

MINUTES
MANHATTAN URBAN AREA PLANNING BOARD
City Commission Room, City Hall
1101 Poyntz Avenue
September 17, 2007
7:00 p.m.

MEMBERS PRESENT: Stephanie Rolley, Chairperson; George Ham, Vice Chairperson; Mike Kratochvil; Jerry Reynard; Mike Hill; Bill Meredith; Stacy Kohlmeier.

MEMBERS ABSENT: None.

STAFF PRESENT: Eric Cattell, Assistant Director for Planning; Steve Zilkie, Senior Planner; Jane Winslow, Senior Planner; Cam Moeller, Planner; Rob Ott, City Engineer; Curt Loupe, Director of Parks and Recreation.

I. GENERAL AGENDA

1. **CONTINUATION OF A REQUEST FOR THE ANNEXATION OF THE PROPOSED KNIGHT'S PARK ADDITION, AN APPROXIMATE 135-ACRE TRACT OF LAND GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION OF CASEMENT ROAD AND MARLATT AVENUE BETWEEN THE BIG BLUE RIVER AND CASEMENT ROAD. (APPLICANT: RUSS WEISBENDER/OWNER: NANCY K. ABBOTT) NOTE: THIS ITEM HAS BEEN RETURNED TO THE PLANNING BOARD BY THE CITY COMMISSION FOR FURTHER CONSIDERATION.)**

2. **CONTINUATION OF A PUBLIC HEARING TO RECONSIDER THE REZONING OF THE PROPOSED KNIGHT'S PARK ADDITION AN APPROXIMATE 135-ACRE TRACT OF LAND GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION OF CASEMENT ROAD AND MARLATT AVENUE BETWEEN THE BIG BLUE RIVER AND CASEMENT ROAD FROM COUNTY G-1, GENERAL AGRICULTURAL DISTRICT, TO R-2, TWO-FAMILY RESIDENTIAL DISTRICT. (APPLICANT: RUSS WEISBENDER/OWNER: NANCY K. ABBOTT) NOTE: THIS ITEM HAS BEEN RETURNED TO THE PLANNING BOARD BY THE CITY COMMISSION FOR FURTHER CONSIDERATION)**

Zilkie presented the Staff Report, recommending denial of both the annexation and rezoning. He also explained the alternatives available to the Board.

Kratochvil asked why the application had been sent back to the Planning Board by the City Commission. The City Commission returned the item to the Planning Board for further consideration with discussion of issues to be addressed with the Comprehensive Land Use Plan, land allocations, the growth vision, and the consistency with the intent and purpose of the zoning ordinance, and with any

additional feedback from the Planning Board to clarify their perspective on the issues raised by the application. Zilkie said in part, the applicant requested the Commission to return the item. Zilkie said that while the Staff Report reviewed the points made last time, it went further into outlining and emphasizing the flood risks.

Hill asked for the recommendation of Parks and Recreation Advisory Board on this proposal. Zilkie indicated there was a memo from the Parks Department.

Curt Loupe, Director of Parks and Recreation, outlined the thoughts of the Parks and Recreation Advisory Board and the Parks Department regarding the proposal. Loupe said the Park Board had concerns about drop-offs and safety of a park along the river bank. He said he and the City Manger and Parks Supervisor toured the site and that the former sand plant had destroyed most of the good trees on the east and southern portions of the site. Loupe noted that there are good trees that currently exist along the Marlatt drainage channel which would be removed by the applicant's proposal to widen the channel. He said there had been dumping of junk along the ditch. He said there has been widespread fill on portions of the site and it is not a good idea to place trails on fill and said erosion is a concern. He said drainage ways on the site would be substantial barriers to developing trail crossings and internal drainage issues will pose continuing problems. Loupe said there is no river-level shoreline on the southern portion of the site and much of the property has 20 -30 foot drop-offs into the river, posing safety and erosion risks. Extensive fencing would be needed could be damaged by river fluctuations and act as a trash collector. To provide vistas of the river, trees would need to be removed, which would impact erosion control. Then you would have substantial permitting and rebuilding costs. He said the idea of providing river access is difficult because the Blue River is not a navigable river and private property on either side runs to the center of the river. Loupe said the Linear Trail can be more efficiently placed along Casement Road. He said the proposal is not is not the most desirable location for the trail along the river, or for parkland internal to the site.

Hill asked if the Parks and Recreation Department is prepared to take on bank stabilization if the Park Board were to accept the park land. Loupe said they have other priorities at this time, such as along Anneberg Park and he would not willingly lake take on additional land where we know there are stabilization problems in the future.

Rob Ott gave a power point presentation that was presented to the City Commission on flood plains and the 1999 Future Flood Predictive Model, which looks at different flood scenarios. He explained the floodway and floodway fringe and gave the 100 and 500 year flood elevations at the closest FEMA cross section on the site. He said the 1993 man-made flood release was only 10 percent of what the Corps can release from Tuttle Creek. He went through several of the scenarios provided by the predictive model, saying the model's accuracy was plus, or minus about 5 percent. He spoke about the undersized box culvert under Casement Road. He explained that the Comprehensive Plan was developed after the 1993 event and provides for a certain level of flood risk and provides both a vertical and horizontal separation from

the river. He said while they can certainly engineer the site, he suggested the Planning Boards' discussion needs to be about risk assessment and risk management. He said the Comprehensive Plan provides the highest level of protection. He said the community had the wisdom at the time and chose to use Casement Road as the line to stay away from the river. Ott said there are engineering solutions to a certain level, but beyond that he couldn't guarantee anything and he didn't think anyone else could either. Ott said the Board needed to determine what level of risk was acceptable and they could debate the technical questions.

Chris Bohm, Ruggles-Bohm, spoke for the applicant, saying he wanted to make sure the Board understood the effects of what was being proposed on the site. He said there is none of the development proposed on the site would be within the 100-year floodplain and explained that the Marlatt drainage channel would be widened with 6:1 side slopes to provide park space and trails that are very maintainable. He said there would be no trail crossing of Marlatt Ditch. Bohm said that the City has allowed for development on the west side of Casement Road within the 1993 flood area where Marlatt channel runs through the Brookfield Addition, with the requirement that the lowest openings be two feet above the 1993 flood level. They want the same level of protection on the east side of the street. He went through a handout, outlining various flood elevations on the site. He said the Marlatt channel will need to be improved when the box under Casement is expanded to improve the capacity of the channel. He said their development could assist in that effort. He said what is being proposed is one foot above the 100-year floodplain and 5.9' above the 1993 flood elevation. Bohm said the lowest proposed opening is at an elevation of 1019.6 feet, while the 100-year flood elevation is 1013.7, the 500-year flood elevation is 1017.4, and the 1993 flood elevation was 1017.6, therefore they are 2 feet above the 1993 inundation and 2.2 feet above the 500 flood elevation. He said the City hasn't required this level of protection anywhere else, but agreed this is a unique area and it is warranted.

Bohm explained what happens to the water after the site is filled as proposed, if there were to be another 1993 event. He said they need 198,600 cubic yards of fill to elevate the site right to the 1993 level and with the Marlatt channel improvements; they need to excavate 203,000 cubic yards of earth, at or below that same flood elevation. He said as a result of the proposed cut and fill, the improved Marlatt drainage channel would provide more storage capacity on the site and would lower the flood elevation in an event similar to the 1993 flood. There should be no change in the water surface elevation on the site, once the channel is improved. He said the site was affected by backwater in the 1993 event, so it is a storage issue on the site, not a flowing water issue. He provided a handout showing Capital Improvement Projects proposed in the area totaling about \$9.4 million dollars by the City and Riley County. He suggested the CIP is not sync with the Comprehensive Plan if there're is no more development in the Marlatt – Casement corridor. He said there are not a lot of other places to housing. Bohm said the proposal meets Comprehensive Plan policies for efficient use of infrastructure, preserving natural resources by provision of parks, multi-modal transportation with the provision of trails, and provision of affordable housing. He outlined reasons to support the annexation and rezoning;

saying it honors the Comprehensive Plan; it creates a linear parkway, a river park and a playground; it completes the Marlatt channel; and it is a return on the City's investment in infrastructure. He said the proposal does not meet the provision that development stay out of the areas affected by the 1993 event. He suggested that if the exiting site had been one foot higher in 1993, this would never have been an issue. We want to add two feet to that level. The development on the west side of Casement Road is just as vulnerable to a large gate release as this area.

Bohm responded to questions from the Board about flooding concerns with the project.

Reynard asked about the box under Casement Road and size of Marlatt channel. Bohm indicated the box needed to be expanded for greater capacity and the permit process would be addressed when it is expanded. He said the impact of the channel improvement to Marlatt would also be addressed at that time.

Meredith asked if the water into the widened Marlatt channel after development and if water would affect existing developments. Bohm indicated the water would be stored in the widened Marlatt channel and that the impact would be less, though not measurable.

Rolley asked if they had looked at build-out of the neighborhood and how it impacts the Marlatt channel. Bohm spoke about the model they used and that it was assumed that the box culvert under Casement Road is fully oversized enough and the Marlatt channel improved to convey the water to the river, it would handle the 100 year storm.

Rolley questioned if Bohm had read the Special Blue River Planning area and Natural Resources chapters in the Comprehensive Plan. Bohm said he had.

Kohlmeier asked if they fill the site two feet and they indicated the 1993 event was backwater on the site, wouldn't this result in impacting other existing developments. Bohm explained that they are balancing the cut and fill with a little more storage space.

Responding to questions from Kratochvil about the Marlatt channel, Bohm indicated it would be more than doubled in size and width.

Ham asked if the lowest opening of homes was proposed at 1019.6 feet, what would be the proposed street elevations. Bohm indicated the lowest street elevations would be a couple inches higher than the 1993 flood level.

Hill asked for clarification on if the proposed the lowest opening was the lowest floor, or opening, because floor could be much lower than an opening. Bohm said it was the lowest opening that water could enter the structure, slab or window or door sill.

Hill asked who would be paying for all the necessary infrastructure improvements

and if the City had decided that all these improvement projects would be funded and completed regardless of the Knight's Park development. He got the feeling that the Parks Department was not excited about doing parks in this area. Hill asked for clarification if the improvements would be funded by special improvement districts on the new development, such as for the Marlatt channel through the development.

Bohm said they would use special improvements districts and would ask for the city to participate in funding those costs.

Hill asked funding for the parks and sidewalks. Bohm said Russ Weisbender would have to answer if he was willing to put in the sidewalks.

Hill asked about bank stabilization along the river. Bohm said no bank stabilization was proposed as part of this development along the river. Hill asked if bank stabilization would be a requirement for the development.

Ott indicated that is one of the difficult questions, regarding the necessary setback from the river. He said the Stormwater Management Master Plan has setback requirements for streams; however the Corps of Engineers can dial up and down different release rates from the dam. For normal river flows, bank stabilization is probably not needed. For higher flows, it might possibly be needed, but he didn't know because the Corps can change the flows. Ott explained the CIP and budgeting process, indicating that while specific infrastructure projects are in the CIP, they could be cut or moved to later years in the budgeting prioritization process by the City Commission. He summarized the CIP improvements projects in the area.

Kohlmeier asked if the CIP projects in the area were being done due to inadequacies in the current systems. Ott confirmed that was the case, due to all the new housing west of Casement Road, with regard to improving Casement Road and providing sidewalks, as well as storm water problems. He said the improvements are needed without additional development, which is the same reason the County is upgrading Marlatt Avenue.

Russ Weisbender (700 Fairman), applicant, said the proposal will provide more area for storage of water to pond than currently exists, so if there is a repeat of 1993, there would be better protection. He said it's a question of what level of protection you are willing to accept. He said the Board had already set that level of protection across Casement Road. Weisbender said they had covered, met or exceeded every portion of the Comprehensive Plan. The development is providing parks and is making use of existing infrastructure that runs down the east side of Casement Road. He suggested that if this site is bypassed, and all the improvements to infrastructure in the area will not be utilized and its capacity is going to waste. He said his development will provide a tax base of \$3,000 to \$3,500 per house. When the box culvert is expanded under Casement Road, someone will need to expand the channel capacity downstream and provide bank stabilization to honor the clean water mandate. Weisbender said the City has spent millions on extending sewer and water facilities to an island annexation in Pottawatomie County. He said the City doesn't need to extend

those facilities to the Knight's Park site. He claimed that the island annexation was also inundated in 1993. He said the City has already set a precedent with the development to the west and with the island annexation. He said he has provided an adequate level of protection and gone the extra mile to protect safety and has met every measure of the Comprehensive Plan. He asked the Board to reconsider the request in light of the new facts he has presented.

Rolley opened the Public Hearing.

Rod Moyer (901 Knox Lane) indicated he lives about a mile downstream from the site and has a house along the river and was there in 1993. He said he witnessed the 1993 flood and saw how the ground settled and how foundations were harmed. Moyer said that in 1993 the water never "backed up", it was always a positive flow from the Big Blue River and he could only get to his house in an air-boat. Moyer said that bringing in a large amount of fill to build houses on is not a very stabilizing factor. In addition, the water will have to seek another area because it has to go around the area that has been filled, which could jeopardize other surrounding properties. He said there are areas north of Marlatt that are being proposed for development, one site over 100 acres, that will utilize the existing infrastructure and provide housing, without putting development in an area that may flood in future years. Moyer asked that the Board recommend denial of the request. Moyer said he has lived in Manhattan his whole life and has seen other developments that the taxpayers had to bail out. He was concerned that this is another example of a development that there is the possibility that taxpayers are going to have to step in to take care of and the developer won't be responsible for the flooding or other problems that could result in the future.

Linda Morse (2118 Spain Drive) asked that the Board reaffirm its earlier decision. Morse said the development does not conform to the Comprehensive Plan. She said the property is prime agricultural land and should be preserved. She was concerned about the overall total cost to the community and taxpayers and affordability. She was concerned the housing proposed would not be as affordable as promised, when infrastructure and flood insurance costs are considered and the costs to the taxpayers. Morse said the housing is at the top end of what soldiers can afford. She asked that the Board not place more residences in the 1993 flood impact area. If this is approved, it would be the first of many other proposals in the northeast area along the river and Knox Lane. She said Tuttle Creek is the largest volume lake in the state and we all know that it will flood again and the 1993 event was not an extreme storm. She said people don't care what level flood event it is, or if it's natural or manmade, if they get flooded. Morse said the community knows this area floods, as it has only been 14 years since it last flooded. She said the Corps of Engineers says not to develop areas below the dam that could be flooded. Morse said the City will be ethically haunted if it approves the development. Morse asked that the City not put future residents in harm's way and to take a hard line on this.

Paul Irvine (3370 Casement Road) said he has farmed in the area since 1951 and his sons want to continue farming there. He had concerns that the proposal will cause

water to back up onto his property and is concerned about the effect on owners downstream. He has seen large bank collapses along the river. Irvine said very little of the Brookfield area was under water in 1993, but that much of Knight's property was under water. He said he was previously on the Planning Board and that there was a lot of input from the community in updating the Plan. Irvine said he does not believe in changing the Comprehensive Plan every time a new proposal comes up. He said most people in the proposed development won't have flood insurance and would be the least able to afford the flood risk. Irvine said there are many single-family and duplex lots available in the community, as well as land for sale on Marlatt Avenue. Irvine has concerns about added traffic on Casement Road which will need to be improved even without the proposed development. He said it sounded like the Parks Department has concern about the park proposal along the river and liability issues. He said the property is prime agricultural land and the tree-lined Marlatt ditch in its natural state is better than what is being proposed. Irvine said there would be a public expense in maintaining the widened drainage channel and was concern the development would add problems that may result in the FEMA buyout. Irvine said there should be a buffer zone between the Big Blue River and Casement Road. He said the Comprehensive Plan and zoning and flood plain regulations' intent and purpose is to protect the public health, safety and welfare. He asked the Board to deny the proposal.

Diane Hoobler (1239 Sandy Land Road) in Zeandale said she serves on the 2025 Riley County Comprehensive Plan Task Force, which is charged with rewriting the County Plan. She said two items the Task Force has had consensus on are: the need for preservation of prime agricultural land; and not building within floodplains to keep people out of harms way. She said she was out of her house for eight weeks in 1993 and her house is in a flood plain and could not get to her house. While she had no flood water in it, all the walls were damaged. Hoobler said that filling would disturb the natural drainage ways on the site. She asked that they not annex the land.

Rolley closed the Public Hearing and asked for discussion from the Board.

Kohlmeier said she would not support the application because it is not consistent with the Comprehensive Plan policies. She said it is good to question policy; however this policy meets the logic test.

Meredith said the proposal has many positive aspects, such as how the engineer handled the Marlatt channel. He said he still remains concerned about where the water will go and there is enough doubt in his mind, that he is not able to support the request.

Ham said he agreed with those comments that there are some good items and there is a need for affordable housing, but not at this location. We had the 60,000 cfs release and it could have been more. He said he can't justify putting that many homes in this predicament. It's a manmade release that caused the flood and that is controlled by the Corps of Engineers. He said he doesn't equate that to a 100 or 500 year flood, because Tuttle Creek reservoir covers a huge drainage basin and there is probability

that we could have floods anytime and even worse ones that we have seen. Ham said the ultimate question is; whether he would want to live here and he would have to answer no. He said there is too much risk involved for people moving in the area and he cannot support it.

Reynard said his vote will not change. He said it is a matter of risk assessment. He said if you look at the site by itself the applicant did a good job, however there are too many unknowns that go with the site that he doesn't have answers for. One of those unknowns is the list of nine million dollars of CIP projects. The CIP projects are not a given, due to their costs and without these projects the project falls flat on its face and that is part of the risk assessment. Reynard said the project might be premature and they should wait to wait and see if the projects are done. He said he was confident in his vote.

Kratochvil said he will support the application, as before. Kratochvil said it comes down to what is an acceptable level of risk to the community. Kratochvil said that it's a matter of what level of risk the community, Planning Board and City Commission will accept. He said he understands why we are basing this on what happened in 1993, but what people don't know is that we were within 24-hours of totally exceeding the 60,000 cfs and that starts affecting the 1951 flood area which is the City downtown core. The risk has already been taken by the community in the areas where it has developed such as the downtown and the City, the County and the Corps know the high risk to the levee that have been taken, if the Corps needs to make a large flood release. He said the developer did a good job of addressing issues and there needs to be some improvements to the east side of the Marlatt ditch. The widening of the channel would be beneficial to the protection of the neighborhood and the east side of Manhattan. He said he has the same thoughts he had previously regarding the risk factor and there were positive aspects of the development.

Hill said it is a complicated and complex issue, and that it comes down between the engineering versus the wisdom of the Comprehensive Plan. He said he works with engineers a lot in his profession and he has to trust and believe in their work. At the same time, he said he served on the 2003 Comprehensive Plan committee and thinks the Comprehensive Plan is wise in its policy not to develop along the river in this area. Hill said Ham raised a good point in asking the question as to whether he would want to live there. Hill said if he asked himself that question, that even though he trusts the engineering, he still wouldn't want to live there. Hill said even though he voted for the development the last time, he has to follow the wisdom of the Comprehensive Plan.

Rolley said in looking at the thirteen standards used in reviewing rezoning applications, there are at least six that cannot be answered favorably in looking at this application. Under suitability of the site to land uses under current zoning, she said it is prime agricultural land and is suited to its current zoning. She said there is a question about compatibility of the development and if it would have a detrimental impact on nearby properties. She said that is the issue of water and that while you might be able to engineer a solution for this property, it does not answer the next

question. With regard to conformance to the adopted Comprehensive Plan, she said it clearly does not meet the standards of the Comprehensive Plan and there are very clear policies about the natural environment and resources and the wisdom of all the factors that went into drawing the Plan map. It is difficult to segregate out one item and pick an elevation point, or top draw a line, and say we can change it because it meets that one criteria. She said that many active and intelligent people were involved in developing the Comprehensive Plan and it was unanimously adopted by the Planning Board and Commission. She discussed the relative gain to the public health, safety and welfare that denial would accomplish versus the hardship on the applicant, indicating concern that while the site can be engineered, it leads people to think they can do all kinds of things with nature, which may or may not be able to be done. She said we can't predict what happens when the Corps makes large releases that have not anticipated before. She said engineering a solution for a natural condition is very different than engineering a solution for a large reservoir and she was not convinced that it can, or should be done. Rolley said there are clear policies in the Comprehensive Plan for protection of natural resources. She was concerned about the City's liability in having parkland along a river and the difficulty of maintaining the park land. With regard to adequacy of public facilities, she said the City has thought through the Comprehensive Plan and proposed CIP items that are planned for development that has always been anticipated on the west side of Casement Road. She said the recommendation of the professional staff was well analyzed. Rolley said approving the application would be setting a precedent for spot annexation and rezoning in areas that the Plan clearly has said not to promote development. She said the Comprehensive Plan guides the Board and this would set a precedent that that we can not live with down the road.

Kohlmeier moved that the Board recommend denial of the annexation of Knight's Park, based on the site not being in conformance with the Future Land Use Map of the Comprehensive Plan for the Manhattan Urban Area and the City of Manhattan, Kansas and the Growth Vision and because the Board has reservations about the proposal's ability to provide the same levels of protection to the area.

Reynard seconded the motion, which passed on a vote of 6-1 (Kratovich voting against).

Kohlmeier moved that the Board recommend denial of the proposed rezoning of Knight's Park from County G-1, General Agricultural District, to R-2, Two-Family Residential District, based on the findings in the Staff Report.

Reynard seconded the motion, which passed on a vote of 6-1 (Kratovich voting against).

3. UPDATES FROM THE PLANNING BOARD AND STAFF

Rolley reminded the Board about the list of three (3) items identified during the Boards joint work session with the City Commission:

1. Address the possibility of changing the jurisdictional boundary and make-up of the Planning Board;
2. Consider the possibility of utilizing Form Based Codes; and
3. Determining an appropriate method for undertaking area plans for the Northeast and Southwest portion of the community.

Rolley said the Board had also added a fourth item in discussion at its September 6, 2007 meeting regarding possibly updating the Stormwater Management Master Plan. She indicated she had a discussion with Community Development staff wanted to provide an update.

Rolley said with regard to the first item, the Planning Board will have a role to play in the process, however is not the group that will initiate that process, so the Board will need to wait until the appropriate time for its input. Cattell indicated the item will be brought up at the monthly City-County meeting later in the week for the two governing bodies to discuss and that staff will get back with the Board at the appropriate stage in the process.

On the second item, Rolley and Cattell explained that the 2009 Capital Improvements Program has a project to address updating the Zoning and Subdivision Regulations. Cattell indicated it was not yet known if the City would look at doing a unified development code that combines the two documents, or not. He said it would be a consultant driven project. In the meantime, he said the Planning staff would have a series of work sessions with the Board and educate the Board on the range of zoning tools available to consider and form based zoning is one option, so that when it comes time to doing the project the Board is better prepared.

Rolley identified the topics she and staff had discussed for future work sessions including: form based zoning, conservation design subdivisions, overlay districts, walkability and bikeability and design guidelines.

She said that with regard to item 3, area and neighborhood plans, staff will be collaborating with the other affected departments to determine the best approach and get back with the Board on the suggested process.

With regard to the update of the Stormwater Management Master Plan she asked Rob Ott for comments. Ott indicated that issue was on the Public Works task list and it will have to be worked into the other projects that are being worked on. Ott said he is familiar with some of the best management practices and has already done some research on the issue and will convey the Board's desire to have this issue addressed to the Public Works Director.

Cattell said staff will put together an outline of topics for future work sessions for the Board and that there were some other items such as the Airport Noise study that might be good topics for presentation to the Board.

II. WORK SESSION

1. PRESENTATION BY THE LEGAL DEPARTMENT CONCERNING THE LEGISLATIVE AND QUASI-JUDICIAL ROLES OF THE MANHATTAN URBAN AREA PLANNING BOARD; COMMUNICATION BETWEEN BOARD MEMBERS, BETWEEN BOARD MEMBERS AND THE PUBLIC; CONFLICT OF INTEREST AND OTHER SUBJECTS.

Katie Jackson, Assistant City Attorney presented a training program to the Board and answered questions covering due process, quasi-judicial, legislative and ministerial actions, and ex parte communications.

There being no other business, the meeting was adjourned.

Respectfully submitted,

Cam Moeller, Planner II