. Water

a. Location and size of water main serving site:

One 6' DI on the north side of 9th - 6' on the west side of Topeka Blvd

b. Does the current system have adequate capacity? If not, are improvements anticipated?

Yes

c. If other than City of Topeka, identify water district provider:____________________

2. Sanitary Sewer

a. Location and size of sewer main serving site:

12' in the alley to the west.

b. Does the current system have adequate capacity? If not, are improvements anticipated?

Yes

c. If other than City of Topeka, identify sewer district provider:____________________

3. Storm Drainage

a. How will storm water run-off be handled on site?

42' on the west side of Topeka blvd.

Inlet on the corner

b. Does the current storm sewer system have adequate capacity for proposed use?

Yes

4. Traffic Circulation

a. Does the site have public street frontage access? What is the pavement width of any adjoining public streets?

Yes - 5 lane on Topeka blvd and 2 lane on 9th street

b. What are the site's existing or proposed access points?

One on 9th on the west end of the lot - One on Topeka Blvd on the south 2/3 ot the lot

c. Will any street improvements or traffic control improvements be required?

NO

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

November 15, 2007

DATE:	**December 4, 2007**		
CONTACT PERSON:	**David Thurbon/Bill Fiander**	**DOCUMENT #:**	**Z07/26**
SECOND PARTY/SUBJECT:	**K-Air, Inc.**	**PROJECT #:**	
CATEGORY/SUBCATEGORY	**014 Ordinances – Non-Codified / 007 Zoning**		
CIP PROJECT:	**No**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 518 and 522 SW 39th Street and property located at the southwest corner of SW Topeka Boulevard and SW 39th Street from "R-1" Single Family Dwelling District TO "C-4" Commercial District. First Reading. *(Z07/26) (Council District No. 5) (Planning Commission recommended approval by a vote of 7-0-0.) (Planning Department recommended approval.)*

(Approval of the rezoning and corresponding plat would allow the property to develop for an automobile sales lot in conjunction with the vacant properties to the north.)

POLICY ISSUE:

The request is consistent with the land use policies and principles of the Land Use and Growth Management Plan- 2025 element of the Comprehensive Plan.

STAFF RECOMMENDATION:

The Planning Commission recommended this request be **APPROVED** by a vote of **7-0-0** at their November 19, 2007 public hearing as referenced in their attached minutes. The Planning Department recommended that this request be **APPROVED** as referenced in the attached staff report.

BACKGROUND:

- See staff report.
- City Council options:
  - **Adopt** the recommendation of the Planning Commission by Ordinance;
  - **Override** the Planning Commission's recommendation by a two-thirds majority (6 votes) of City Council membership; or,
  - **Return** such recommendation to the Planning Commission with a statement specifying the basis for the City Council's failure to approve or disapprove.

BUDGETARY IMPACT:

Item #14

N/A

SOURCE OF FUNDING:

N/A

ATTACHMENTS:

Ordinance

staff report

zoning map

aerial map

application

(Published in the Topeka Metro News ___________________________________)

ORDINANCE NO. _______________________

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr. amending the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, by providing for certain changes in zoning on property located at 518 and 522 SW 39th Street and property located at the southwest corner of SW Topeka Boulevard and SW 39th Street from "R-1" Single Family Dwelling District **TO** "C-4" Commercial District. **(Z07/26) (Council District No. 5)**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That the "District Map" referred to and made a part of the Zoning Ordinances by Section 48-1.04 of the Code of the City of Topeka, be, and the same is hereby amended, by classifying the following described property:

A TRACT OF LAND IN THE NORTHEAST QUARTER, SECTION 24, TOWNSHIP 12 SOUTH, RANGE 15 EAST OF THE 6TH P.M., CITY OF TOPEKA, SHAWNEE COUNTY KANSAS, DESCRIBED AS FOLLOWS;
COMMENCING AT THE NORTHEAST CORNER OF FOSTORIA SUBDIVISION; THENCE ON AZIMUTH 179 DEGREES 59 MINUTES 39 SECONDS (WGS84), COINCIDENT WITH THE EAST LINE OF SAID FOSTORIA SUBDIVISION, A DISTANCE OF 15.00 FEET TO THE POINT OF BEGINNING. SAID POINT BEING 645.00 FEET ON AZIMUTH 00 DEGREES 01 MINUTES 05 SECONDS AND 662.57 FEET ON AZIMUTH 269 DEGREES 49 MINUTES 07 SECONDS FROM THE SOUTHEAST CORNER OF SAID QUARTER SECTION; FIRST COURSE, THENCE ON AZIMUTH 89 DEGREES 49 MINUTES 07 SECONDS, PARALLEL WITH SAID SOUTH LINE, A DISTANCE OF 544.34 FEET; SECOND COURSE, THENCE ON AZIMUTH 192 DEGREES 06 MINUTES 36 SECONDS, A DISTANCE OF 168.20 FEET; THIRD COURSE, THENCE ON AZIMUTH 265 DEGREES 55 MINUTES 28 SECONDS, A DISTANCE OF 510.33 FEET TO THE SOUTHEAST CORNER OF LOT 1 BLOCK 'A' OF SAID FOSTORIA SUBDIVISION; FOURTH COURSE, THENCE ON AZIMUTH 359 DEGREES 59 MINUTES 39 SECONDS COINCIDENT WITH THE EAST LINE OF SAID LOT 1, A DISTANCE OF 198.99 FEET TO THE POINT OF BEGINNING. SAID TRACT CONTAINS 2.19 ACRES MORE OR LESS.
THE GRANTOR HEREBY RETAINS ANY AND ALL ABUTTER'S RIGHTS OF ACCESS TO TOPEKA BOULEVARD (SECOND COURSE), AND KANSAS TURNPIKE/I-470, (THIRD COURSE).

AND

A TRACT LYING IN THE NORTH HALF OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 12 SOUTH, RANGE 15 EAST OF THE 6TH P.M., SHAWNEE COUNTY, KANSAS: BEGINNING AT A POINT 20 FEET NORTH AND 379.8 FEET WEST OF THE SOUTHEAST CORNER OF THE NORTH HALF OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 24; THENCE NORTH PARALLEL TO THE EAST LINE OF SAID QUARTER SECTION, 116 FEET; THENCE WEST 124 FEET; THENCE SOUTH 116 FEET TO A POINT 20 FEET NORTH OF THE SOUTH LINE OF THE NORTH HALF OF THE SOUTH HALF OF THE

NORTHEAST QUARTER, THENCE EAST 124 FEET TO THE POINT OF BEGINNING,

AND

BEGINNING AT A POINT 20 FEET NORTH AND 503.8 FEET WEST OF THE SOUTHEAST CORNER OF THE NORTH HALF OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 12 SOUTH, RANGE 15 EAST OF THE 6TH P.M., SHAWNEE COUNTY, KANSAS; THENCE NORTH PARALLEL TO THE EAST LINE OF SAID QUARTER SECTION, 116 FEET; THENCE WEST 124 FEET; THENCE SOUTH 116 FEET TO A POINT 20 FEET NORTH OF THE SOUTH LINE OF THE NORTH HALF OF THE SOUTH HALF, OF THE NORTHEAST QUARTER; THENCE EAST 124 FEET TO THE POINT OF BEGINNING.

AND

ALL OF THE RIGHT-OF-WAY FOR SOUTHWEST 39TH STREET DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF LOT 1, BLOCK A, FOSTORIA SUBDIVISION EXTENDED; THENCE EASTERLY TO THE WEST RIGHT-OF-WAY LINE OF SOUTHWEST TOPEKA BOULEVARD.

from “R-1” Single Family Dwelling District **TO** “C-4” Commercial District.

Section 2. This Ordinance Number shall be fixed upon the “District Map”.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

PASSED AND APPROVED by the Council of the City of Topeka, ______________________, 2007.

____
William W. Bunten, Mayor

ATTEST:

____
Brenda Younger, City Clerk

To Be Codified _______

Not To Be Codified ___X___

November 19, 2007
Agenda Item # G-3a

ZONING REPORT

CITY OF TOPEKA PLANNING DEPARTMENT

CASE NO: Z07/26 **by: K-Air, Inc.**

PROPOSAL: Zone change from "R-1" Single-Family Dwelling District **TO** ""C-4" Commercial District

LOCATION:. 518 and 522 SW 39th Street and the southwest corner of SW Topeka Blvd and SW 39th Street

PARCEL ID NUMBER: 1462401001018000, 1462401001019000, and 1462401004002000

PRESENT USE: Existing single-family residences are located at 518 and 522 SW 39th Street. The property at the southwest corner of Topeka Blvd and SW 39th was previously Kansas Turnpike right-of-way and is presently vacant.

PROPOSED USE: Auto sales lot in conjunction with the properties to the north (vacant).

CHARACTER OF NEIGHBORHOOD: The property is located along a regional commercial corridor (SW Topeka Blvd) at the Interstate-470 interchange.

ZONING CLASSIFICATION AND USE OF SURROUNDING PROPERTIES:

	ZONING CLASSIFICATION	PRESENT LAND USE
North:	"C-4" Commercial District	Vacant (will be part of auto sales lot)
South:	Highway right-of-way	Interstate-470
East:	"C-4" Commercial District	Vacant
West:	"R-1" Single-Family Dwelling District	Two single-family residences

LENGTH OF TIME PROPERTY HAS REMAINED VACANT AS ZONED OR USED FOR ITS CURRENT USE UNDER PRESENT CLASSIFICATION: Existing zoning records indicate the properties have been zoned "R-1" Single-Family Dwelling District since annexed in the 1950s. The existing residences have remained on the property since built (1926 and 1950). The property at the southwest corner of Topeka Blvd and SW 39th has remained vacant since used as right-of-way by the Kansas Turnpike Authority.

SUITABILITY OF PROPERTY FOR USES TO WHICH IT HAS BEEN RESTRICTED: The property classification as Single-Family Dwelling District is no longer suitable for this area. The properties are located along a regional commercial corridor. The four remaining single-family residences along SW 39th Street may no longer be suitable at this location as they are entirely surrounded by commercial and industrial land uses and located near the Interstate-470 frontage road.

November 19, 2007
Agenda Item # G-3a

CONFORMANCE TO COMPREHENSIVE PLAN: The Comprehensive Plan designates this area for *Commercial/Office* land uses. The pattern of surrounding land uses along Topeka Blvd. has developed for commercial uses. Therefore, this proposal is in conformance with the Comprehensive Plan.

THE EXTENT TO WHICH REMOVAL OF THE RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES: The proposed reclassification should have no detrimental effect on the surrounding area and would allow this property to develop consistent with the pattern of surrounding land uses.

THE RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE BY THE DESTRUCTION OF THE VALUE OF THE OWNER'S PROPERTY AS COMPARED TO THE HARDSHIP IMPOSED UPON THE INDIVIDUAL LANDOWNER: The proposed reclassification would accommodate the redevelopment of this property for commercial uses consistent with those in the surrounding area. As no detrimental effects are anticipated, there would appear to be no particular loss to public health, safety, and welfare by the reclassification of this area.

AVAILABILITY OF PUBLIC SERVICES: All essential public utilities, services and facilities are presently available to this area and will be provided at the time of site development.

COMPLIANCE WITH ZONING AND SUBDIVISION REGULATIONS:

Minimum Lot Area: **Compliant-** The properties at 518 and 522 SW 39th Street will be combined with properties to the north.

Setbacks: **Compliant-** New structures will meet required setbacks in the "C-4" District.

Platting: **Compliant**- A plat for Briggs 1st Addition has been submitted in conjunction with this application to merge existing lots and vacate a portion of SW 39th Street (P07/35)

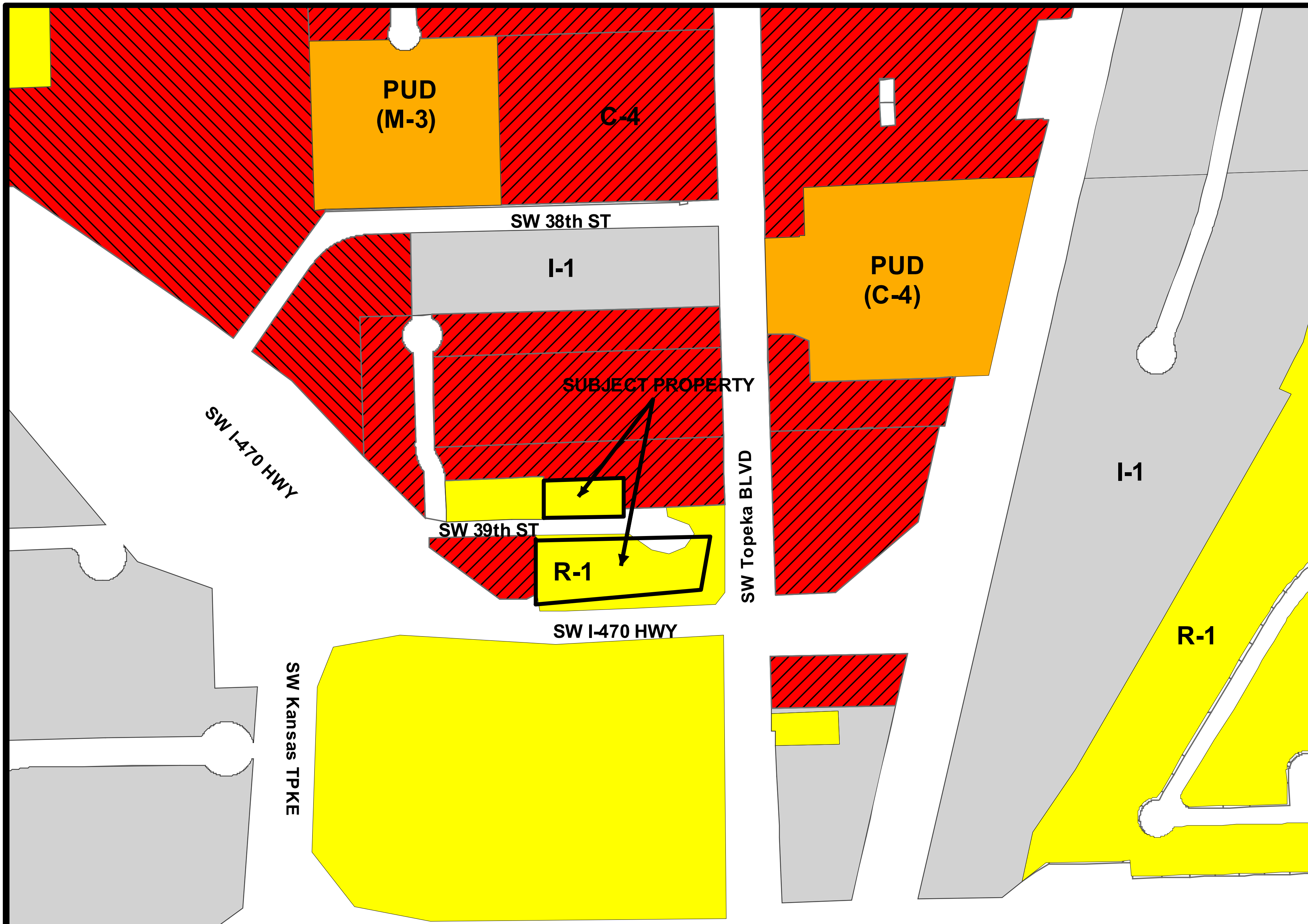
CONCERNS OF STAFF AND REVIEWING AGENCIES: This request was submitted to all applicable reviewing agency staff for consideration and comment. All issues or concerns that were expressed by reviewing staff relative to code compliance or provisions of public service have been resolved or will be resolved at the site development stage.

ADDITIONAL FACTORS:

1. Neighborhood Improvement Association: N/A
2. Capitol Area Plaza Authority: N/A
3. Flood Hazard Area: N/A
4. Airport Hazard Area: N/A
5. Historic Properties: N/A

STAFF RECOMMENDATION: Based upon the above findings and analysis, the planning staff recommends **APPROVAL** of this proposal.

Prepared by: Annie Driver, Planner I



Z07/26 by: K-Air, Inc.

City of Topeka Planning Department

Z07/26 by: K-Air, Inc.

City of Topeka Planning Department

Application Form
Re-Zoning or Conditional Use Permit

City of Topeka Planning Department
620 SE Madison, 3rd Floor
Topeka, KS 66607
Phone 785-368-3728 Fax 785-368-2535

Applicant Information

Property Owner(s): K-Air Inc.

Street Address: 2312 Stagg Hill Road

City: Manhattan State: KS Zip: 66502 E-mail:

Business phone: Home phone: Fax:

Authorized Owner Representative (if any):

Street Address:

City: State: Zip: E-mail:

Business phone: Home phone: Fax:

Authorized Professional Agent (Engineer, Architect, Attorney, etc.) – if different from above

Bartlett & West Inc., by John Ladson, P.E.

Street Address: 1200 SW Executive Drive

City: Topeka State: KS Zip: 66615-3850 E-mail: john.ladson@bartwest.com

Business phone: 785-272-2252 ext 309 Home phone: 785-806-2806 cell Fax: 785-273-8735

Authorization

I (we) am (are) the owner(s) of record for the subject property and hereby authorize filing of this application and posting of signage on the property by the City of Topeka for the requested zoning change. I (we) declare that all required materials are submitted along with this application and that the information submitted is complete and accurate. I (we) hereby acknowledge that all appropriate procedures, policies and regulations have been reviewed and understood, including authorization of any agent as listed in this application.

Owner 1 Name: Russell K. Briggs, President, K-Air Inc.

Owner 1 Signature: [signature] **Date:** 10-3-07

Owner 2:

Owner 2 Signature: **Date:**

Requested Action and Site Information

Address of Property to be Re-Zoned (or if vacant, describe general location): SW Topeka Blvd & SW 39th Street

Legal Description of Property: *lot(s)*_____ *block*_____ *subdivsion* see attached
(if unplatted, attach metes and bounds description)

Total Area (acres/square feet): 2.85 AC. +/-

Type of Application:
1. *Re-zoning from:* R-1 *to:* C-4
2. *Conditional Use Permit proposed use:*_____

Existing Use (# of dwelling units, square feet, etc.): 2 residential units to be demolished and old KTA right-of-way

How long has the existing use been on the property? plus 20 years

Proposed Use (# of dwelling units, square feet, etc.): Car dealership auto plaza

Was a Pre-Application Meeting or Zoning Inquiry completed with Staff? yes **If Yes, when?** 9/06/2007

FOR OFFICE USE ONLY

Date submitted: 10/5/07	**Date notice sent:** 10/26/07
Application no.: Z07/26	**Date advertised:** 10/26/07
Filing fee: 650.00 **Receipt no.:** 11643	**Date of hearing:** 11/19/07
Quarter section map no.: _____	**Council district:** #5

CHECK YES OR NO

Capital Plaza Area: Yes___ No X	**Within Historic Site Environs:** Yes___ No X
	If Yes, what is it?:_____
100 yr Floodplain: Yes___ No X	**National/State Historic Register:** Yes___ No X
Airport Hazard Area: Yes___ No X	**Local Historic Resource:** Yes___ No X
	Neighborhood Association: Yes___ No ✓
	Name of N.I.A./N.A:_____

Applicant Justification

For re-zoning applications:

This section is intended to provide you with the opportunity to present information in support of your request. It is important to bear in mind that the presumption of validity rests with the present zoning and use of the property. It is the burden of the applicant to demonstrate that the proposed change in zoning classification or proposed conditional use permit is appropriate.

Please attach additional sheets if necessary.

1. **Why is the land not suitable for the uses to which the property is currently zoned?**

Need to zone C-4 with the remainder of the plat to accomodate the proposed auto plaza.

2. **What effect would the proposed zone change have on the character of the neighborhood and surrounding properties?**

Consistent with surrounding zoning.

3. **How does this request relate to any adopted neighborhood/land use plans by the City?**

Consistent with city land use plan.

Infrastructure Availability

Please consult the Engineering Division of Topeka Public Works Department for information below (368-3842)

1. Water

a. Location and size of water main serving site:

12" water line & 6" water line in the west right of way of SW Topeka Blvd.
12" water line in the south and north right of way of SW 39th Street.

b. Does the current system have adequate capacity? If not, are improvements anticipated?

NO,

c. If other than City of Topeka, identify water district provider:______________________

2. Sanitary Sewer

a. Location and size of sewer main serving site:

8" Sanitary sewer in west right of way of SW Topeka Blvd, line only goes south of SW 38th Street approximately 250 feet, various sewer line trough out site in platted easements.

b. Does the current system have adequate capacity? If not, are improvements anticipated?

NO,

c. If other than City of Topeka, identify sewer district provider:______________________

3. Storm Drainage

a. How will storm water run-off be handled on site?

Existing 18" RCP along west right of way of SW Topeka Blvd. and 15" RCP along SW 39th Street. Storm system constructed on site.

b. Does the current storm sewer system have adequate capacity for proposed use?

NO, storm waster detention on site.

4. Traffic Circulation

a. Does the site have public street frontage access? What is the pavement width of any adjoining public streets?

YES, SW Toepka Blvd. right of way varies, maximum of 145 feet. SW 39th Street right of way is 50 feet.

b. What are the site's existing or proposed access points?

2 access points onto SW Topeka Blvd. First access point is 448 feet south of SW 38th Street, proposed enterance is 60'. Second access point is 744 feet from SW 38th Street, proposed enterance 30'. Two private drive off of SW 39th Street, street width is 24' back of curb to back of curb.

c. Will any street improvements or traffic control improvements be required?

YES, curb cuts and entrances will be removed and 2 new entrances will be constructed.

A Capital City Government Working For You…

www.topeka.org

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

October 5, 2007

Back Print

DATE:	**December 4, 2007**		
CONTACT PERSON:		**DOCUMENT #:**	
SECOND PARTY/SUBJECT:		**PROJECT #:**	
CATEGORY/SUBCATEGORY			
CIP PROJECT:	**No**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available

Item #15

A Capital City Government Working For You…

www.topeka.org

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

October 5, 2007

Back Print

DATE:	**December 4, 2007**		
CONTACT PERSON:		**DOCUMENT #:**	
SECOND PARTY/SUBJECT:		**PROJECT #:**	
CATEGORY/SUBCATEGORY			
CIP PROJECT:	**No**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available

Item #16

A Capital City Government Working For You…

www.topeka.org

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

October 5, 2007

← Back Print

DATE:	**December 4, 2007**		
CONTACT PERSON:		**DOCUMENT #:**	
SECOND PARTY/SUBJECT:		**PROJECT #:**	
CATEGORY/SUBCATEGORY			
CIP PROJECT:	**No**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available

Item #17

A Capital City Government Working For You…

www.topeka.org

Council Action Form

Council Chambers
214 SE 8th Street
Topeka, Kansas 66603

October 5, 2007

Back Print

DATE:	**December 4, 2007**		
CONTACT PERSON:		**DOCUMENT #:**	
SECOND PARTY/SUBJECT:		**PROJECT #:**	
CATEGORY/SUBCATEGORY			
CIP PROJECT:	**No**		
ACTION OF COUNCIL:		**JOURNAL #:**	
		PAGE #:	

DOCUMENT DESCRIPTION:

POLICY ISSUE:

STAFF RECOMMENDATION:

BACKGROUND:

BUDGETARY IMPACT:

SOURCE OF FUNDING:

ATTACHMENTS:

No Attachments Available

Item #18