



MINUTES
MANHATTAN BOARD OF ZONING APPEALS
City Commission Room, City Hall
1101 Poyntz Avenue
Thursday, October 25, 2018
6:00 PM

MEMBERS PRESENT: Harry Hardy, Chairperson; Connie Hamilton, Vice-Chairman; La Barbara Wigfall; Sara Fisher

MEMBERS ABSENT: Angie Danner

STAFF PRESENT: Katie Jackson, City Attorney; John Adam, Senior Long Range Planner; Shauna Laauwe, Planner II

Meeting was delayed, began at 6:13 p.m.

WORKSHOP AND TRAINING SESSION TO REVIEW THE BOARD OF ZONING APPEALS BYLAWS AND VOTING PROCEDURES WITH THE CITY ATTORNEY AND PLANNING STAFF.

Jackson provided Board members and Staff copies of an article: “Open Government: The Kansas Open Records Act (“KORA”).” The literature provided discussion on the Kansas Open Meetings Act (KOMA), and Conflict of Interest for Quasi-Judicial Acts. Jackson discussed the Kansas Open Meetings Act (KOMA) and what that meant in relation to receiving phone calls, letters, or emails. Board members were advised to publically acknowledge receipt of any contact about a pending case during the public hearing process and to pass along written or electronic correspondence to Staff.

Board members and Staff discussed different scenarios of receiving such information.

Jackson then led a discussion regarding conflicts of interest and different situations where a Board Member may feel the need to, or not to, recuse themselves. It is a personal decision based on if a Member feels they can decide objectively on an item.

Jackson then provided the Board members with a discussion outline for Voting Procedural Training for the Board of Zoning Appeals:

1. Board’s Purpose
 - a. Required by state law, K.S.A. 12-759 et seq.
 - b. Established locally by the Manhattan Zoning Regulations
 - c. Governed by the BZA bylaws; see Section 1

2. Quasi-Judicial role
 - a. A decision is required; a “judge” cannot decline to act.

- b. Fair, open and impartial decisions
 - c. Resolving a “dispute” between the zoning regulations and the applicant
3. Defensible decisions
- a. Notice of public hearing as required by law
 - b. No “ex-parte” contact, or if it occurs, must be declared at the public hearing
 - c. Declare any conflicts of interest and recuse if needed
 - d. Public hearing conducted with due process in accordance with state law and Section 2 of the Bylaws
 - e. Basis for decision must be stated in findings of fact based upon the evidence received in the staff report and at the public hearing
4. Voting
- a. A quorum of 3 must be present and voting
 - b. An affirmative by a majority of those present and constituting a quorum is required to approve an action, except in the case of an appeal of a zoning admin decision
 - c. Question “to approve” must be called. There is no “motion” and “second”.
 - d. Vote “yes” for approval and “no” for denial. Don’t call a question “to deny.”
 - e. Roll call vote required
 - f. Outcome should be announced after the vote (Variance approved; Variance not approved)
 - g. Written decision must be delivered to applicant.
 - h. Appeal to district court
5. Voting results (all requests other than appeal of zoning administrator’s decision):
- a. When 5 members present, a request is approved when the vote is:
5-0 4-1 3-2
 - b. When 4 members present and voting, a request is approved when:
4-0 3-1 (a 2-2 vote is denial, because majority did not approve)
 - c. When 3 members present and voting, a request is approved when:
3-0 2-1

Jackson presented each topic in the outline that followed with Board and Staff discussion. Jackson, Adam, Laauwe, Chairperson Hardy, Vice-Chair Hamilton, Fisher, and Wigfall were all active participants in the discussion and understanding of the Board of Zoning Appeals voting procedures.

Laauwe will provide the Chairperson and Board with a procedural checklist to be utilized during the Board of Zoning Appeals public hearings.

Hardy adjourned the meeting at 7:43 p.m.

Respectfully submitted by,
Shauna Laauwe, Planner II