

**ITEM 4      CASE #09-09-SUP – HOLD PUBLIC HEARING REGARDING A SPECIFIC USE PERMIT AND CONSIDER A RECOMMENDATION FOR AN ORDINANCE**

Receive public input regarding a request for a Specific Use Permit on Kitty House Survey, A-678, Tract 1B3, for a Crematory and Mortuary in TX-10 (Texas Highway 10 Multi-Use District) zoning, and consider a recommendation regarding an Ordinance. This property is located on 2215 W. Pipeline Road.

Chairman McNeese opened the public hearing.

Stephen Cook, Senior Planner, gave a brief description of the case. Community Mortuary Services is seeking to lease space within an existing structure, located at 2215 W. Pipeline Road, in order to establish a crematorium and mortuary use. The property is located within the TX-10 (Texas Highway 10 Multi-Use District) zoning district, which requires the approval of a Specific Use Permit (SUP) for the establishment of that use. The proposed use would occupy lease space within the existing building adjacent to All Paws Go to Heaven, a pet crematorium use approved by Specific Use Permit (06-08-SUP) by the City Council in August 2006. The subject space was formerly occupied by a place of worship which had been granted a Specific Use Permit in April 2009. The applicant has indicated that the service provided by the use is the preparation for burial of human remains as well as the preparation and cremation of human remains. The applicant would install a crematorium within the facility. The mortuary will also involve a refrigeration room for the storage of remains as they are moved in transit. The business will be open from 7:00am to 7:00pm and be staffed continuously during this time. The business will be on-call 24 hours a day for transportation requirements. No services will be held at the location. Members of families may attend a cremation process. If approved, the applicant would be required to submit building permit applications for the renovation of the interior of the building to be utilized by the crematory. Staff has received two written responses from adjacent property owners opposed to the SUP. The primary reason for opposition to the use is cited as a repugnant "burning odor" that is frequently experienced from the existing pet crematorium on the site. The Planning and Development Department has not previously received any formal complaints from surrounding property owners regarding odor. One of the thirteen conditions for approval of a SUP states: "adequate nuisance prevention measures have been or shall be taken to prevent or control offensive odors, fumes, dust, noise, vibration and visual blight." City staff would ensure through Code Enforcement any deviation of the use from being in compliance with the nuisance and performance standards regulating dust, noise, air pollution and vibration found in Sec 84-184 of the Unified Development Code. Control of offensive odors is not a performance standard found in 84-184 and is inherently difficult to quantify. The Texas Commission on Environmental Quality (TCEQ) regulates the air emissions from crematories. Staff would recommend that a condition be placed as part of the SUP that would require the applicant to provide staff with current permits and licenses issued by TCEQ regarding their compliance with State regulations. The Development Review Committee (DRC) has reviewed the application and finds that it

substantially conforms to City regulations. Staff recommends denial of the Specific Use Permit. If Planning and Zoning Commission should recommend approval of the Specific Use Permit, Staff would recommend the following conditions:

- 1) Tied to the business owner: Sherrie Ann Dalton
- 2) Tied to the business name: Community Mortuary Services
- 3) Tied to the location for the period of one year to be renewed by application to the City of Euless.
- 4) All loading and unloading will be made through the rear entry of the structure.
- 5) All activities will be confined internally to the building.
- 6) A secondary power source will be provided to the cremation equipment in case of emergencies in order for a cool down process to occur.
- 7) The Owner shall provide to the City of Euless any reports, inspections, or certifications by Federal or State licensing agencies – including but not limited to the Texas Commission on Environmental Quality (TCEQ).

Richard Dalton, 1712 Caladium, Corinth, Texas, stated the concerns that adjacent properties have with the pet crematorium could be because the equipment might not be up to standards with today's technology. His machinery is state of the art that has pollution control, temperature control, and it does not emanate dust or fumes. A camera system would be installed to visually monitor the stacks so if there are any admissions you would be able to see them. He has been doing this for 23 years and has never had a problem with TCEQ or the state. This is a facility that Euless does not have and with about 20 to 25 percent of the population choosing cremation, they currently have to go to Fort Worth or Dallas to have it done.

Chairman McNeese asked for any proponents/opponents to come forward for any comments. Chairman McNeese entered into the record two written protest received by Voss Parts & Supply Inc. and by Arrow Bolt and Electric, Inc.

Esther Johnson, 1205 Pebble Creek Drive, Euless, Texas, stated she has viewed the exhibits for this case and it appears they are not accurate to scale. She is concerned with the size of the walk-in cooler and the loading/receiving area. She read that members of the family may view the cremation and did not see how that would be controlled if they invite more people.

Chairman McNeese asked Chris Barker how many parking spaces would be required for this use.

Chris Barker, Director of Planning and Development, stated the facility has 2 or 3 employees that would park behind the gate and allow the front parking for the occasional customers that want to view the cremation. From staff's prospective the facility has adequate parking.

Richard Dalton stated they may have 1 or 2 a month and it is usually just the immediate family that will come. There are some religions that will come with their monks and at

the most usually about 7 or 8 cars. If there happens to be more people arrangements are made such as to have a limousine pick them up to and drive them to the facility.

Chairman McNeese asked the applicant what was the largest number of people he had attend a cremation.

Richard Dalton stated the largest number he has seen may have been 25 cars for a religious figure but they have more room at this facility to park.

Chris Barker stated there are 10 spaces in the front and there is additional spaces in the rear where if they had an overflow they could use the back parking.

Commissioner Brown asked if the 10 spaces were for both tenants in the building.

Chris Barker stated that is correct.

Seeing no other proponents/opponents Chairman McNeese closed the public hearing.

Commissioner Huffman asked the applicant if he was a licensed mortician.

Richard Dalton stated he was not.

Commissioner Huffman asked if this is a business for himself.

Richard Dalton stated it is a business that he and his wife started. He stated for this type of business he is not required to be a license mortician but he does have a Funeral Director in Charge (FDIC).

Commissioner Portugal asked the applicant what he was planning as far as ratios for embalming and cremation.

Richard Dalton stated the majority of his business will focus on first calls (making removals for the families for the funeral homes) and the cremations. The embalming will probably be around 15%, first calls will be around 35%, and the cremations will be the remaining.

Commissioner Portugal asked where his closest competitor is located.

Richard Dalton stated the closest competitor that deals with the public is in Fort Worth called Tarrant County Mortician Service located near the downtown area.

Commissioner Portugal asked if his 23 years of experience is in running the machinery.

Richard Dalton stated it is with running the machinery and the business.

Commissioner Portugal asked how familiar he was with this equipment he is presenting.

Richard Dalton stated he could pretty much take the machine apart and put it back together.

Commissioner Portugal asked how often he has to replace or upgrade the equipment.

Richard Dalton stated as far as the machine goes you can rebuild it and rebuild it because on the inside it bricks and mortar. Annual maintenance is done to clean the burners but there are not many moving parts that wear out or break. There are upgrades in technology that you can add to the machine.

Commissioner Portugal asked why he would want to upgrade such as Environmental Control.

Richard Dalton stated because there are some points where you cannot get the parts for older components.

Vice Chairman Bearden stated one of the complaints was for the smell and asked the applicant what measures he will take to adequately deal with this issue.

Richard Dalton stated the machine has temperature controls and pollution control devices that detect any type of emissions that may come out and will shut the machine down into safe mood.

Vice Chairman Bearden asked where his existing business is located.

Richard Dalton stated it is in Lewisville.

Vice Chairman Bearden asked how high the smoke stacks go above the roof.

Richard Dalton stated they all go above the peak of the roof.

Vice Chairman Bearden asked if he has businesses around his existing location and if so, do they complain about the smell.

Richard Dalton stated it is surrounded by houses and a church. Some of the houses that get rented do complain because they do not realize what business they are moving by. The city will come out and inspect the facility and they meet all their requirements.

Commissioner Mennis asked the applicant if he could elaborate on having to have a secondary power source.

Richard Dalton stated it is a requirement and it is where the main power goes out of the building and if the power goes out then a generator will turn on.

Commissioner Mennis asked if he had an issue with this.

Richard Dalton stated no, but in the worst case scenario, it might cause some smoke.

Commissioner Mennis asked if the power is controlled by gas.

Richard Dalton stated yes.

Commissioner Mennis asked if the machine is electronically controlling the gas.

Richard Dalton stated that is correct.

Commissioner Mennis asked if he had any other issues with any of the other stipulations for the Specific Use Permit.

Richard Dalton stated he did not.

Commissioner Brown asked the applicant if the secondary power source was a portable unit.

Richard Dalton stated he would have to have an electrician address that because he has never had to have a secondary power source.

Commissioner Brown asked how often the units are inspected.

Richard Dalton stated the units are inspected every year by the state.

Commissioner Brown asked if he has had any citations based on the inspections.

Richard Dalton stated he had a citation for not having a fire extinguisher.

Commissioner Brown asked what type of parts the state inspects.

Richard Dalton stated the state Funeral Service Commission inspects the machine to see if it is operating correctly and the facility. The TCEQ comes out if there is a complaint and they look at the machine to see if it has been operating correctly. There is no agency that comes out and does any testing.

Commissioner Brown asked if it was up to the operator on whether to use the electric eye.

Richard Dalton stated it is wired into the combustion chamber and if the eye is not working the machine will not ignite.

Commissioner Brown asked if he would repair his own unit.

Richard Dalton stated he would if possible.

Commissioner Brown asked how he determines when it needs to be repaired.

Richard Dalton stated that the brick will start to get thin. He looks at the interior every day after the process. They inspect under the machine once a year and the floors are usually good for about 1,500 cremations.

Commissioner Brown asked about how many cremations he expects to do in a year.

Richard Dalton stated around 1200 cremations a year.

Chairman McNeese asked if TCEQ has done an inspection while he was doing a cremation.

Richard Dalton stated he has.

Chairman McNeese asked as sophisticated as this machine is and the sensors they have if a problem arises, in his 23 years experience is there any sensor that will detect an odor and shut the machine down.

Richard Dalton stated there is not.

Chairman McNeese asked in his opinion if he believed that this business is compatible at this location and would not have any negative effect on the existing businesses or surrounding homes.

Richard Dalton stated he believes this to be correct.

Vice Chairman Bearden made a motion to approve case #09-09-SUP. Commissioner Huffman seconded the motion. The vote was as follows:

Ayes: Vice Chairman Bearden, Commissioners Huffman and Portugal

Nays: Chairman McNeese, Commissioners Zahn, Mennis, and Brown

Abstention: None

The motion failed (3-4-0)

Commissioner Zahn made a motion to deny case #09-09-SUP based on #6 and #8 within Section 84-153 "Conditions of permit approval". Commissioner Mennis seconded the motion. The vote was as follows:

Ayes: Chairman McNeese, Commissioners Zahn, Mennis and Brown

Nays: Vice Chairman Bearden, Commissioners Huffman and Portugal

Abstention: None

The motion carried (4-3-0)