



CITY OF LEAVENWORTH
100 N. 5th Street
Leavenworth, Kansas 66048

City Commission Regular Meeting
Commission Chambers
Tuesday, May 25, 2021 7:00 p.m.

CALL TO ORDER - The Governing Body met for a regular meeting and the following commission members were present in the commission chambers: Mayor Nancy D. Bauder, Mayor Pro-Tem Camalla Leonhard, Commissioners Myron J. (Mike) Griswold, Mark Preisinger and Jermaine Wilson.

Staff members present in the commission chambers: City Manager Paul Kramer, Assistant City Manager Taylour Tedder, Director of Planning and Community Development Julie Hurley, Public Works Director Brian Faust, Police Chief Patrick Kitchens, City Attorney David E. Waters and City Clerk Carla K. Williamson.

Mayor Bauder asked everyone to stand for the pledge of allegiance followed by silent meditation.

Mayors Award to Sandy Simmons for exceptional dedication to the Leavenworth Back Pack Buddies for over 14 years.

OLD BUSINESS:

Consideration of Previous Meeting Minutes:

Commissioner Preisinger moved to approve the minutes from the May 11, 2021 regular meeting. Commissioner Leonhard seconded the motion and the motion was unanimously approved. Mayor Bauder declared the motion carried 5-0.

NEW BUSINESS:

Public Comment: (*emails received by the public for public comment on non-agenda items will be read at this time limited to 2-3 minutes*) -- No emails were received.

General Items:

Acceptance-Dedication of Land for Public Purposes; Eisenhower Marketplace Final Plat - Director of Planning and Community Development Julie Hurley presented for consideration the final plat for Eisenhower Marketplace located at the northwest corner of Eisenhower Road and Lakeview Drive. The plat was unanimously approved by the Planning Commission on May 3, 2021. The action required by the City Commission is to accept the dedication of land for public purposes in the form of utility easements associated with the plat.

Commissioner Leonhard moved to accept the dedication of land for public purposes as part of the Eisenhower Marketplace final plat. Commissioner Wilson seconded the motion and the motion was unanimously approved. Mayor Bauder declared the motion carried 5-0.

Acceptance-Dedication of Land for Public Purposes; Adam's Valley Final Plat - Director of Planning and Community Development Julie Hurley presented for consideration the final plat for Adam's Valley

residential development located at 1440 and 1460 Quincy Street. The plat was unanimously approved by the Planning Commission on May 3, 2021. The action required by the City Commission is to accept the dedication of land for public purposes in the form of utility easements and right-of-way associated with the plat.

Commissioner Preisinger moved to accept the dedication of land for public purposes as part of the Adam's Valley final plat as presented. Commissioner Wilson seconded the motion and the motion was unanimously approved. Mayor Bauder declared the motion carried 5-0.

Mayor's Appointment

Mayor Bauder moved to appoint to the City Planning Commission Harold (Bill) Waugh to an unexpired term ending May 1, 2024. Commissioner Leonhard seconded the motion and the motion was unanimously approved. Mayor Bauder declared the motion carried 5-0.

Bids, Contracts and Agreements:

Consider Sole Source Bid for 2021 Police Car Equipment - Police Chief Patrick Kitchens presented for consideration a sole source purchase of four (4) replacement in-car camera systems in the amount of \$26,395.00 from Safe Fleet Coban Mobile Visions. Safe Fleet Coban provides the operating system for the entire police fleet and has since September 2013. It is necessary to purchase equipment from them for compatibility to the system.

Commissioner Wilson moved to approve the sole source bid in the amount of \$26,395.00 from Safe Fleet Coban Mobile Vision to replace four in-car camera systems. Commissioner Griswold seconded the motion and the motion was unanimously approved. Mayor Bauder declared the motion carried 5-0.

Consider Agreement with Kansas Department of Transportation (KDOT) for 4th Street Improvements – Public Works Director Brian Faust presented for consideration Agreement No. 142-21 with KDOT related to City Connecting Link Improvements Program (CCLIP) award for the 4th Street Pavement Rehabilitation Project. In 2019 the city submitted CCLIP applications to KDOT for 2 project along 4th Street. One from Choctaw to Delaware and one from Delaware to Seneca. In July 2020 KDOT selected the Choctaw to Delaware project with a cost share of 85%/15% with KDOT contributing 85% of the eligible costs with a maximum contribution of \$1,000,000.00. KDOT agreed to include the Delaware to Seneca portion of the second project in the overall project but the city will be responsible for all costs associated with the sections between Delaware and Seneca.

Commissioner Griswold moved to authorize the Mayor to sign Agreement No. 142-21 between KDOT and the City of Leavenworth related to Improvements to 4th Street between Choctaw Street and Seneca Street. Commissioner Leonhard seconded the motion and the motion was unanimously approved. Mayor Bauder declared the motion carried 5-0.

First Consideration Ordinances:

First Consideration Ordinance to Rescind Special Use Permit 1700 10th Avenue – City Clerk Carla Williamson presented for first consideration an ordinance to rescind the Special Use Permit allowing Video

Rental & Sales at 1700 10th Avenue. The Family Video which previously occupied the property closed earlier in the year and the Special Use Permit is no longer applicable to the property.

There was a consensus by the Commission to place on first consideration.

First Consideration Ordinance Special Use Permit Daycare 2137 Birch Street - Director of Planning and Community Development Julie Hurley presented for first consideration an ordinance allowing a Special Use Permit for operation of an in-home Child Care Center at 2137 Birch Street. City code does allow for Child Care Centers in R1-6 zoning districts with issuance of a special use permit.

Ms. Hurley reviewed the Conditions of Determination presented in the policy report. These are sometimes referred to as the “Golden Standard or Golden Rule” from the Kansas Supreme Court case Golden v City of Overland Park Kansas.

CONDITIONS OF DETERMINATION

In recommending approval of a special use, the Planning Commission may impose such conditions, safeguards and restrictions as may be necessary to carry out the general purpose and intent of the ordinance. The development regulations stipulate specific conditions as a requirement for the approval of Child Care Centers as follows:

1. Shall not be located along an arterial street as designated on the Major Street Plan Map unless indirect vehicular access to that street, such as with a frontage road is available. The City Planner, with the advice of the DRC, shall determine if the drop off and pick up arrangements of a childcare center or business appear safe. Appeal of any negative decision shall be to the City Commission.
The subject property is located along Birch Street, which is classified as a Residential street.
2. Shall provide at least one hundred (100) square feet of open space per child. This open space shall be 100% enclosed by a minimum four (4) foot high fence or wall.
The subject property includes a back yard area of approximately 3,050 sq. ft., enclosed by a 4’ wooden fence. The back yard is adjacent to fenced backyard of residential properties.
3. Shall provide a loading zone capable of accommodating at least two (2) automobiles for the easy picking up and discharging of passengers.
The subject property does have a driveway or other paved off-street loading area. There is ample on-street parking in front of the subject property as well.
4. Shall conform to all requirements of the State of Kansas and shall acquire a State of Kansas Child Care Center License.
The applicants have provided a copy of their Group Day Care Home permit from the Kansas Department of Health and Environment.
5. All childcare centers operated in residential zoning districts shall be the only legal residence of the operator.
The home functions as the only residence of the operator/owner.

6. Childcare centers in residential districts may have one non-illuminated monument sign with no more than 3 square feet per side and a maximum of 2 sides or one non-illuminated sign affixed to the main structure of 3 square feet.

The applicant currently is not displaying a sign advertising her business.

COMMISSION FINDINGS

The Commission may recommend issuance of a special use permit whenever it finds that:

1. The proposed special use complies with all applicable provisions of this ordinance.

Staff believes that this application complies with all provisions of City of Leavenworth Development Regulations.

2. The proposed special use at the specified location will contribute to and promote the economic development, welfare or convenience of the public.

Child Care Centers are an essential service to working parents in the community, and promote the economic development, welfare and convenience of the public.

3. The special use will not cause substantial injury to the value of other property in the neighborhood in which it is located.

Staff does not feel that the proposed Child Care Center will cause any substantial injury to the value of other property in the neighborhood. There are currently a total of 17 Child Care Centers in residential neighborhoods with active Special Use Permits within the City of Leavenworth.

4. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations.

No new structures or building modifications are proposed as part of this special use permit. The property will continue to look and function as a residential structure.

The Planning Commission considered the request at their May 3, 2021 meeting and after reviewing the conditions of determination voted 4-1 to recommend approval. Staff recommends approval of the request with provision stated in Section 2 of the proposed ordinance.

The property owners Kimberly and Duane Reece, requesting the permit were present to address the Commission with questions. Ms. Reece stated the following:

- Most likely there will be 10 kids and only 5 parents, so only 5 cars and no more than 6 cars
- She has extended hours for her daycare with unique hours so people do not drop off and pick up at one time
- Currently there are only 2 cars that come at approximately the same time to drop off and pick up
- Parents pull into the driveway closest to the door and kids always hold hands going to and from vehicles

- Has been daycare provider in Leavenworth for 9 years; 19 years total daycare provider
- There is a need for child care in the area

Commissioner Griswold spoke about the opposition by neighbors

- Neighbors alleged that cars parked in their drive way to drop off and pick up
- Concerned about safety with only 2 entrances and exits to the subdivision
- Concerns about the effect of property values
- Commissioner Griswold stated that in his opinion some of these concerns are valid

Commissioner Preisinger

- Does not see a problem with up to 7 cars dropping off and pickup throughout the day
- There are other daycares in the city with the same street traffic flow or with one road in and out and there are no problems
- This is not a gated community as one neighbor in opposition had stated
- There is a need for day care in the city

Commissioners Leonhard, Wilson and Mayor Bauder all agreed that there is a great need for day care in the City.

There was a consensus by the Commission to place on first consideration.

First Consideration Ordinance Rezoning 5136 Lakeview Drive - Director of Planning and Community Development Julie Hurley presented for first consideration an ordinance rezoning 5136 Lakeview Drive from Medium Density Single Family Residential District (R1-9) to General Business District (GBD). The site plans were reviewed at the April 15, 2021 Development Review Committee meeting. A Culver's restaurant is planned for the southeast portion of the property.

Ms. Hurley reviewed the Conditions of Determination presented in the policy report. These are sometimes referred to as the "Golden Standard or Golden Rule" from the Kansas Supreme Court case Golden v City of Overland Park Kansas.

CONDITIONS OF DETERMINATION

Whenever the Planning Commission or City Commission takes action on an application for amendment to these Development Regulations, and such proposed amendment is not a general revision of existing ordinances, but one which will affect specific property, the Planning Commission and City Commission shall consider the following factors:

- a) The character of the neighborhood;

The subject property is 11.8 acres in size and is occupied by a single family home. It is located directly along the Eisenhower corridor. To the east is the Armed Forces Insurance office building, the Leavenworth County Health Department, and Hallmark Cards factory. To the west is the Frontier Community Credit Union, Woods Gas Station, and Dillons grocery store. To the north is a 26.6 acre single family residential lot, with additional single family homes further to the north. To the south across Eisenhower is a strip commercial center, in the City of Lansing.

- b) The zoning and use of properties nearby;
The properties to the north and immediately across Lakeview Drive to the east are zoned R1-9, Medium Density Single Family Residential. Properties to the west and further east are zoned OBD, Office Business District. Property further to the west is zoned GBD, General Business District. Property to the south is inside the city limits of Lansing and is zoned PUD, Planned Unit Development.
- c) The suitability of the subject property for the uses to which it has been restricted;
The subject property is currently occupied by one single-family home. As this property is immediately adjacent to the Eisenhower Road corridor which is a major 4 lane thoroughfare and experiences a high volume of traffic, and is adjoined by commercial and office uses along this corridor, single family residential is not the most appropriate use of the property.
- d) The extent to which removal of the restrictions will detrimentally affect nearby property;
The proposed rezoning should have little detrimental effect upon surrounding properties. The property is primarily surrounded by commercial and office uses, with single-family to the north. The existing home to the north is approximately 565 feet from the property line, and screening/buffering would be required at the time of development of the northern portion of the subject property.
- e) The length of time the subject property has remained vacant as zoned;
The subject property has always been single-family residential in nature.
- f) The relative gain to economic development, public health, safety and welfare by the reduction of the value of the landowner's property as compared to the hardship imposed by such reduction upon the individual landowner;
The proposed rezoning will have a positive effect on the economic development of the City and region with added commercial uses, and will increase the value of the subject property through development as a commercial site.
- g) The recommendations of permanent or professional staff;
Staff recommends approval of the rezoning request.
- h) The conformance of the requested change to the adopted or recognized Comprehensive Land Use Plan being utilized by the city;
The area is identified as appropriate for commercial uses on the Future Land Use map. Therefore, staff finds the proposed use to be in conformance with the overall goals of the adopted Comprehensive Plan.
- i) Such other factors as may be relevant to a particular proposed amendment. The factors considered in taking action on any proposed amendment shall be included in the minutes or otherwise be made part of the written record.
No other factors

The Planning Commission considered the request at their May 3, 2021 meeting and after reviewing the conditions of determination voted unanimously to recommend approval. On May 14, 2021 a protest petition regarding the rezoning was delivered to the office of the City Clerk. After review by the City Attorney, and based on property areas calculated by Staff, the City Attorney and City Staff have determined that the protest petition does not meet the threshold requirement under K.S.A. 12-757 so as to require a supermajority (2/3) vote by the Commission.

- **Mark Schuler**, developer for 5136 Lakeview Drive was in attendance in person to address the City Commission
 - Retired from the Air Force and decided he wanted to get involved with Culvers and build one in Leavenworth
 - Built first Culvers in Platte City then one in Lawrence
 - Real estate has been the challenge in finding a location for a Culvers in Leavenworth
 - Wanted to bring additional economic development to his hometown
 - This will bring not only a Culvers but other possible economic development with additional businesses on site

Opposition to request:

- **Mike Crow** of Crow & Associates was in attendance in person to address the City Commission
 - Represents Lakeview Acres owners
 - Lakeview Acres is currently zoned the same as the property in question and has always been residential
 - Mr. Crow referred to a PowerPoint regarding the property would like the commission to look at the property as three different tracts of land
 - He is not speaking about Culvers on being on Eisenhower but the tracts of land in question
 - Concern is about the City allowing for entrance and exit from the west side of Lakeview Drive because of the residential property
 - Only family homes are on west side of Lakeview Drive
 - Disagrees with the 1000' notification of the Lansing property since it is incorporated
 - Does not seem fair that more Lansing property owners were given notice than Leavenworth property owners
 - Concern is rezoning the Jahn Homestead
 - Discussed the "Golden Rule" set by the Kansas Supreme Court in Golden v City of Overland Park Kansas
 - Focus on Jahn Homestead believes the character of the neighborhood is residential
 - Strongly disagrees with only a 20' landscape buffer; it is not enough to shield residential property
 - There is a binding agreement that runs forever on Lakeview Acres that specifically states they will not erect any buildings within 100 feet of the boundaries, along with other restrictions listed in the agreement
- **City Attorney David E. Waters:**
 - Important to remember that the commission is not approving a Culvers; the issue is considering rezoning of a property
 - When it comes to the actual building of anything on the property it would be considered through staff following regulations set out in the code and development regulations
 - This is one tax parcels not 3 different; The entirety of the property is to be one legal description
 - The notification is by the complete legal description of the entire area not parcels

- Mr. Waters addressed the question raised on notification; there is confusing wording in the statute; feels the unincorporated verbiage refers to property not incorporated by the City requesting the action and opinion is that proper notice
 - As far as private agreements, it is not the city’s job to enforce such covenants, or that such covenants supersede the zoning regulations. The two issues are separate—except where the regulations are more restrictive, then the City’s regulations govern. Essentially the city does not get involved in whatever private agreements there might be on properties.
- **Gloria Jahn Mercer**, One of the property owners of 5136 Lakeview Drive, was in attendance via GoToMeeting to address the City Commission.
 - Speaking on behalf of her sisters who are the co-owners of the property
 - Father was very pro-business and strong supporter of economic development in Leavenworth
 - It’s time for a change in the land use of the area
 - Disagrees with the restrictions as represented
 - Regarding impact on traffic; need to trust that the city will make adjustments to take care of the traffic issues as the development and area changes
 - **Michelle Burns** representing the property owners of 5136 Lakeview Drive was in attendance via GoToMeeting to address the City Commission.
 - The City went through the Golden Standard and she agrees with the assessment by the City
 - There is other single family property surrounded by commercial property in the area
 - This rezoning will have little if any effect on the properties
 - No point in separating out the tracts as it is all under one ownership
 - Restrictive agreement is not a factor in approving rezoning

There was a consensus by the Commission to place on first consideration.

The Mayor called for a 5 minute break at 8:37

The meeting resumed at 8:42

First Consideration Ordinance Rezoning 711 Marshall Street - Director of Planning and Community Development Julie Hurley presented for first consideration an ordinance rezoning 711 Marshall Street from High Density Single Family Residential District (R1-6) to General Business District (GBD). The property is the former Cushing Memorial Hospital, which closed in October 2020 and is currently vacant. The request for rezoning was submitted by the Leavenworth County Board of County Commissioners to allow for the reuse of the building for a mix of county offices and private health care providers.

Ms. Hurley reviewed the Conditions of Determination presented in the policy report. These are sometimes referred to as the “Golden Standard or Golden Rule” from the Kansas Supreme Court case Golden v City of Overland Park Kansas.

CONDITIONS OF DETERMINATION

Whenever the Planning Commission or City Commission takes action on an application for amendment to these Development Regulations, and such proposed amendment is not a general revision of existing

ordinances, but one which will affect specific property, the Planning Commission and City Commission shall consider the following factors:

- a) The character of the neighborhood;

The subject property is the site of the former Cushing Memorial Hospital, which is currently vacant. To the north is a multi-story medical office building. To the south is the Carroll Mansion, occupied by the Leavenworth County Historic Society. Two blocks to the north is the former Medical Arts building, which was rezoned to GBD in 2017. The remainder of the neighborhood consists of single-family homes.

- b) The zoning and use of properties nearby;

All surrounding properties are zoned R1-6, High Density Single Family District, except for the site of the former Medical Arts building two blocks to the north which is zoned GBD.

- c) The suitability of the subject property for the uses to which it has been restricted;

The subject property was built in the late 1800's as a hospital, and has functioned as such since that time until its recent closure in October, 2020. The building has housed medical uses consistently since construction, and is unsuited for residential use.

- d) The extent to which removal of the restrictions will detrimentally affect nearby property;

The proposed rezoning should have little detrimental effect upon surrounding properties. The subject building has housed medical uses since its construction, and provides adequate parking facilities for such uses. It is anticipated that the neighborhood will experience a decrease in traffic, as the building will not be used on a 24/7 schedule in the same manner that the hospital was. No detrimental effect on nearby property is anticipated due to the rezoning.

- e) The length of time the subject property has remained vacant as zoned;

The building has functioned as a hospital since its construction in the late 1800's, until the hospital's closure in October, 2020.

- f) The relative gain to economic development, public health, safety and welfare by the reduction of the value of the landowner's property as compared to the hardship imposed by such reduction upon the individual landowner;

The proposed rezoning will have a positive effect on public health and welfare by providing space for needed health services, while preserving and adaptively reusing an historic building.

- g) The recommendations of permanent or professional staff;

Staff recommends approval of the rezoning request.

- h) The conformance of the requested change to the adopted or recognized Comprehensive Land Use Plan being utilized by the city;

The area is identified as appropriate for Institutional uses on the Future Land Use map. Therefore, staff finds the proposed use to be in conformance with the overall goals of the adopted Comprehensive Plan.

- i) Such other factors as may be relevant to a particular proposed amendment. The factors considered in taking action on any proposed amendment shall be included in the minutes or otherwise be made part of the written record.

No other factors

The Planning Commission considered the request at their May 3, 2021 meeting and after reviewing the conditions of determination voted 4-1 to recommend approval.

Commissioner Leonhard read the following statement regarding her employment with Leavenworth County and this issue:

"In the interest of full disclosure, I am employed by the Council on Aging, which is an agency of the applicant, Leavenworth County, Kansas. As I understand from our City Attorney, as this application is a non-contractual matter, but rather a legislative matter, I am permitted to act on this matter so long as I have disclosed my interest as a County employee on the State-required Statement of Substantial Interest. I have done so. Nevertheless, I still want to assure the Commission that I have not pre-judged this application."

- **Leavenworth County Commissioner Vicky Kaaz and Leavenworth County Attorney David Van Parys** were both in attendance, in person to address the City Commission. Mr. Van Parys thanked city staff for their professional handling of the matter and thanked the commission for their consideration.

There was a consensus by the Commission to place on first consideration.

First Consideration Ordinance Text Amendments Development Regulations - Director of Planning and Community Development Julie Hurley presented for first consideration an ordinance amending various sections of the Development Regulations of the City Code of Ordinances Appendix A. The Planning Commission reviewed the proposed amendments at their May 3, 2021 meeting and voted unanimously to recommend approval.

There was a consensus by the Commission to place on first consideration.

Consent Agenda:

Commissioner Wilson moved to approve claims for May 8, 2021, through May 21, 2021, in the amount of \$871,241.58; Net amount for Payroll #10 effective May 21, 2021 in the amount of \$344,465.40 (Includes Police & Fire Pension in the amount of \$8,804.19). Commissioner Leonhard seconded the motion and the motion was unanimously approved. Mayor Bauder declared the motion carried 5-0.

Other:

City Manager Paul Kramer:

- Parks and Recreation league games kick off next week
- Wollman Pool opens May 31

Mayor Bauder:

- Mayor Bauder read a statement from the Commission about the death of Medal of Honor recipient and longtime Leavenworth resident Charles C. Hagemeister who served in Vietnam. Condolences to the Hagemeister family.

Adjournment:

Commissioner Preisinger moved to adjourn the meeting. Commissioner Wilson seconded the motion and the motion was unanimously approved and the meeting was adjourned.

Time Meeting Adjourned 9:05 p.m.
Minutes taken by City Clerk Carla K. Williamson, CMC