

**MINUTES**  
**MANHATTAN URBAN AREA PLANNING BOARD**  
**City Commission Room, City Hall**  
**1101 Poyntz Avenue**  
**September 19, 2011**  
**7:00 p.m.**

**MEMBERS PRESENT:** Jerry Reynard, Chairperson; Bill Meredith, Vice-Chair; Linda Morse; Mike Hill; Stephanie Rolley; and, Gary Stith.

**MEMBERS ABSENT:** Mike Kratochvil.

**STAFF PRESENT:** Eric Cattell, Assistant Director for Planning; Steve Zilkie, Senior Planner; Lance Evans, Senior Planner; and, Rob Ott, City Engineer.

**OPEN PUBLIC COMMENTS**

No one spoke.

**CONSENT AGENDA**

**APPROVE THE MINUTES OF THE SEPTEMBER 8, 2011, MANHATTAN URBAN AREA PLANNING BOARD MEETING.**

Morse moved that the Board approve the Minutes of the September 8, 2011, Manhattan Urban Area Planning Board meeting. Rolley seconded the motion, which passed on a vote of 5-0-1, with Stith abstaining.

**APPROVE THE FINAL DEVELOPMENT PLAN OF WESTPORT COMMONS UNIT THREE, COMMERCIAL PUD, AND THE FINAL PLAT OF WESTPORT COMMONS UNIT THREE, COMMERCIAL PUD, GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION OF BROWNING AVENUE AND DICKENS AVENUE. (APPLICANT: /OWNER: WESTPORT COMMONS DEVELOPMENT, LLC – TIM SCHULTZ)**

Stith requested the Final Development Plan and Final Plat be removed from the Consent Agenda. He indicated he had several questions.

**GENERAL AGENDA**

**APPROVE THE FINAL PLAT OF THE FIRST UNITED METHODIST CHURCH ADDITION, GENERALLY LOCATED NORTH OF POYTNZ AVENUE, SOUTH OF HUMBOLDT STREET, AND WEST OF N. 6<sup>TH</sup> STREET. (APPLICANT: /OWNER: THE FIRST UNITED METHODIST CHURCH OF MANHATTAN, KANSAS, INC. JOHN LINDHOLM, CHAIRPERSON, BOARD OF TRUSTEES)**

Cattell presented the staff report and recommended approval.

Morse asked for an explanation of the temporary easement noted on the plat. Cattell explained the easement. Morse asked who paid for the relocation of the public improvements. Cattell said the church will pay all the costs to relocate the public and private utilities and the alley.

Stith expressed a concern with the procedure to file the plat. He suggested the final plat should not be filed until the improvements have been constructed. His concern is that the agreement anticipates that the church may not construct the improvements, in which case there may be a filed plat that has the city's utilities located in a temporary easement in perpetuity which doesn't make sense. There might also be a platted right of way for the new alley that may conflict with the churches desired use for that area if they don't proceed with h project. Stith said suggested there should have either been a preliminary plat and the final plat shouldn't have been submitted until the church was ready to turn the utilities over to the city. Or, the City Commission should not accept the alley right-of-way and easements until the city is ready to accept the new improvements.

Cattell said there was a lot of discussion about the procedure with the Legal Department. He said if the church didn't proceed they could replat it back to its current condition. Stith said that in the eventuality the church didn't proceed with the improvements, it may be more beneficial to not file the plat until the improvements were built so they could continue use the site as is. Cattell said the City Attorney felt this was the best way to proceed.

Stith said the only argument to file the plat is for the improvements to be built in the easements. but without a preliminary plat the Board doesn't know where the utilities will be built. He said the church could build the utilities on their property and dedicate easements when they are ready to turn them over to the city. Cattell explained where the utilities would be located.

Rolley asked if the Development Agreement between the City and Church was contingent on approval of the plat. Cattell said the Agreement does not require the Planning Board to approve the plat; however the plat must be approved by November 1, 2011, or the Agreement is terminated. The Planning Board approves the plat, the City Commission accepts the easements and rights-of-way and the plat is then filed with the Register of Deeds.

Stith asked if the Board could request the City Commission not accept the easements and rights-of-way, until the improvements are built and accepted by the city. He asked who would be responsible to file a future replat, as it isn't set out in the Agreement.

Stith asked if variation findings were necessary to allow the change to the alley. Zilkie said staff had discussed the provision and didn't think a variation was necessary, because the Subdivision Regulation's specifically indicate that the Planning Board can decide alley layouts, whereas with other provisions a variation is required.

Hill asked Ott if the utilities had to be built in easements. Ott said the utilities could not be inspected if not in easements.

Thaniel Monaco, BG Consultants representing the church, said the church would agree to a condition to the plat, requiring that a replat be submitted by the church at no cost to the city, if the improvements are not built and the Agreement is terminated. He said there was a lot of discussion between the city and the church before the Development Agreement was finalized and the city and church felt it was the best way to proceed. He said the Churches chair of the trustees was present and agreed to the condition.

Hill asked if there any instances where public utilities were on private land without an easement. Ott said he wasn't aware of any utilities where an easement or right-of-way wasn't present.

Morse asked about the storm water drainage. Monaco explained the proposed storm water system to be built, owned and maintained privately.

Stith asked if there would be on-site detention. Monaco said no and there will be a slight decrease in impervious surface as a result of the proposed development.

Reynard asked if there were any comments from the public.

John Lindholm, Chair of the Board of Trustees, said as Chair the church intends to build the project and would agree to a replat if the improvements were not built and Agreement is terminated.

Hill moved that Manhattan Urban Area Planning Board approve the Final Plat of First United Methodist Addition, based on conformance with the Manhattan Urban Area Subdivision Regulations, with the following recommendation to the City Commission:

1. If the church does not complete the project, that the church shall replat the property to its original condition

Zilkie said the Board conditions approval of the plat and it's not a recommendation to the City Commission. Hill revised his statement as a condition of approval on the plat. He also said that staff could determine the timing for submittal of the replat. Zilkie said he didn't think it was necessary for staff to decide.

Stith suggested the condition be revised to state, "If the Agreement is terminated, the church would replat the property to its original condition." Hill agreed to the change to his motion to read,

1. If the Agreement is null and void, the church shall replat the property to its original condition.

Stith seconded the motion and asked how it would be enforced. Cattell said if the Development Agreement is void then staff would contact the church to replat the property.

Rolley said the Board has worked its way through a decision based on engineering and infrastructure discussion with no discussion on design and planning in the downtown.

She said there were no planning documents that she could find that allow, or require, the Board to consider the impact like the one proposed with the plat, on the function of the downtown. She said the Downtown Tomorrow Plan is outdated and when the Board considers requests like this that all types of circulation including alley and pedestrian circulation functions should be considered. She said it was sad that an alley can be vacated by an action by the City Commission and then presented to the Board as an engineering plat and that's as much discussion as there would be.

On a vote the motion was approved 6-0.

**APPROVE THE FINAL DEVELOPMENT PLAN OF WESTPORT COMMONS UNIT THREE, COMMERCIAL PUD, AND THE FINAL PLAT OF WESTPORT COMMONS UNIT THREE, COMMERCIAL PUD, GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION OF BROWNING AVENUE AND DICKENS AVENUE. (APPLICANT: /OWNER: WESTPORT COMMONS DEVELOPMENT, LLC – TIM SCHULTZ)**

Stith said the ground sign along Browning adjacent to the new building is a directory sign and didn't appear necessary at that location versus an identification sign.

Tim Schultz said his clients would disagree about the need for a directory sign. He described the proposed sign as smaller, with only two name plates on the sign for the two new businesses, which wanted a sign for visibility along Browning, because no business identification sign is available except at the entrance off Dickens. He also described the signage plan changes proposed with the Final Plan.

Hill asked for a description of the signs. Schultz said the sign would be about five feet tall, made of brick and it would be landscaped. He said that the Plan shows a sign with 14 names, but only two will be on the brick sign. He said the letters will be larger and ground lit, but he has been asked if the signs can be back-lit. He said there is a private covenant that prohibits backlit signs and there may be discussion to allow the sign as backlit.

Stith asked if it would help with Schultz's negotiations if the Board did not allow a backlit sign. Schultz said he was trying to work with his tenants.

Stith moved that the Manhattan Urban Area Planning Board approve the Final Development Plan of Westport Commons Addition, Unit Three, Commercial Planned Unit Development, based on conformance with the approved PUD; and, approve the Final Plat of Westport Commons Addition, Unit Three, Commercial Planned Unit Development, based on conformance with the Manhattan Urban Area Subdivision Regulations, with the following condition of approval:

1. The sign facing Browning Avenue shall be limited to two signs and shall not be internally illuminated.

Schultz said he understood the limit to two signs, but not the basis for restricting illumination. Stith said the reason for the covenant restricting backlit signs was that the

neighborhood across the street may be concerned about the change to internal illumination.

Rolley seconded the motion.

Hill said he wouldn't support the motion and that he didn't understand the difference between two names and three names. Meredith agreed with Hill.

Morse said it was a nominal change and she would support the motion.

On a vote of (3-3) the motion failed, with Stith, Morse and Rolley in favor, and Hill, Reynard and Meredith opposed.

Rolley moved that the Manhattan Urban Area Planning Board approve the Final Development Plan of Westport Commons Addition, Unit Three, Commercial Planned Unit Development, based on conformance with the approved PUD; and, approve the Final Plat of Westport Commons Addition, Unit Three, Commercial Planned Unit Development, based on conformance with the Manhattan Urban Area Subdivision Regulations, with the following condition of approval:

1. The signs in the PUD shall not be internally lit and shall follow the designs as presented in the Final Development Plan with the size of the sign on Browning Avenue appropriate to the number of businesses not to exceed those shown on the drawings.

Stith said the motion did not reduce the number of signs and 14 signs cannot be read while driving on Browning Avenue. He said he could agree to four signs.

Meredith seconded the motion.

Rolley said the illumination limit is based on the public input during the rezoning and concerns about introducing commercial activity into the neighborhood. Adding internal illumination moves the commercial look on Claflin Road into the neighborhood. She said she will trust the developer not to build the sign any taller than it needs to be.

Reynard said he understood, but would rely on the developer and back lighting may not be too bright and the Board was over-managing.

Schultz said he was not a fan of backlit signs. He said Chris Curtin added the covenant on the site before selling it, but that it would not apply to the bank on Claflin Road.

On a vote the motion was approved 6-0.

**DISCUSS ALTERNATIVE APPROACHES FOR ADDRESSING CREMATORIALS IN THE MANHATTAN ZONING REGULATIONS.**

Zilkie presented the staff report and alternatives.

Reynard asked if there any members of the public that wanted to address the Board.

Doug Meloan, Yorgensen-Meloan-Londeen Funeral Home, said they started the crematorium issue. The funeral home has been at its current location for over 30 years and on Poyntz 80 years. Currently, as the number of cremation requests has increased, the funeral home relies on crematories in Salina, Topeka, Wichita and Kansas City. He said they don't mind but it is an inconvenience.

Current cremation rate is about 50 percent. When the cremation rate increased to 50% a lot of travel has increased and they want the service available locally.

They asked the city if there were zoning issues and were informed there were none. He said they met with their architect and wanted an addition that fit in the area. Its location was adjacent to its professional staff. It was always their intent to meet with the neighborhood but word got out before they could meet. They were surprised at the response based on conversations they'd had in the community about the need for a crematorium. Once they found out about the concerns, they decided to step back for now to do what's best for everybody.

Bruce McMillan was asked if there is any gas, odor or smoke that is emitted, and responded that to the best of his knowledge the emissions are controlled within the crematorium itself except for a slight steam that is exhausted but nothing more from a flue. He visited the Hutchinson crematorium and saw the unit and the manufacturer indicates the emissions are minimal. He said the crematorium meets the zoning except for parking. Initial staff response was that parking for the crematoria itself had to be provided and they were informed afterwards that parking for the entire site was an issue and needed Board of Zoning Appeals approval.

Reynard asked if the neighborhood, or any neighborhood, would find the crematorium offensive. McMillan said he couldn't respond for the neighborhood.

Katie Harkin, 1610 Humboldt Street, said she is a neighbor and found out early about the project by accident. She said she is concerned as a parent of a six and eight year old child. She said that initially she didn't know about crematoriums and didn't really know about cremation. She said as a veterinarian she has seen a lot of things and is not uneasy about the cremation of humans. Once she started reading about cremations she learned about the emission of mercury from dental amalgam as well as other emissions. She commented that the C-1 District is supposed to be compatible with neighborhoods and does not see how mercury raining down on her family is compatible, or on schools and parks in the area which would affect children. She said the proposed location doesn't match and is not a good fit for the neighborhood. She said she understood the funeral homes need for the service but not in a residential neighborhood.

Reynard asked if Harkin had found anything about filtering of crematoriums. Harkin said they can be filtered. Her research indicated that certain communities have required filters, which can be very costly. She said the unit the funeral home proposed to use was a Millenium III cremator and she called direct sources for information and salesman told

her the mercury would be burned twice and go to nothing. She said as a scientist that no matter how many times it is burned mercury will be released. The other thing about mercury it will accumulate and deposit on the ground and water. She also found out that the EPA and KDHE do not regulate mercury emissions and the answer she got from the air quality scientist at KDHE is that it is up to the local community and is a zoning issue and where crematoriums can be placed. She said the community needs more control. She said if it is allowed on her block she will be breathing, walking on, seeing it and possibly smelling it.

Eric Londeen said that in no way does the funeral home want to harm anyone. He said all the directors have gone through the licensing process. He said he contacted a local dentist who said he and other dentists have not used mercury in a long time and the number of people with mercury fillings will diminish over time. They have also been told that the amount of mercury from a crematorium is about the size of two sugar cubes but didn't know if that was substantiated or not. He said there is more mercury in mercury bulbs in the city than what would create harm in the city. Today it is a small amount and will decrease.

Rolley said it appears with the changes in dental technology it won't be as much of an issue in the future. She asked if teeth were not something that had to go into the crematorium? Londeen responded that if there is a requirement to pull a tooth that he wouldn't do it and thought it was disrespectful on multiple levels.

Morse asked about the average size and features of crematoriums. Londeen said it was designed to allow families to witness the cremation for a short period of time. The size of the building is about 29 by 45 feet. He explained the interior design.

Jan Borst, 1918 Humboldt Street, has no qualms about locations but asked the Board to look at the levels of mercury emission and no matter what anyone says there is no safe level of mercury. She was also concerned about the licensed crematorium operators being self regulated. Her understanding was EPA called human remains medical waste and had questions about that. She was also concerned the Board sometimes made decisions about who was making the request. She also wanted to know how many people would be cremated and the number of sugar cubes would add up. She has a lot of respect for the funeral home but wanted a discussion about emissions.

Meloan said he appreciated Harkin's and Borst's concerns and wants to do what is right for the community. He said the Board of Mortuary Arts regulates funeral homes and watches operations very carefully. He said whatever the city decides it should be respectful and if built in an industrial area it would be highly disrespectful and asked the Board not to consider crematoriums in industrial districts.

Hill asked Meloan about mercury filters. Meloan said he didn't know about filters. He mentioned a crematorium he worked in had a 500 foot requirement for comment. He said the Cremation Association of North America licensing told him they make a filter and there is debate if it is efficient and costs about \$150,000. If the city wants filters they will need to decide if they wait until technology evolves. He appreciated the neighbor concerns but was also concerned about himself and his employees as they will be at the

site and if there was a concern he wouldn't give this a second thought and would look for another location. As new technology and education comes along they learn more and think the proposed location is where they want it. He said they've been told it is a good location and some have said it is not and is looking for the community's help.

Hill said he felt the information about mercury in light bulbs is more of an issue than crematoriums and was something to think about and puts it into perspective for himself. Rolley asked if he had information that confirmed that and the Board doesn't know? He said his guess is that light bulbs were more concern than one crematorium.

Kathy Dzewaltowski, 100 S Delaware, said she lived two and one half blocks from the funeral home and is not bothered by the process but is concerned about the emissions. She reminded the Board about a recent local incident where mercury was found and the EPA representative had said no amount of mercury was safe.

Stith said the city needs a crematorium and intends to use the service but did not want his particulate matter to rain down on children. He said he didn't have enough knowledge to make a decision. He said the board needed to decide how to accommodate the use. Alternative 1 would allow the use as an accessory by right use but the community wouldn't be able to raise any concerns and that would be a problem. He thought the community and decision makers would need to be more educated about the use. Design issues as well could not be considered but may not be critical. Any solution should allow the community to raise concerns and several of the alternatives don't allow public input. However, the Board needs more technical information.

Morse said the staff's position leaned towards allowing crematoriums as a permitted accessory use. Compatibility as an accessory use or as a free standing use needs to be considered as well as the operator. She said she wasn't sure what was appropriate without more information. She also mentioned animal cremation.

Meredith said he wanted to know more about mercury emissions and planned on contacting someone he knows about emissions. He said the Sunrise Cemetery was an option but needed more information.

Rolley said the Board needs more information for a process to allow for public input and expert knowledge about mercury emissions. So far, all the Board has heard from is the public.

Zilkie said staff would provide more information as requested by the Board.

### **REPORTS AND COMMENTS BY BOARD MEMBERS**

Cattell told the Board that the Wildcat Creek Watershed Area Working Group will meet on Thursday, September 22<sup>nd</sup>, at 7:00 PM in the City Commission Room.

Respectfully submitted,

Steve Zilkie, Senior Planner