



City of Leavenworth  
100 N. 5<sup>th</sup> Street  
Leavenworth, Kansas 66048

CITY COMMISSION REGULAR MEETING  
COMMISSION CHAMBERS  
TUESDAY, MAY 25, 2021 7:00 P.M.

Welcome to your City Commission Meeting – Please turn off or silence all cell phones during the meeting

Meetings are televised everyday on Channel 2 at 7 p.m. and midnight and available for viewing on YouTube and Facebook Live. In accordance with Kansas Open Meetings Act (KOMA), the meeting can be viewed on Channel 2 and via Facebook Live. The public is encouraged to view the meeting using one of those options. The Leavenworth City Commission meeting is open to the public with limited seating capacity. To attend the meeting in person, email [cwilliamson@firstcity.org](mailto:cwilliamson@firstcity.org) no later than 4:00 pm on the day of the meeting to reserve a seat. Seats are available on a first come first serve basis. Face coverings are optional when attending the meeting. If you are not attending the meeting but would like to submit public comments to be read during the Public Comments portion of the meeting, or submit comments on an agenda items to be read during discussion on that topic, email your comments to [cwilliamson@firstcity.org](mailto:cwilliamson@firstcity.org) no later than 6:00 pm on the day of the meeting.

Call to Order – Pledge of Allegiance Followed by Silent Meditation

1. Mayor's Award

**OLD BUSINESS:**

**Consideration of Previous Meeting Minutes:**

2. Minutes from May 11, 2021 Regular Meeting **Action:** Motion (pg. 2)

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**NEW BUSINESS:**

Public Comment: (i.e. Items not listed on the agenda or receipt of petitions- Public comment is limited to 2-3 minutes and no action will be taken by the Commission on public comment items - Please state your name and address)

**General Items:**

3. Acceptance Dedication of Land for Public Purposes-Eisenhower Marketplace Final Plat **Action:** Motion (pg. 6)  
4. Acceptance Dedication of Land for Public Purposes-Adams Valley Final Plat **Action:** Motion (pg. 8)  
5. Mayor's Appointment **Action:** Motion (pg. 10)

**Bids, Contracts and Agreements:**

6. Consider Sole Source Bid for 2021 Police Car Equipment **Action:** Motion (pg. 11)  
7. Consider Agreement with Kansas Department of Transportation (KDOT) for 4<sup>th</sup> Street Improvements **Action:** Motion (pg. 16)

**First Consideration Ordinances:**

8. First Consideration Ordinance Rescind Special Use Permit **Action:** Consensus (pg. 46)  
9. First Consideration Ordinance Special Use Permit Daycare 2137 Birch Street **Action:** Consensus (pg. 48)  
10. First Consideration Ordinance Rezoning 5136 Lakeview Drive **Action:** Consensus (pg. 73)  
11. First Consideration Ordinance Rezoning 711 Marshall Street **Action:** Consensus (pg. 94)  
12. First Consideration Ordinance Text Amendments Development Regulations **Action:** Consensus (pg. 109)

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**Consent Agenda:**

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) **Action:** Motion

**Other:**

**Adjournment**

**Action:** Motion



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

**Staff members present in the commission chambers:** City Manager Paul Kramer, Public Works Director Brian Faust, Police Chief Patrick Kitchens, and Deputy City Clerk Cary L. Collins.

**Members participating via teleconference:** David E. Waters, City Attorney.

Mayor Pro Tem Leonhard asked everyone to stand for the pledge of allegiance followed by silent meditation.

**Mayors Award** to Craig Idacavage for his dedication to the youth in the City of Leavenworth. Mr. Idacavage was recently recognized as the Kansas Elementary Principal of the Year by the Kansas Principal's Association. Mr. Idacavage is the Principal at David Brewer Elementary School. Mr. Idacavage accepted the award.

**Proclamations:**

- **National Historic Preservation Month** – Leavenworth Preservation Commission members Edward Otto and Richard Jackson were present to accept the proclamation.
- **National Police Week May 9-15** – Chief Patrick Kitchens was present to accept the proclamation.
- **National Public Works Week May 16-22** - Public Works Director Brian Faust was present to accept the proclamation.

**OLD BUSINESS:**

**Consideration of Previous Meeting Minutes:**

Commissioner Preisinger moved to approve the minutes from the April 27, 2021 regular meeting. Commissioner Wilson seconded the motion and the motion was unanimously approved. Mayor Pro-Tem Leonhard declared the motion carried 4-0.

**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.

**Brian Stephens, 2614 S 25<sup>th</sup> St**

- West Limit Acres and Whispering Hills
- Objective is to present relevant facts related to area infrastructure that require assessment, planning and action in our neighborhoods

- Introduced audience members Kathy Sheehan and Travis Denney as neighbors there for support
- 30 to 40 neighbors watching meeting via Facebook live
- Attended Commission Meeting four months ago on same subject on January 11, 2021
- Vilas and Limit from 20<sup>th</sup> to 22<sup>nd</sup> Street.
- Email campaign, one response from unnamed city leader that stated “looking at low-cost solution”, did not sit well with him
- He apologized for his message not being clear initially
- Henry Leavenworth, deteriorating roads, school queue
- Handed printed PowerPoint presentation to Commissioners
- 3<sup>rd</sup> slide, “how did we get here” started in 1996
- Henry Leavenworth opened in 2010
- Parents walk/drive, no mention of vehicle drop-off and pickup procedures
- CIP \$800,000 to redo Vilas and Limit from 20<sup>th</sup> to 22<sup>nd</sup> Streets
- Real world scenario, fire departments ability to respond based on road size vs. fire truck size
- Call to action, what to do for roads
- Presented Deputy City Clerk with 87 letters signed by area residents

The City Commissioners individually thanked Mr. Stephens and said they would take his comments into consideration.

#### **General Items:**

**Lakeview Drive Improvements** – City Manager Paul Kramer presented for review and discussion improvements to Lakeview Drive. The 12 acre property along Eisenhower Road and Lakeview Drive west to the property line of Frontier Community Credit Union is under contract to be purchased for a multi-phase commercial development with the first tenant being Culver’s Restaurant. At the May 3, 2021 Planning Commission meeting, the commission recommended rezoning of the property to General Business District (GBD). One major factor to the redevelopment is the current condition of Lakeview Drive which is not at an acceptable standard to safely access the development. Staff recommends moving forward with design and construction of a section of the Lakeview Drive contingent upon full approval of rezoning the property to GBD. Engineering and construction is estimated to cost \$300,000.00 which would include curb and gutter with stormwater service that would adequately serve the development. Funding for the road improvements would be available through a combination of pavement management funds, Federal Funds Exchange dollars, economic development funds and the City’s general fund. Staff is asking for a consensus for staff to pursue.

Mayor Pro-Tem Leonhard asked Mr. Kramer where the \$300,000 comes from, Mr. Kramer stated that the city has funds that are specifically for economic development fund projects which come from the county wide sales tax that the commission set aside a portion of for these type projects. Additional funding will come from the pavement management fund and highway funds received from the federal government. There was a consensus from the Commission for staff to move forward and pursue details of the project.

**2021-2022 City Commission Goals** – City Manager Paul Kramer presented for consideration and approval the 2021-2022 City Commission Goals. The City Commission met on Friday, April 9, 2021 for their annual

goal setting session. The goals for 2021-2022 have been updated and finalized based on input from the Commission. The Goals document was presented for approval.

Commissioner Griswold moved to approve the 2021-2022 City Commission Goals. Commissioner Wilson seconded the motion and the motion was unanimously approved. Mayor Pro-Tem Leonhard declared the motion carried 4-0.

**Consent Agenda:**

Commissioner Wilson moved to approve claims for April 24, 2021 through May 7, 2021, in the amount of \$1,704,446.23; Net amount for Payroll #9 effective May 5, 2021 in the amount of \$339,445.22 (No Police & Fire Pension). Commissioner Preisinger seconded the motion and the motion was unanimously approved. Mayor Pro-Tem Leonhard declared the motion carried 4-0.

**Other:**

**Commissioner Leonhard**

- Saturday, May 15, 2021 Armed Forces Day. Recognize retired, active, and to all that have served, thank you for your service.
- Riverfront Community Center at Landing Park “To Be at War” public art exhibit. Opened April 22 goes on until June 4, all need to go down and take a look, and it is free. Has toured it personally, it is a moving art exhibit

**Commissioner Griswold:**

- Starting Thursday, May 14 COVID-19 vaccination clinic located at 500 Eisenhower Leavenworth County Health Department
- Matrix is favorable and low, believes it can stay low if everyone gets vaccinated

**Commissioner Preisinger**

- A couple of months ago discussed owner of Genesis Health Clubs
- Owner of Genesis, has many health clubs in Kansas/Missouri area
- In Kansas as of now, is \$500,000 to \$750,000 in the rears on property taxes owed
- Owner was pushing hard to make his clubs property tax free, he ran this four or five years ago and it failed in the Kansas Senate after someone got up and said here’s the money that he has given to each one of you legislators and then many of them voted “no” at that time
- Believe it was voted down again this year, applauds legislator for voting it down
- Mr. Stephens does have a lot of money that he passes around to people of interest in the political realm
- Advice to Mr. Stephens is to use that money to go ahead and pay your property taxes, that’s a deduction off your bottom line, political contributions are not

**Commissioner Wilson**

- Encourages everyone in the community to continue to love and pray for one another

**City Manager Kramer:**

- Wollman Aquatic Center, free pool passes this year, most popular effort possibly ever
  - 1400 households signed up
  - Occupancy limit 525 (based on fire dept. established guidelines on the space there)
  - If we get a hot summer, may have to start a head count, but don't anticipate it being problem
  - Could use 10 more lifeguards, early June classes available, good for high school or college students, or anyone else interested, contact Parks and Recreation Department
  - Need additional concession workers, details available on city's website
- 600 Cherokee commercial building purchase couple weeks ago, six potential developers toured so far, Request for Proposals due by 2 p.m. May 20
- CAMP Leavenworth announced and Melissa Etheridge has been announced headliner on Saturday night
- June 1 Commission Meeting, Kelly O'Neil will give update on CAMP Leavenworth
- Two more adopted parks, seven new organizations
- Dougherty Park start taking down old equipment next week, firm will install new equipment
- Warranty work to basketball courts at Dougherty Park
- COVID transition; limited, but expanded occupancy at Riverfront Community Center a week ago Monday
- Riverfront Community Center will go back to full capacity on May 18, still haven't seen the groups come back, but requests for weddings, graduation parties, and other events are scheduled this year

**Adjournment:**

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

Time Meeting Adjourned 7:51 p.m.


Minutes taken by Deputy City Clerk Cary L. Collins, CMC

**POLICY REPORT  
LEAVENWORTH CITY COMMISSION  
EISENHOWER MARKETPLACE  
FINAL PLAT**

**MAY 25, 2020**

**SUBJECT:**

A request for a final plat of Eisenhower Marketplace.

  
\_\_\_\_\_  
**Prepared By:**  
Julie Hurley  
Director of Planning and  
Community Development

  
\_\_\_\_\_  
**Reviewed By:**  
Paul Kramer  
City Manager

**ANALYSIS:**

The subject property is owned by Sandra Harrison, Donna DeMet, Gloria Mercer, and Darlene Lynch, plat prepared by Herring Survey Company. The property is under contract to be purchased by 4M Pioneer Holdings, LLC, who is acting as the applicant/agent for the project.

The applicant is requesting approval of an 11.8 acre, 2 lot final plat for the Eisenhower Marketplace, located at the northwest corner of Eisenhower Road and Lakeview Drive. The property is currently zoned R1-9, Medium Density Single Family Residential District. An accompanying request to rezone the property to GBD, General Business District, is also on this agenda. The property is currently occupied by one single-family home, which is vacant.

The Planning Commission considered this plat at their May 3, 2021 meeting and voted unanimously to approve the plat. The plat is before the City Commission for the purpose of accepting the dedication of land for public purposes in the form of public utility easements that are associated with the plat.

**ACTION/OPTIONS:**

Accept the dedication of land for public purposes as part of the Final Plat

# EISENHOWER MARKETPLACE

A Minor Subdivision in the West Half of the Northwest Quarter of Section 13,  
Township 9 South, Range 22 East of the 6th P.M., City of Leavenworth,  
Leavenworth County, Kansas.

## FINAL PLAT

PREPARED FOR:  
4M Jayhawk Holdings, LLC  
5135 Lakewood Drive  
Leavenworth, KS 66048  
PID #106-13-00-00-016

**SURVYOR'S DESCRIPTION:**  
A tract of land in the West Half of the Southwest Quarter of Section 13, Township 9 South, Range 22 East of the 6th P.M., City of Leavenworth, Leavenworth County, Kansas, more fully described as follows: Commencing at the Southwest corner of said Northwest Quarter; thence North 87 degrees 51'14" East for a distance of 383.18 feet to a corner of the S1/4 Sec 13; thence South 87 degrees 51'14" West for a distance of 58.97 feet to the TRUE POINT OF BEGINNING, and from said point of beginning, and from the Southeast corner of Lot 1, FOMT LEAVENWORTH CREDIT UNION ADDITION Subdivision, and the North end of way line of Eisenhower Road, thence East along North 01 degree 11'11" West for a distance of 170.88 feet along the East end of said Subdivision and to the Northwest corner of Lot 1 of said Subdivision, thence North 17 degrees 17'51" East for a distance of 152.21 feet to the East line of said lot; thence South 01 degree 11'11" West for a distance of 529.17 feet along said East end to the Western right of way line of Eisenhower Road per Road Plans 62-50-15371(L) dated 1967; thence South 88 degrees 51'41" West for a distance of 30.00 feet along said right of way; thence South 30 degree 57'07" West for a distance of 51.16 feet along said right of way; thence South 87 degrees 51'14" West for a distance of 75.51 feet along said right of way; thence South 87 degrees 51'14" West for a distance of 806.07 feet along said right of way to the point of beginning.  
Land property contains 12.27 Acres, more or less, including road right of way.  
Date of Closure - 1 - 30-2021

**ZONING:**  
Existing - Residential R-10  
Proposed - CSD - General Business District  
**LAND AREA:**  
12.27 Acres - 53429.6 Sq. Ft., more or less including road right of way.  
Existing Right of Way (Lakewood Drive)  
0.24 Acres - 10377.5 Sq. Ft., more or less  
Additional 10' Right of Way (Lakewood Drive)  
0.12 Acres - 5201.8 Sq. Ft., more or less

**CERTIFICATION AND DEDICATION**  
The undersigned proprietors state that all taxes of the above described tract of land have been paid and that they have cleared the same to be subdivided in the manner shown on the accompanying plat, which subdivision shall be known as: EISENHOWER MARKETPLACE.

Easements shown on this plat are hereby dedicated for public use, the rights of way which are shown with dashed lines on the accompanying plat, and said easements may be employed to locate and maintain sewers, water lines, gas lines, poles and wires and any other form of public utility now and hereafter used by the public over, under and along the strips marked "Utility Easement" (U/E) or "Drainage Easement" (D/E).

Streets shown on the accompanying plat and not heretofore dedicated for public use are hereby so dedicated.

Building Lines or Setback Lines (B.S.L.) are hereby established as shown on the accompanying plat and no building or portion thereof shall be built or constructed between this line and the street line.

**IN TESTIMONY WHEREOF,**  
We, the undersigned owners of EISENHOWER MARKETPLACE, have set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Mark Schuler  
4M Jayhawk Holdings LLC

**NOTARY CERTIFICATE:**  
Be it remembered that on this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, a notary public in and for said County and State came Mark Schuler, member of 4M Jayhawk Holdings LLC, to me personally known to be the same person who executed the foregoing instrument of writing, and duly acknowledged the execution of same. In testimony whereof, I have hereunto set my hand and affixed my notary seal the day and year above written.

**NOTARY PUBLIC**  
My Commission Expires: \_\_\_\_\_ (month)

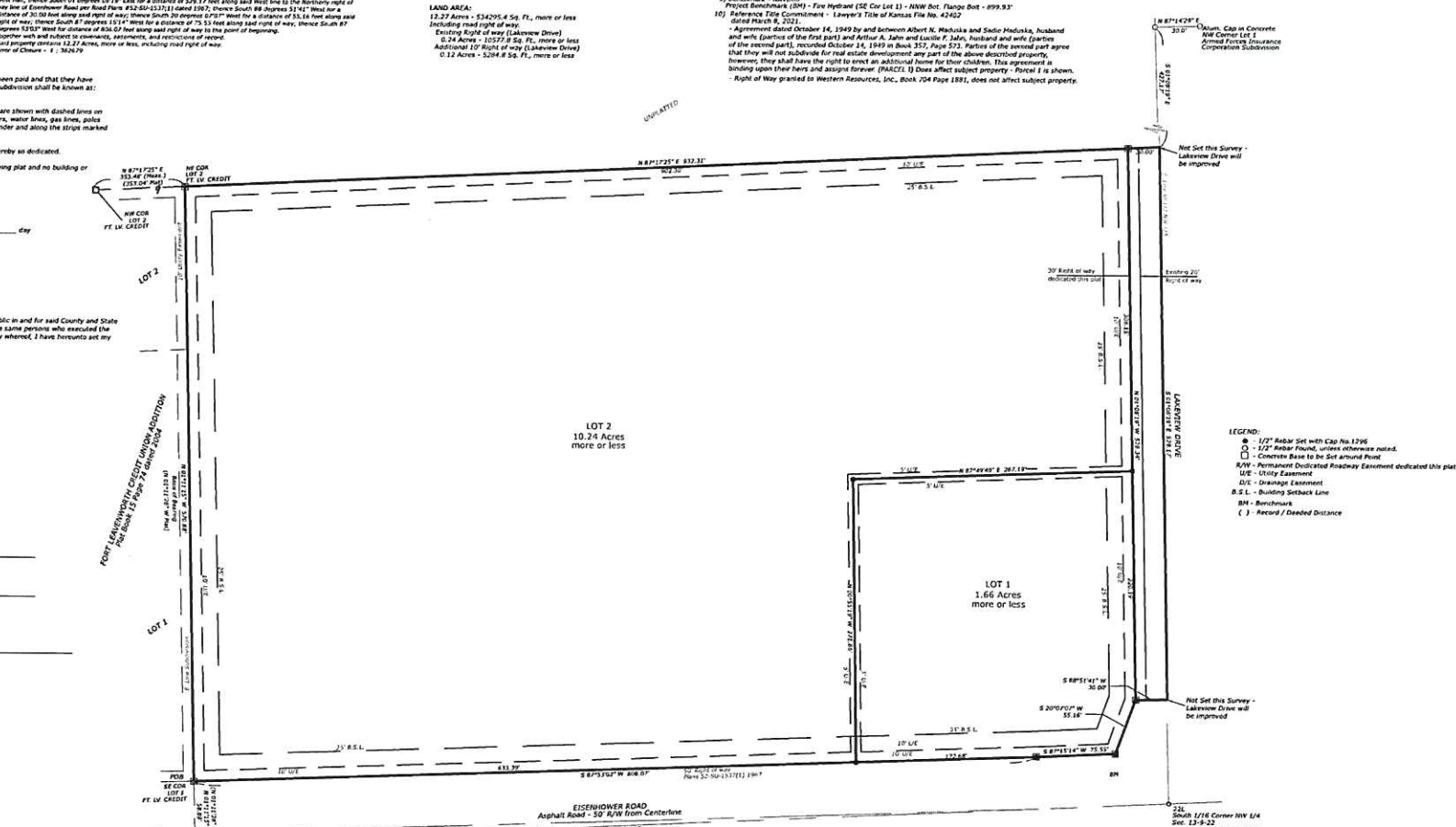
**PLANNING COMMISSION OF LEAVENWORTH, KANSAS**  
This plat of EISENHOWER MARKETPLACE, has been submitted to and approved by the Leavenworth Planning Commission this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**CITY COMMISSION OF LEAVENWORTH, KANSAS**  
This plat approved by the City Commission of Leavenworth, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Chairman \_\_\_\_\_  
Secretary \_\_\_\_\_  
Director of Public Works \_\_\_\_\_  
City Attorney \_\_\_\_\_  
Attest: City Clerk \_\_\_\_\_

**REGISTER OF DEEDS CERTIFICATE:**  
Filed for Record as Document No. \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2021 at \_\_\_\_\_ o'clock \_\_\_\_\_ in the Office of the Register of Deeds of Leavenworth County, Kansas.  
Register of Deeds - Terrianna C. Masbaum

- NOTES:**
- 1) This survey does not show ownership.
  - 2) All distances are calculated from measurements or measured this survey, unless otherwise noted.
  - 3) All record and measured distances are the same, unless otherwise noted.
  - 4) Error of Closure - 1 - 102236
  - 5) Basis of Bearing - KS ST PLANE N Zone 1501
  - 6) East Line - FOMT LEAVENWORTH CREDIT UNION - N 01°11'15" W
  - 7) Monument Origin Unknown, unless otherwise noted.
  - 8) Reference Surveys -  
Recorded Plat of FOMT LEAVENWORTH CREDIT UNION - Book 15 Page 34 dated 2004  
Recorded Plat of EISENHOWER CROSSING - Book 15 Page 81 dated 2006  
Recorded Plat of ARMED FORCES INSURANCE COOPERATION - Book 10 Page 97 dated 1985  
Road Plans 52-50-15371(L) dated 1967  
Recorded Survey by B. Temple Wilkerson H Page 110 dated 1950 (Parcel 1)
  - 9) Road Records - See Survey
  - 10) Reference Title Commitment - Lawyer's Title of Kansas File No. 42402 dated March 9, 2021.  
- Agreement dated October 14, 1949 by and between Albert N. Maduka and Sada Maduka, husband and wife (parties of the first part) and Arthur A. Jahn and Lucille F. Jahn, husband and wife (parties of the second part), recorded October 14, 1949 in Book 357, Page 573. Parties of the second part agree that they will not subdivide for real estate development any part of the above described property; however, they shall have the right to erect an additional home for their children. This agreement is binding upon their heirs and assigns forever. (PARCEL 1) does affect subject property. Parcel 1 is shown.
  - 11) Right of Way granted to Western Resources, Inc., Book 104 Page 1891, does not affect subject property.



- LEGEND:**
- - 1/2" Rebar Set with Cap No. 1296
  - - 1/2" Rebar Found, unless otherwise noted.
  - ▭ - Concrete Base to be Set around Point
  - R/W - Permanent Dedicated Roadway Easement dedicated this plat
  - U/E - Utility Easement
  - D/E - Drainage Easement
  - B.S.L. - Building Setback Line
  - BM - Benchmarks
  - ( ) - Record / Deeded Distance



I hereby certify this plat meets the requirements of KSA-58-2001 through 58-2003. The face of this plat was reviewed based on Kansas Minimum Standards for Boundary Surveys. No field verification is required. This certifies as to surveying information only.

Michael J. Bopka, KS PS 1615  
Leavenworth County Survey Registrar



I hereby certify that this survey was made by me, or under my direct supervision, on the ground during the date of March 2021 and this map or plat is correct to the best of my knowledge.

Joseph A. Herring  
PS # 1296

Scale 1" = 50'

Job # 20-1482  
April 5, 2021 Rev. May 18, 2021

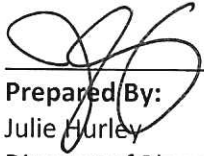
**HERRING SURVEYING COMPANY**  
315 North 31st Street, Law - KS 66048  
781-841-3050 Fax - 781-841-8261  
www.herringsurveying.com

POLICY REPORT  
LEAVENWORTH CITY COMMISSION  
ADAMS VALLEY  
FINAL PLAT

MAY 25, 2021

**SUBJECT:**

A request for a final plat of Adams Valley



**Prepared By:**

Julie Hurley  
Director of Planning and  
Community Development



**Reviewed By:**

Paul Kramer  
City Manager

**ANALYSIS:**

The subject property is owned by LD Development, LLC, plat prepared by Atlas Surveyors.

The applicant is requesting approval of a 4.76 acre, 18 lot final plat for the Adam's Valley residential development, located at 1440 and 1460 Quincy Street. The property is currently zoned R1-6, High Density Single Family Residential District, and is occupied by one single family home, which is vacant.

The Planning Commission considered this plat at their May 3, 2021 meeting and voted unanimously to approve the plat. The plat is before the City Commission for the purpose of accepting the dedication of land for public purposes in the form of public utility easements and right-of-way that are associated with the plat.

**ACTION/OPTIONS:**

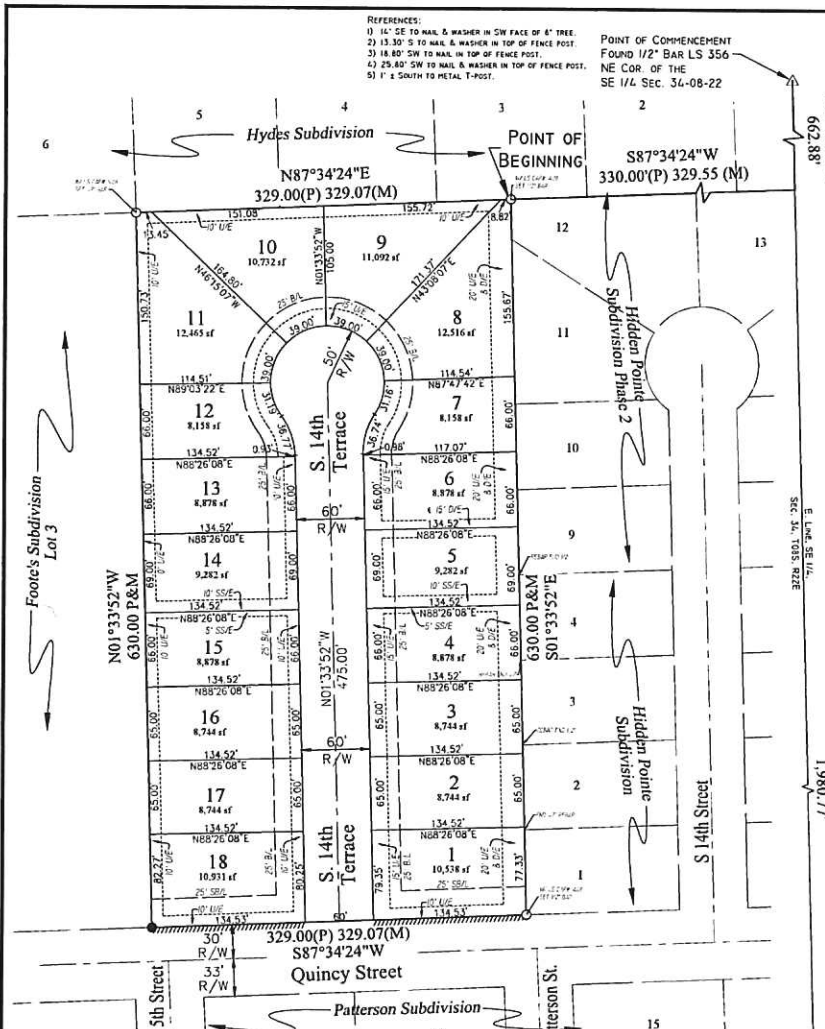
Accept the dedication of land for public purposes as part of the Final Plat



# FINAL PLAT

## ADAMS VALLEY

A REPLAT OF LOT 2  
FOOTE'S SUBDIVISION  
ALL IN THE CITY OF LEAVENWORTH,  
LEAVENWORTH COUNTY, KANSAS



**DISCLAIMER:**  
Leavenworth County, Kansas, does not warrant or guarantee that the details shown on this document and provided by the applicant, or any agent of applicant, including any survey information, should be relied upon by any third party as being wholly or partially accurate and complete.

Title information furnished by:  
**ALLIANT NATIONAL TITLE INSURANCE COMPANY**  
Commitment No.: L0259  
Dated: December 12, 2020

**LEGAL DESCRIPTION**

This is a survey and plat of part of the Southeast Quarter of Section 34, Township 08 South, Range 22 East of the Sixth Principal Meridian, in the City of Leavenworth, Leavenworth County, Kansas, being a replat of Lot 2, FOOTE'S SUBDIVISION, more particularly described as follows:  
Commencing at the Northeast corner of said Southeast Quarter, thence South 01 degree 31 minutes 34 seconds East along the east line of said Southeast Quarter a distance of 662.85 feet; thence South 87 degrees 34 minutes 21 seconds West a distance of 329.55 feet to the Point of Beginning, and point being the Northeast corner of said Lot 2; thence South 01 degree 31 minutes 32 seconds East along the east property line of said Lot 2 a distance of 630.00 feet to the southeast corner of said Lot 2; thence South 87 degrees 34 minutes 21 seconds West along the south property line of said Lot 2 a distance of 329.07 feet to the northwest corner of said Lot 2; thence North 01 degree 31 minutes 32 seconds West along the west property line of said Lot 2 a distance of 630.00 feet to the northwest corner of said Lot 2; thence North 87 degrees 34 minutes 21 seconds East along the north line of said Lot 2 a distance of 329.07 feet to the Point of Beginning.  
Containing 207,714 square feet of 4.793 acres more or less.

**DEDICATION**

The undersigned proprietor of the above described tract of land has caused the same to be subdivided in the manner as shown on the accompanying plat, which subdivisions and plat shall hereinafter be known as "ADAMS VALLEY".  
The streets and roads shown on this plat and not heretofore dedicated to public use, are hereby so dedicated.  
An easement or license to enter upon, locate, construct and maintain or alter the location, construction, or maintenance and use of conduits, water, gas, electrical, sewer pipes, poles, wires, drainage facilities, ducts and cables, and similar utility facilities upon, over, and under these areas contained and designated on this plat as "Utility Easement" or "UE"; is hereby granted to the City of Leavenworth, Kansas, and other governmental entities as may be authorized by state law to use such easement for said purposes.  
An easement or license to hereby dedicated to the City of Leavenworth, Kansas to enter upon, locate, construct and maintain or alter the location, construction or maintenance and use of conduits, sewer pipes, surface drainage facilities, etc., upon, over, and under these areas contained and designated on this plat as "Drainage Easement" or "DE".  
An easement or license to lay, construct, alter, replace and operate one or more sewer lines and all appurtenances convenient for the collection of sanitary sewage, together with the right of ingress and egress, over and through these areas designated as "Sanitary Sewer Easement" or "SSE" on this plat is hereby dedicated to the City of Leavenworth, Kansas.  
The use of all lots in this subdivision shall hereafter be subject to the restrictions which will be executed as a separate instrument of writing and will be recorded in the Office of the Register of Deeds of Leavenworth County, Kansas, and restrictions will thereby be made a part of the dedication of this plat as though fully set forth herein.  
The use of all lots in this subdivision shall hereafter be subject to the restrictions which will be executed as a separate instrument of writing and will be recorded in the Office of the Register of Deeds of Leavenworth County, Kansas, and restrictions will thereby be made a part of the dedication of this plat as though fully set forth herein.

TOTAL AREAS		
240.00	50.27	290.27
127.7	275.54	403.24
127.7	8.224	135.924
127.7	8.224	135.924
127.7	8.876	136.576
127.7	9.744	137.444
127.7	8.876	136.576
127.7	22.590	150.290
127.7	10.092	137.792
127.7	21.737	149.437
127.7	8.058	135.758
127.7	8.876	136.576
127.7	8.876	136.576
127.7	8.224	135.924
127.7	8.224	135.924
127.7	10.092	137.792
80.00	35.637	115.637
TOTAL	207,293	4.77

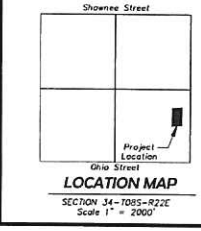
IN TESTIMONY WHEREOF, the undersigned proprietor has caused this instrument to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2021.  
LEHN DEVELOPMENT, LLC  
KEVIN LIS, Managing Partner  
STATE OF KANSAS )  
COUNTY OF LEAVENWORTH )  
BE IT REMEMBERED that on this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, a Notary Public in and for said County and State, came KEVIN LIS, Managing Partner of LEHN DEVELOPMENT, LLC, to me personally known to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of the same.  
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal and the day and year above written.  
My Commission Expires \_\_\_\_\_

This plat of ADAMS VALLEY has been submitted to and approved by the Leavenworth Planning Commission, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.  
CHAIRMAN - MICHAEL BURKE  
SECRETARY - JULIE HURLEY  
This plat approved by the City Commission of Leavenworth, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.  
ATTEST: MAYOR - NANCY BAUDER  
CITY CLERK - CARLA WILLIAMSON DIRECTOR OF PUBLIC WORKS - BRIAN FAUST  
CITY ATTORNEY - DAVID WATERS  
State of Kansas, County of Leavenworth, SS  
This is to certify that this instrument was filed for record in the Register of Deeds office on the \_\_\_\_\_ day of \_\_\_\_\_, 2021, in Book \_\_\_\_\_ Page \_\_\_\_\_.  
REGISTER OF DEEDS - TERRILL MASHBURN  
I hereby certify this plat meets the requirements of K.S.A. 58-2003. The face of this plat was reviewed for compliance with Kansas Minimum Standards for Boundary Surveys. No field verification is required. This review is for survey information only.  
COUNTY SURVEYOR - BILL NOLL  
This is to certify on this \_\_\_\_\_ day of \_\_\_\_\_, 2021, that field survey was completed on the ground to be under my direct supervision and that said survey meets or exceeds the "Kansas Minimum Standards" for boundary surveys pursuant to K.S.A. 58-2037.  
ROGER B. DILL, L.S. 1408

Prepared For:  
LEHN Development, L.L.C.  
c/o Kevin LIS, Managing Partner  
905 5th Ave.  
Leavenworth, KS 66048  
(913) 306-2743  
Date of Preparation:  
Rev. - April 9, 2021

ADAMS VALLEY  
SEC. 34, T08S, R22E LEAVENWORTH COUNTY, KANSAS

**ATLAS SURVEYORS, L.L.C.**  
7470191 6486 07 9004 85025  
207 South 5th Street | Leavenworth, Kansas 66048 | 913.682.8600 | 913.682.8606 (F)



**REFERENCES:**  
1) 1/4" SE TO NAIL & WASHER IN SW FACE OF 8" TREE.  
2) 13.30' SW TO NAIL & WASHER IN TOP OF FENCE POST.  
3) 18.80' SW TO NAIL IN TOP OF FENCE POST.  
4) 25.80' SW TO NAIL & WASHER IN TOP OF FENCE POST.  
5) 1' S SOUTH TO METAL T-POST.

**LEGEND**  
▲ DENOTES FOUND MONUMENT AS NOTED  
● DENOTES SET TOP BEARINGS IN CONCRETE WITH LEP 1/2" DIA CAP  
⊙ DENOTES FOUND CORNER W/ CAP LSP 1/2" DIA  
- - - DENOTES UTILITY EASEMENT  
- - - DENOTES DRAINAGE EASEMENT  
SSSE DENOTES SANITARY SEWER EASEMENT  
B.L. DENOTES BUILDING LINE  
SBL DENOTES SIDE BUILDING LINE

**CLOSURE CALCULATIONS:**  
1.918 140' (plat boundary) / 0.000' (closing distance) = undated error of closure 1 in 1,000,000.

**DATUM**  
NAVD 1988, U.S. Feet  
Bench Mark: "x" cut on the SW corner of light pole base at the NE corner of Euclawner and 20th St. Trafficway  
ELEVATION: 943.21

**REFERENCES:**  
1) 91.80' SW TO NAIL IN EAST FACE OF POLE.  
2) 51.60' NW TO CENTER OF TOP FH.  
3) 4.8.30' N TO P&M NAIL & WASHER IN WEST FACE OF P.P.  
4) IN APARTMENT 1 OF EAST, WEST & SOUTH TRAVELWAY.

**NOTE:**  
The basis of bearing system Kansas North Zone, U.S. State Plane, NAD 83.  
The Interior Lot Corners shall be set Post Utility Construction.  
Corner Lots with a Side Building Line (SBL) shall have No Direct Vehicular Access on that side of the Lot.  
Estate Plat Corner Monuments to be set in concrete per Leavenworth County Regulations prior to issuing building permits.  
The minimum Front Yard Setback for Single Family Lots shall be 25 feet from the right-of-way line.  
The minimum Side Yard Setback for Single Family Lots shall be 6 feet on each side of structure.  
The minimum Rear Yard Setback for Single Family Lots shall be 25 feet from the structure to the property line.



**MAYOR'S APPOINTMENTS**

**MAY 25, 2021**

**Mayor Bauder**

*"Move to*

*Appoint to the **City Planning Commission** Harold (Bill) Waugh to an unexpired terms ending May 1, 2024.*

**Requires a second and vote by the Governing Body.**

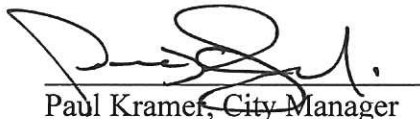
**Policy Report No. 5-2021  
2021 Police Car Equipment  
May 25, 2021**

Prepared by:



Patrick R. Kitchens, Police Chief

Approved by:



Paul Kramer, City Manager

**ISSUE:**

The Police Department is requesting the commission authorize a sole source purchase from Safe Fleet Coban Mobile Vision in the amount of \$26,395.00 for the purchase of four (4) replacement in-car camera systems.

**STAFF RECOMMENDATION:**

Staff recommends approval.

**BACKGROUND:**

The Leavenworth Police Department operates 24 police cars equipped with Safe Fleet Coban in-car camera systems. The Police Department has operated that system since September of 2013. The entire system is complete with back end software and servers that maintain and store data. We would not be able to consider other vendors unless we considered replacing the entire system.

These four camera systems have reached the end of their useful life cycle and need replaced.

**BUDGET IMPACT:**

The Police Department would fund this purchase from two sources.

- 2020 Byrne Grant in the amount of \$14,384
- The remaining balance of \$12,011 will be funded from the \$37,114 balance in the 2021 CIP allocation of Police Cars.

**COMMISSION ACTION:**

Approve the sole source bid in the amount of \$26,395 from Safe Fleet Coban Mobile Vision to replace four (4) in-car camera systems.



Quote: Q-17102-1  
 Date: 4/28/2021, 1:47 PM  
 Expires On: 6/27/2021

COBAN Technologies, Inc.  
 SF Mobile-Vision, Inc.  
 11375 W. Sam Houston Pkwy S., Suite 800  
 Houston, Texas 77031-2348  
 United States

Phone: (281) 925-0488  
 Fax: (281) 925-0535  
 Email: SFLE-Sales@safefleet.net

Ship To  
 Amy Peters  
 Leavenworth Police Department (Leavenworth, KS)  
 601 S 3rd St.  
 Leavenworth, Kansas 66048  
 United States  
 (913) 680-2546  
 apeters@firstcity.org

Bill To  
 Leavenworth Police Department (Leavenworth, KS)  
 601 S 3rd St.  
 Leavenworth, Kansas 66048  
 United States

SALESPERSON	EXT	EMAIL	DELIVERY METHOD	PAYMENT METHOD
Watson LaForce	x	wlaforce@safefleet.net		Net 30

FOCUS H1 In-Car Camera Hardware      3-Year Hardware Warranty  
 Please see Q-17103 for 3-Year Software Maintenance, Back Office Set Up, Install Training

LINE NO.	PART #	DESCRIPTION	UNIT PRICE	QTY	EXTENDED
QL-0095262	FOCUS-50-00	FOCUS H1 IN-CAR SYSTEM PACKAGE 3 w/o BODY CAMERA OR WIRELESS MICROPHONE Features: • 4.3" touchscreen monitor • GPS • Crash Sensor • Smart Power Module (SPM) w/ UPS • 16 GB internal Solid State OS drive • 128 GB internal Solid State Fail-Safe drive • 64 GB removable Thumb Drive • Internal 802.11 A/G/N/AC wireless card • Backseat wide angle IR camera with built in covert microphone • Front facing HD low profile color camera • Three year limited hardware warranty	USD 4,845.00	4	USD 19,380.00
QL-0095266	MZZ-01	MOUNTING  For secure mounting within the vehicle	USD 100.00	4	USD 400.00
QL-0095267	SCAA-016	FOCUS H1 SUPPORT KIT	USD 125.00	1	USD 125.00
QL-0095268	FOCUS-04-06	FOCUS H1 64 GB SECURED PEN DRIVE	USD 250.00	1	USD 250.00
QL-0095264	LFEE-050	SHIPPING - IN CAR VIDEO SYSTEMS	USD 50.00	4	USD 200.00
<b>FOCUS H1 In-Car Camera Hardware TOTAL:</b>					<b>USD 20,355.00</b>

<b>TOTAL:</b>	<b>USD 20,355.00</b>
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**Terms & Conditions**

Applicable sales taxes are not reflected on this proposal and will be included in the invoice. Any purchases that are exempt from sales taxes must be accompanied by a tax exemption and/or re-sellers' certificate.

This quote is presented to the customer under the condition that it remains a valid quote for only 60 days after the stated Quote Date, after which the quote becomes null and void.

Please email or fax a signed copy of this quotation and other referenced documents to SFLE-Sales@safefleet.net or (281) 925-0535

COBAN Technologies, Inc.  
11375 W. Sam Houston Pkwy S., Suite 800  
Houston, Texas 77031-2348

IN WITNESS WHEREOF, the Parties have caused this Agreement to Purchase to be executed and delivered by their respective authorized representatives whose signatures appear below.

COBAN Technologies, Inc.

Leavenworth Police Department (Leavenworth, KS)

Signature:

\_\_\_\_\_

Signature:

\_\_\_\_\_

Printed Name:

\_\_\_\_\_

Printed Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

Title:

\_\_\_\_\_

Dated:

\_\_\_\_\_

Dated:

\_\_\_\_\_



Quote: Q-17103-1  
 Date: 4/28/2021, 1:48 PM  
 Expires On: 6/27/2021

COBAN Technologies, Inc.  
 SF Mobile-Vision, Inc.  
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Phone: (281) 925-0488  
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Bill To  
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 601 S 3rd St.  
 Leavenworth, Kansas 66048  
 United States

SALESPERSON	EXT	EMAIL	DELIVERY METHOD	PAYMENT METHOD
Watson LaForce	x	wlaforce@safefleet.net		Net 30

3-Year Software Maintenance

Q-17103 Provides the 3-Year Software Maintenance, Back Office Set Up and Install Training for Q-17102

LINE NO.	PART #	DESCRIPTION	UNIT PRICE	QTY	EXTENDED
QL-0095289	WLIC-01	COBAN DVMS SOLUTION • Per Active Device • Software License with <b>First Year Technical Support</b>	USD 150.00	4	USD 600.00
QL-0095290	WMAIN-110	COBAN DVMS SOLUTION ANNUAL RENEWAL • Per Active Device • Software maintenance and Technical Support • <b>YEAR 2</b>	USD 150.00	4	USD 600.00
QL-0095291	WMAIN-110	COBAN DVMS SOLUTION ANNUAL RENEWAL • Per Active Device • Software maintenance and Technical Support • <b>YEAR 3</b>	USD 150.00	4	USD 600.00
<b>3-Year Software Maintenance TOTAL:</b>					USD 1,800.00

Professional Services

LINE NO.	PART #	DESCRIPTION	UNIT PRICE	QTY	EXTENDED
QL-0095275	LSET-17	BACKOFFICE SETUP PACKAGE A Includes: • 2 Days remote and on-site project deployment • Back office configuration and setup • Admin and User Training  Project Deployment, Single Platform On-site / Remote Project Implementation	USD 2,995.00	1	USD 2,995.00
QL-0095281	LSET-18	ONE DAY ADDITIONAL ON-SITE SETUP • Vehicle Installation Training  Add-on to LSET-17, LSET-19, or LSET-21	USD 1,245.00	1	USD 1,245.00
<b>Professional Services TOTAL:</b>					USD 4,240.00

<b>TOTAL: USD 6,040.00</b>
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Terms & Conditions

Applicable sales taxes are not reflected on this proposal and will be included in the invoice. Any purchases that are exempt from sales taxes must be accompanied by a tax exemption and/or re-sellers' certificate.

This quote is presented to the customer under the condition that it remains a valid quote for only 60 days after the stated Quote Date, after which the quote becomes null and void.

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11375 W. Sam Houston Pkwy S., Suite 800  
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Leavenworth Police Department (Leavenworth, KS)

Signature:

\_\_\_\_\_

Signature:

\_\_\_\_\_

Printed Name:

\_\_\_\_\_

Printed Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

Title:

\_\_\_\_\_

Dated:

\_\_\_\_\_

Dated:

\_\_\_\_\_

**POLICY REPORT PWD NO. 21-18**

**CONSIDER APPROVAL FOR THE MAYOR TO SIGN  
AGREEMENT 142-21 WITH THE KANSAS DEPARTMENT OF TRANSPORTATION  
FOR IMPROVEMENTS ON 4<sup>th</sup> STREET FROM CHOCTAW STREET TO SENECA STREET  
KDOT PROJECT NO. 73-52 KA-5990-01  
CITY PROJECT NO. 2020-939**

May 25, 2021

Prepared by:

  
Brian Faust  
Director of Public Works

Reviewed by:

  
Paul Kramer  
City Manager

**ISSUE**

Consider authorizing the Mayor to sign Agreement No. 142-21 with KDOT related to City Connecting Link Improvement Program (CCLIP) award for 4<sup>th</sup> Street Pavement Rehabilitation Project. Project limits are from Choctaw Street and Seneca Street.

**BACKGROUND**

In March of 2019, the city submitted CCLIP applications to KDOT for two (2) projects along 4<sup>th</sup> Street. The first project was from Choctaw to Delaware and the second was from Delaware to Seneca.

KDOT notified the city in July of 2020 that our project between Choctaw and Delaware was selected. The second project, between Delaware and Seneca was not. The CCLIP is a cost share program with KDOT covering 85% of eligible costs while the city's share is 15%. The maximum KDOT contribution will be \$1,000,000. Costs that are not eligible are acquisition of rights-of-way and utility relocations. At this time, we do not envision additional ROW being required.

While not selected, the city requested that the second project (Delaware to Seneca) be included in the overall project limits. KDOT agreed and Agreement No. 142-21 includes the updated project limits. The city will be responsible for all costs associated with the section between Delaware and Seneca.

The city is currently seeking qualifications from prospective consulting firms for pre-construction engineering and project management. Tentative KDOT bid letting date is March 15, 2023.

**RECOMMENDATION**

Staff recommends that the City Commission authorize the Mayor to sign Agreement No. 141-21 between KDOT and the City of Leavenworth related to Improvements to 4<sup>th</sup> Street between Choctaw Street and Seneca Street.

**ATTACHMENTS:**

KDOT Agreement No. 142-21  
KDOT Award Letter  
KDOT Program Packet



PROJECT NO. 73-52 KA-5990-01  
ACNHP-A599(001)  
PAVEMENT RESTORATION  
CITY OF LEAVENWORTH, KANSAS

## AGREEMENT

This Agreement is between the **Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the “Secretary”) and the **City of Leavenworth, Kansas** (“City”), collectively, the “Parties.”

### RECITALS:

- A. The City has applied for and the Secretary has approved a CCLIP (PR) Project, as further described in this Agreement.
- B. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city connecting links of the State Highway System through the City.
- C. The City desires to construct the Project on 4<sup>th</sup> Street (US-73/K-7), a city connecting link for the State Highway System, in the City
- D. The Secretary desires to enter into an Agreement with the City to participate in the cost of the Project by use of state and federal funds.

**NOW THEREFORE**, the Parties agree as follows:

### ARTICLE I

#### DEFINITIONS:

1. **“Agreement”** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
2. **“CCLIP Resurfacing Program”** means a City Connecting Link Improvement Program that is a part of the KDOT Local Partnership Program with cities and counties. The state’s participation in the cost of construction and construction engineering will be one hundred percent (100%) for cities with a population between 0 to 2,499, ninety-five percent (95%) for cities with a population between 2,500 to 4,999, ninety percent (90%) for cities with a population between 5,000 to 24,999, eighty-five percent (85%) for cities with a population between 25,000 to 49,999, eighty percent (80%) for cities with a population between 50,000 to 99,999, and seventy-five percent (75%) for cities with a population equal to or greater than 100,000, up to a maximum of \$1,000,000.00 per fiscal year of state or federal funds. The CCLIP Resurfacing Program is for contract maintenance only.

3. **“City”** means the City of Leavenworth, Kansas, with its place of business at 100 N. 5<sup>th</sup> Street, Leavenworth, KS 66048.
4. **“City Connecting Link”** means a route inside the city limits of a city which: (1) connects a state highway through a city; (2) connects a state highway to a city connecting link of another state highway; (3) is a state highway which terminates within such city; (4) connects a state highway with a road or highway under the jurisdiction of the Kansas Turnpike Authority; or (5) begins and ends within a city’s limits and is designated as part of the national system of Interstate and defense highways.
5. **“Construction”** means the work done on the Project after Letting, consisting of building, altering, repairing, improving or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.
6. **“Construction Contingency Items”** mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.
7. **“Construction Engineering” or “CE”** means inspection services, material testing, engineering consultation and other reengineering activities required during Construction of the Project.
8. **“Consultant”** means any engineering firm or other entity retained to perform services for the Project.
9. **“Contractor”** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor with respect to the Project.
10. **“Design Plans”** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement.
11. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
12. **“Encroachment”** means any building, structure, farming, vehicle parking, storage or other object or thing, including but not limited to signs, posters, billboards, roadside stands, fences, or other private installations, not authorized to be located within the Right of Way which may or may not require removal during Construction pursuant to the Design Plans.
13. **“FHWA”** means the Federal Highway Administration, a federal agency of the United States.
14. **“Fiscal Year (FY)”** means the state’s fiscal year which begins July 1 and ends on June 30 of the following calendar year.
15. **“Geometric Improvements” or “GI”** means projects intended to address a safety, capacity, or operational need that can be addressed by changing the roadway geometrics. Examples of projects under this category include, but are not limited to, intersection reconstruction to reduce encroachments over the curb from off-tracking of turning trucks; addition or extension of turn

lanes; widening of the roadway to accommodate larger vehicles; or sight distance improvements.

16. **“Hazardous Waste”** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261, *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280, *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. § 65-3430, *et seq.*, Hazardous Waste.
17. **“KDOT”** means the Kansas Department of Transportation, an agency of the State of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.
18. **“Letting” or “Let”** means the process of receiving bids prior to any award of a Construction contract for any portion of the Project.
19. **“Non-Participating Costs”** means the costs of any items or services which the Secretary, acting on the Secretary’s own behalf and on behalf of the FHWA, reasonably determines are not Participating Costs.
20. **“Participating Costs”** means expenditures for items or services which are an integral part of highway, bridge and road construction projects, as reasonably determined by the Secretary.
21. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the City.
22. **“Pavement Restoration” or “PR”** means a project intended to address deficiencies in the road surface that are too extensive or expensive to be addressed by the measures under the CCLIP Surface Preservation (SP) category. Actions under this category could include full-depth pavement replacement of the entire driving surface or extensive pavement rehabilitation. Other related improvements, such as curb and gutter repair/replacement, storm sewer, parking lanes, or sidewalk construction may be included.
23. **“Preliminary Engineering”** means pre-construction activities, including but not limited to design work, generally performed by a consulting engineering firm that takes place before Letting.
24. **“Project”** means a CCLIP-PR project including pavement replacement with curb and gutter, storm sewer, sidewalks, relocation of a traffic signal, and other necessary and approved means of pavement replacement on 4<sup>th</sup> Street (US-73/K-7) from Choctaw Street to Seneca Street (US-73/K-7) in Leavenworth, Kansas, and is the subject of this Agreement.

25. **“Project Limits”** means that area of Construction for the Project, including all areas between and within the Right of Way boundaries as shown on the Design Plans.
26. **“Responsible Bidder”** means one who makes an offer to construct the Project in response to a request for bid with the technical capability, financial capacity, human resources, equipment, and performance record required to perform the contractual services.
27. **“Right of Way”** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.
28. **“Secretary”** means the Secretary of Transportation of the State of Kansas, and his or her successors and assigns.
29. **“Utilities” or “Utility”** means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water, and other similar commodities, including fire and police signal systems which directly or indirectly serve the public.

## ARTICLE II

### FUNDING:

1. **Funding.** The table below reflects the funding commitments of each Party. The Total Actual Costs of Construction include all Construction Contingency Items. The Parties agree estimated costs and contributions are to be used for encumbrance purposes and may be subject to change. **The City agrees to notify the Bureau of Local Projects if costs increase more than 10% over the estimate.**

Party	Responsibility	Total Projected Contribution (\$)
Secretary	85% of Total Actual Costs of Preliminary Engineering (PE), Construction, and Construction Engineering (CE), not to exceed \$1,000,000.00.	891,188.00
City	15% of Total Actual Costs of PE, Construction, and CE until Secretary’s funding limit is reached.  100% of Total Actual Costs of PE, Construction, and CE after Secretary’s funding limit is reached.  100% of Cost of Right of Way and Utility Adjustments.  100% Non-Participating Costs	
Total Estimated Project Cost		1,048,457.00

### ARTICLE III

#### SECRETARY RESPONSIBILITIES:

1. **Technical Information on Right of Way Acquisition.** The Secretary will provide technical information upon request to help the City acquire Right of Way in accordance with the laws and with procedures established by KDOT's Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives to obtain participation of federal funds in the cost of the Project.
2. **Letting and Administration by KDOT.** The Secretary shall Let the contract for the Project and shall award the contract to the lowest Responsible Bidder upon concurrence in the award by the City. The Secretary further agrees, as agent for the City, to administer the Construction of the Project in accordance with the final Design Plans, as required by FHWA, to negotiate with and report to the FHWA and administer the payments due the Contractor or the Consultant, including the portion of the cost borne by the City.
3. **Indemnification by Contractors.** The Secretary will require the Contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act or omission of the Contractor, the Contractor's agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the City defends a third party's claim, the Contractor shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City or both incur in defending the claim.
4. **Final Billing.** After receipt of FHWA acknowledgement of the final voucher claim, the Secretary's Chief of Fiscal Services will, in a timely manner, prepare a complete and final billing of all Project costs for which the City is responsible and shall then transmit the complete and final billing to the City.

### ARTICLE IV

#### CITY RESPONSIBILITIES:

1. **Secretary Authorization.** The Project shall be undertaken, prosecuted and completed for and on behalf of the City by the Secretary acting in all things as its agent, and the City hereby constitutes and appoints the Secretary as its agent, and all things hereinafter done by the Secretary in connection with the Project are hereby by the City authorized, adopted, ratified and confirmed to the same extent and with the same effect as though done directly by the City acting in its own individual corporate capacity instead of by its agent. The Secretary is authorized by the City to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of state aid and the current Federal-Aid Transportation Act for this Project.
2. **Legal Authority.** By his or her signature on this Agreement, the City certifies that the signatory has legal and actual authority as representative and agent for the City to enter into this Agreement. The City agrees to take any administrative and/or legal steps as may be required to give full effect to the terms of this Agreement.

3. **Conformity with State and Federal Requirements.** The City shall be responsible to design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with the current Local Projects LPA Project Development Manual, AASHTO A Policy on Geometric Design of Highways & Streets, the KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Road Design's road memorandums, the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD), the current version of the Bureau of Traffic Engineering's Traffic Engineering Guidelines, and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and any necessary Project Special Provisions required by the Secretary or by the City with the Secretary's concurrence, and with the rules and regulations of the FHWA pertaining to the Project. The City will be responsible for construction of any traffic signal and/or sidewalk improvements that are necessary to comply with Public Right-of-Way Accessibility Guidelines (PROWAG), regardless of whether such improvements are deemed non-eligible/non-participating bid items by the Secretary for reimbursement purposes.

4. **Design and Specifications.** The City shall be responsible to make or contract to have made Design Plans for the Project.

5. **Submission of Design Plans to Secretary.** Upon their completion, the City shall have the Design Plans submitted to the Secretary by a licensed professional engineer attesting to the conformity of the Design Plans with the items in Article IV, paragraph 3 above. The Design Plans must be signed and sealed by the licensed professional engineer responsible for preparation of the Design Plans. In addition, geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer who is responsible for the preparation of the geological investigations or studies. All technical professionals involved in the Project are required to meet the applicable licensing and/or certification requirements as stated in K.S.A. § 74-7001, *et seq.*

6. **Consultant Contract Language.** The City shall include language requiring conformity with Article IV, paragraph 3 above, in all contracts between the City and any Consultant with whom the City has contracted to perform services for the Project. In addition, any contract between the City and any Consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement must contain language requiring conformity with Article IV, paragraph 3 above. In addition, any contract between the City and any Consultant with whom the City has contracted to prepare and certify Design Plans for the Project covered by this Agreement must also contain the following provisions:

(a) **Completion of Design.** Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the Consultant's control.

(b) **Progress Reports.** Language requiring the Consultant to submit to the City (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.

(c) **Third Party Beneficiary.** Language making the Secretary a third party beneficiary in the agreement between the City and the Consultant. Such language shall read:

“Because of the Secretary of Transportation of the State of Kansas’ (Secretary’s) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Consultant. This third party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the City or both incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant’s negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary’s right to payment or reimbursement.”

7. **Responsibility for Adequacy of Design.** The City shall be responsible for and require any Consultant retained by it to be responsible for the adequacy and accuracy of the Design Plans for the Project. Any review of these items performed by the Secretary or the Secretary’s representatives is not intended to and shall not be construed to be an undertaking of the City’s and its Consultant’s duty to provide adequate and accurate Design Plans for the Project. Reviews by the Secretary are not done for the benefit of the Consultant, the construction Contractor, the City, any other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the Design Plans for the Project, or any other work performed by the Consultant or the City.

8. **Authorization of Signatory.** The City shall authorize a duly appointed representative to sign for the City any or all routine reports as may be required or requested by the Secretary in the completion of the Project.

9. **Right of Way.** The City agrees to the following with regard to Right of Way:

(a) **Right of Way Acquisition.** The City will, in its own name, as provided by law, acquire by purchase, dedication or condemnation all the Right of Way shown on the final Design Plans in accordance with the schedule established by KDOT. The City agrees the necessary Right of Way shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R., Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The City shall certify to the Secretary, on forms provided by the KDOT’s Bureau of Local Projects, such Right of Way has been acquired. The City further agrees it will have recorded in the Office of the Register of Deeds all Right of Way, deeds, dedications, permanent easements and temporary easements.

(b) **Right of Way Documentation.** The City will provide all legal descriptions required for Right of Way acquisition work. Right of Way descriptions must be signed and sealed by a licensed land surveyor responsible for the preparation of the Right of Way descriptions. The

City further agrees to acquire Right of Way in accordance with the laws and with procedures established by KDOT's Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives for the participation of federal funds in the cost of the Project. The City agrees copies of all documents, including recommendations and coordination for appeals, bills, contracts, journal entries, case files, or documentation requested by the Office of Chief Counsel will be delivered within the time limits set by the Secretary.

(c) Relocation Assistance. The City will contact the Secretary if there will be any displaced person on the Project prior to making the offer for the property. The Parties mutually agree the City will undertake the relocation for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. §§ 58-3501 to 58-3507, inclusive, and Kansas Administrative Regulations 36-16-1, *et seq.* The Secretary will provide information, guidance, and oversight to the City for any relocations required by the Project.

(d) Non-Highway Use of Right of Way. Except as otherwise provided, all Right of Way provided for the Project shall be used solely for public street purposes. If federal funds are used in the acquisition of Right of Way, any disposal of or change in the use of Right of Way or in access after Construction of the Project will require prior written approval by the Secretary.

(e) Trails and Sidewalks on KDOT Right of Way. With regard to any bike or pedestrian paths or sidewalks ("Trail/Sidewalk") constructed on state highway right of way, if any, pursuant to the Design Plans, the City agrees as follows:

- (i) City Responsible for Repairs and Providing Alternative Accessible Routes. The City agrees that the primary purpose of KDOT Right of Way is for the construction and maintenance of US-73/K-7. If the construction or maintenance of US-73/K-7 reasonably requires the Trail/Sidewalk on KDOT Right of Way to be damaged or removed, the City shall be responsible for all repairs to the Trail/Sidewalk made necessary as a result of US-73/K-7 construction or maintenance. In the event the Trail/Sidewalk on KDOT Right of Way is temporarily closed or removed for any reason and for any length of time, the City will be wholly responsible for providing an alternative accessible path and for compliance with all laws and regulations relating to accessibility.
- (ii) Interference with KDOT Right of Way. If the Secretary, in the Secretary's sole judgment, determines that continued use of the Trail/Sidewalk is or will interfere with KDOT use of its Right of Way or is otherwise rendered impractical, inconvenient, or unsafe for use by the traveling public, the City will remove the Trail/Sidewalk and restore the KDOT Right of Way location to its original condition prior to the Construction of the Trail/Sidewalk.
- (iii) Incorporation of Trail/Sidewalk into Local Transportation System. The City agrees to take all steps necessary to designate the Trail/Sidewalk component



of the Project as an integral part of its local transportation system, being primarily for transportation purposes and having only incidental recreational use for purposes of 49 U.S.C. § 303 and 23 C.F.R. 771.135.

(iv) Maintenance. When the Project is completed and final acceptance is issued, the City, at its own cost and expense, will maintain, including snow removal if required by law, the Trail/Sidewalk on KDOT Right of Way and make ample provision each year for such maintenance. If notified by the State Transportation Engineer of any unsatisfactory maintenance condition, the City will begin the necessary repairs within a reasonable period and will prosecute the work continuously until it is satisfactorily completed. Any notification by the State Transportation Engineer, however, is not intended to and shall not be construed to be an undertaking of the City's absolute duty and obligation to maintain the Trail/Sidewalk.

(f) Use of City Right of Way. The Secretary shall have the right to utilize any land owned or controlled by the City, lying inside or outside the limits of the City as shown on the final Design Plans, for the purpose of constructing the Project.

10. **Removal of Encroachments**. The City shall initiate and proceed with diligence to remove or require the removal of all Encroachments either on or above the limits of the Right of Way within its jurisdiction as shown on the final Design Plans for this Project. It is further agreed all such Encroachments will be removed before the Project is advertised for Letting; except the Secretary may permit the Project to be advertised for Letting before such Encroachment is fully removed if the Secretary determines the City and the owner of the Encroachment have fully provided for the physical removal of the Encroachment and such removal will be accomplished within a time sufficiently short to present no hindrance or delay to the Construction of the Project.

11. **Future Encroachments**. Except as provided by state and federal laws, the City agrees it will not in the future permit Encroachments upon the Right of Way of the Project, and specifically will require any gas and fuel dispensing pumps erected, moved, or installed along the Project be placed a distance from the Right of Way line no less than the distance permitted by the National Fire Code.

12. **Utilities**. The City agrees to the following with regard to Utilities:

(a) Utility Relocation. The City will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing Utilities necessary to construct the Project in accordance with the final Design Plans. New or existing Utilities to be installed, moved, or adjusted will be located or relocated in accordance with the current version of the KDOT Utility Accommodation Policy (UAP), as amended or supplemented.

(b) Status of Utilities. The City shall furnish the Secretary a list identifying existing and known Utilities affected, together with locations and proposed adjustments of the same and designate a representative to be responsible for coordinating the necessary removal or adjustment of Utilities.

(c) Time of Relocation. The City will expeditiously take such steps as are necessary to facilitate the early adjustment of any Utilities, initiate the removal or adjustment of the Utilities, and proceed with reasonable diligence to prosecute this work to completion. The City shall certify to the Secretary on forms supplied by the Secretary that all Utilities required to be moved prior to Construction have either been moved or a date provided by the City as to when, prior to the scheduled Letting and Construction, Utilities will be moved. The City shall move or adjust or cause to be moved or adjusted all necessary Utilities within the time specified in the City's certified form except those necessary to be moved or adjusted during Construction and those which would disturb the existing street surface. The City will initiate and proceed to complete adjusting the remaining Utilities not required to be moved during Construction so as not to delay the Contractor in Construction of the Project.

(d) Permitting of Private Utilities. The City shall certify to the Secretary all privately owned Utilities occupying public Right of Way required for the Construction of the Project are permitted at the location by franchise, ordinance, agreement or permit and the instrument shall include a statement as to which party will bear the cost of future adjustments or relocations required as a result of street or highway improvements.

(e) Indemnification. To the extent permitted by law, the City will indemnify, hold harmless, and save the Secretary and the Contractor for damages incurred by the Secretary and Contractor because identified Utilities have not been moved or adjusted timely or accurately.

(f) Cost of Relocation. Except as provided by state and federal laws, the expense of the removal or adjustment of the Utilities located on public Right of Way shall be borne by the owners. The expense of the removal or adjustment of privately owned Utilities located on private Right of Way or easements shall be borne by the City except as provided by state and federal laws.

13. Hazardous Waste. The City agrees to the following with regard to Hazardous Waste:

(a) Removal of Hazardous Waste. The City shall locate and be responsible for remediation and cleanup of any Hazardous Waste discovered within the Project Limits. The City shall take appropriate action to cleanup and remediate any identified Hazardous Waste prior to Letting. The City will also investigate all Hazardous Waste discovered during Construction and shall take appropriate action to cleanup and remediate Hazardous Waste. The standards to establish cleanup and remediation of Hazardous Waste include, but are not limited to, federal programs administered by the Environmental Protection Agency, State of Kansas environmental laws and regulations, and City and County standards where the Hazardous Waste is located.

(b) Responsibility for Hazardous Waste Remediation Costs. The City shall be responsible for all damages, fines or penalties, expenses, fees, claims and costs incurred from remediation and cleanup of any Hazardous Waste within the Project Limits which is discovered prior to Letting or during Construction.

(c) Hazardous Waste Indemnification. The City shall hold harmless, defend, and indemnify the Secretary, the Secretary's agents and employees from all claims, including contract claims and associated expenses, and from all fines, penalties, fees or costs imposed under

state or federal laws arising out of or related to any act of omission by the City in undertaking cleanup or remediation for any Hazardous Waste.

(d) No Waiver. By signing this Agreement, the City has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any Hazardous Waste on any Right of Way within the Project Limits. The City reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project Limits.

14. **Inspections**. The City is responsible to provide Construction Engineering for the Project in accordance with the rules and guidelines developed for the current KDOT approved Construction Engineering program and in accordance with the current edition of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions and any necessary Project Special Provisions. The detailed inspection is to be performed by the City or the Consultant. The Secretary does not undertake for the benefit of the City, the Contractor, the Consultant or any third party the duty to perform the day-to-day detailed inspection of the Project, or to catch the Contractor's errors, omissions, or deviations from the final Design Plans. The City will require at a minimum all personnel performing Construction Engineering to comply with the high visibility requirements of the MUTCD, Chapter 6E.02, High-Visibility Safety Apparel. The agreement for inspection services must contain this requirement as a minimum. The City may require additional clothing requirements for adequate visibility of personnel.

15. **Traffic Control**. The City agrees to the following with regard to traffic control for the Project:

(a) Temporary Traffic Control. The City shall provide a temporary traffic control plan within the Design Plans, which includes the City's plan for handling multi-modal traffic during Construction, including detour routes and road closings, if necessary, and installation of alternate or temporary pedestrian accessible paths to pedestrian facilities in the public Right of Way within the Project Limits. The City's temporary traffic control plan must be in conformity with the latest version of the MUTCD, as adopted by the Secretary, and be in compliance with the American Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, and FHWA rules, regulations, and guidance pertaining to the same. The Secretary or the Secretary's authorized representative may act as the City's agent with full authority to determine the dates when any road closings will commence and terminate. The Secretary or the Secretary's authorized representative shall notify the City of the determinations made pursuant to this section.

(b) Permanent Traffic Control. The City must ensure the location, form and character of informational, regulatory and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by any public authority, or other agency as authorized by K.S.A. § 8-2005, shall conform to the latest version of the MUTCD as adopted by the Secretary.

(c) Parking Control. The City shall prohibit parking of vehicles on the city connecting link and on the acceleration and deceleration lanes of all connecting streets and highways and on additional portions of the connecting streets and highways as the Secretary may deem necessary to permit free flowing traffic throughout the length of the Project covered by this Agreement.

(d) **Traffic Movements.** The arterial characteristics inherent in the Project require uniformity in information and regulations to the end that traffic may be safely and expeditiously served. The City shall adopt and enforce rules and regulations governing traffic movements as may be deemed necessary or desirable by the Secretary and the FHWA.

16. **Access Control.** The City will maintain control of access rights and prohibit the construction or use of any entrances or access points along the Project within the City other than those shown on the final Design Plans, unless prior approval is obtained from the Secretary.

17. **Remittance of Estimated Share.** The City shall either 1) deposit with the Secretary its estimated share of the total Project expenses based upon estimated approved contract quantities or 2) provide billing and payment documentation to the Secretary of any Preliminary Engineering costs incurred by the City for the Project that the City has paid. If the total amount expended by the City for its Preliminary Engineering costs does not equal its total financial obligation, as described in Article II, then the City shall deposit with the Secretary the difference. If the City chooses to forego providing Preliminary Engineering documentation to the Secretary, the City will remit its estimated share by the date indicated on the resolution form Authorization to Award Contract, Commitment of City Funds received by the City from the Secretary. The date indicated for the City to deposit its estimated share of the total Project expenses or provide Preliminary Engineering documentation is fifty (50) days after the Letting date.

18. **Payment of Final Billing.** If any payment is due to the Secretary, such payment shall be made within thirty (30) days after receipt of a complete and final billing from the Secretary's Chief of Fiscal Services.

19. **Audit.**

(a) **Audit Requirements for Federal Awards.** All local governmental units, state agencies or instrumentalities, non-profit Organizations, institutions of higher education and Indian Tribal governments shall comply with Federal-Aid Transportation Act and the requirements of 2 C.F.R. Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (commonly known as the "Supercircular"). The Audit Standards set forth in 2 C.F.R. Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," and specifically the requirements in Subpart F, 2 C.F.R. §200.500 et seq. require either a single or program specific audit be performed by an independent certified public accountant in accordance with these standards. All information audited and audit standards and procedures shall comply with 2 C.F.R. §200.500 et seq.

(b) **Agency Audit.** If the Audit Standards set forth in 2 C.F.R. Part 200 do not apply, the Secretary and/or the NHSTA may request, in their sole discretion, to conduct an audit of the Project. Upon the request of the Secretary and/or the NHTSA for an audit, the LPA/City/County will participate and cooperate in the audit and shall make its records and books available to representatives of the requesting agency for a period of five (5) years after date of final payment under this Agreement. If the audit reveals payments have been made with federal funds by the LPA/City/County for items considered Non-Participating Costs, the LPA/City/County shall promptly reimburse the Secretary for such items upon notification by the Secretary

20. **Accounting.** Upon request by the Secretary and in order to enable the Secretary to report all costs of the Project to the legislature, the City shall provide the Secretary an accounting of all actual Non-Participating Costs which are paid directly by the City to any party outside of the Secretary and all costs incurred by the City not to be reimbursed by the Secretary for Preliminary Engineering, Right of Way, Utility adjustments, Construction, and Construction Engineering work phases, or any other major expense associated with the Project.

21. **Cancellation by City.** If the City cancels the Project, it will reimburse the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The City agrees to reimburse the Secretary within thirty (30) days after receipt by the City of the Secretary's statement of the cost incurred by the Secretary prior to the cancellation of the Project.

## ARTICLE V

### GENERAL PROVISIONS:

1. **Incorporation of Design Plans.** The final Design Plans for the Project are by this reference made a part of this Agreement.

2. **City Connecting Link.** The Parties previously entered into an agreement covering routine maintenance of city connecting links, US-73/K-7, K-92, and K-5. It is the Parties' intention that the agreement for routine maintenance shall remain in full force and effect and the mileage set out in the city connecting link maintenance agreement is not affected by this Agreement.

3. **FHWA Approval.** Decisions as to what Project Costs are federal Participating Costs will be made in accordance with the requirements of the FHWA.

4. **Civil Rights Act.** The "Special Attachment No. 1, Rev. 09.20.17" pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

5. **Contractual Provisions.** The Provisions found in the most recent version of the Contractual Provisions Attachment (Form DA-146a), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

6. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not to be deemed to control or affect the meaning or construction or the provisions herein.

7. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the City and their successors in office.

8. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

9. **Buy America Compliance.** The Parties agree to comply with the Buy America requirements of 23 CFR 635.410, as applicable, when purchasing items using Federal funds under this

Agreement. Buy America requires the Parties to purchase only steel and iron produced in the United States, unless a waiver has been granted by FHWA or the product is subject to a general waiver. Costs for applicable materials which are not certified either compliant or under waiver will not be reimbursed. Buy America requirements apply to all contractors/subcontractors and should be incorporated through appropriate contract provisions as needed.

10. **Prohibited Use of Certain Technologies.** All Parties agree that they will comply with 2 CFR 200.216 and 2 CFR 200.471 regulations. Such regulations provide that recipients and sub-recipients of federal funds are prohibited from obligating or expending loan or grant funds, if any, to 1) procure or obtain; 2) extend or renew a contract to procure or obtain, or; 3) enter into a contract to procure or obtain telecommunication or video surveillance equipment, services, or systems produced by: Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); and Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). Any expenditures for such telecommunication or video surveillance equipment, services or systems are unallowable costs and will not be reimbursed.

11. **Headings.** The captions of the various articles and sections of this Agreement are for convenience and ease of reference only, and do not alter the terms and conditions of any part or parts of this Agreement.

12. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

**IN WITNESS WHEREOF** the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

ATTEST:

THE CITY OF LEAVENWORTH, KANSAS

\_\_\_\_\_  
CITY CLERK (Date)

\_\_\_\_\_  
MAYOR

(SEAL)

Kansas Department of Transportation  
Secretary of Transportation

By: \_\_\_\_\_  
Burt Morey, P.E. (Date)  
Deputy Secretary and  
State Transportation Engineer

### CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001, *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, *et seq.*) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to



comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

6. **Acceptance of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority to Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility for Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101, *et seq.*
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

## KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment  
To Contracts or Agreements Entered Into  
By the Secretary of Transportation of the State of Kansas

### PREAMBLE

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d to 2000d-4) and other nondiscrimination requirements and the Regulations, hereby notifies all contracting parties that it will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, color, national origin, sex, age, disability, income-level or Limited English Proficiency (“LEP”).

### CLARIFICATION

Where the term “contractor” appears in the following “Nondiscrimination Clauses”, the term “contractor” is understood to include all parties to contracts or agreements with the Secretary of Transportation, Kansas Department of Transportation. This Special Attachment shall govern should this Special Attachment conflict with provisions of the Document to which it is attached.

### ASSURANCE APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”), agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in its Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration (FHWA), the Federal Transit Administration (“FTA”) or the Federal Aviation Administration (“FAA”) as they may be amended from time to time which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontractors, Including Procurements of Material and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA, Federal Transit Administration (“FTA”), or Federal Aviation Administration (“FAA”) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or, the FHWA, FTA, or FAA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA, FTA, or FAA may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of the paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any

subcontract or procurement as the Recipient or the FHWA, FTA, or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

### **ASSURANCE APPENDIX E**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- The Federal Aid Highway Act of 1973 (23 U.S.C. § 324 et. seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et. seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et. seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL No. 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with LEP, and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681)

July 15, 2020

Mr. Michael McDonald  
City Engineer  
100 N. 5th St.  
Leavenworth, KS 66048

Dear Mr. McDonald,

Congratulations! Your application for a Pavement Restoration project has been selected for funding as part of the Kansas Department of Transportation (KDOT) State Fiscal Year (SFY) 2023 City Connecting Link Improvement Program. KDOT has allocated \$1,000,000.00 for Preliminary Engineering, Construction, and Construction Engineering for this project:

Pavement replacement with curb and gutter, storm sewer and sidewalk on K-7 from Choctaw St. to Delaware St.

The City will be required to contribute a minimum of 15% plus anything over the amount shown above and will also be responsible for all Right-of-Way and Utility costs.

For KDOT to program your project, KDOT must receive a completed 1302 form from you before August 17, 2020. Please complete the enclosed form and return it as soon as possible to [KDOT.LPePlans@ks.gov](mailto:KDOT.LPePlans@ks.gov).

Once KDOT receives your completed 1302 form, KDOT will program the project and send a project schedule as a reference in developing the project in accordance with KDOT's procedures. Project development details may be found in the LPA Project Development Manual at [KDOT: Local Projects](#). After receiving and reviewing field check plans, a project manager from KDOT Bureau of Local Projects will contact you to schedule the field check for the project.

To keep the project on schedule, this letter serves as the commitment from KDOT to fund this project at the amount written above. An agreement between KDOT and the City will be forthcoming that outlines all terms and conditions of KDOT's funding. Preliminary Engineering utilizing CCLIP funds must follow a Qualification Based Selection (QBS) process, which can be found at [PE Consultant Selection Packet \(QBS\)](#). The City shouldn't issue a Notice to Proceed until funding is obligated.

Regretfully, only one of your three projects was selected for this round of funding. This does not mean the other projects were not good ones, but merely, KDOT did not have adequate funds to approve all requests.

If you have any questions, please do not hesitate to contact us. Questions may be directed to Dawn Hueske at (785) 207-1420 or [Dawn.Hueske@ks.gov](mailto:Dawn.Hueske@ks.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Stringer". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael J. Stringer, P.E., Chief  
Bureau of Local Projects

CC: Leroy Koehn  
Jason VanNice  
Bill Legge



Dwight D. Eisenhower State Office Building  
700 S.W. Harrison Street  
Topeka, KS 66603-3745

Phone: 785-296-3861  
Fax: 785-296-6946  
kdot#publicinfo@ks.gov  
http://www.ksdot.org

Julie L. Lorenz, Secretary  
Michael J. Stringer, P.E., Chief

Laura Kelly, Governor

September 30, 2020

City of Leavenworth  
Mr. Michael McDonald, P.E.  
City Engineer, Director of Public Works  
100 N 5th St  
Leavenworth, KS 66048-

Dear Mr. McDonald:

Your awarded SFY 2023 CCLIP-PR project has been programmed and assigned the following project numbers:

**Project Name:** Leavenworth CCLIP-PR: US-73 from Choctaw to Delaware  
**KDOT Project Number:** 052 KA-5990-01  
**Federal Project Number:** ACNHP-A599(001)

The approved Kansas Department of Transportation Project Authorization for this project is enclosed.

Also, attached to this letter is a Project Schedule. The dates are furnished as a guide to aid in maintaining this project on a recommended project development schedule. The letting date has been tentatively set and the amount of funds and/or the obligation authority available could cause the schedule to be revised. If the letting date is revised or the completion of the items fluctuate significantly from the dates listed, the schedule will be revised to indicate the new tentative letting date and project schedule.

If you have any questions, please do not hesitate to contact us or your BLP Project Manager, Bill Legge, P.E..

Michael J. Stringer, P.E., Chief  
Bureau of Local Projects

Lisa M. Roth

Digitally signed by Lisa M. Roth  
DN: CN=Lisa M. Roth,  
OU=Bureau of Local Projects,  
O=Kansas Department of  
Transportation, L=Topeka,  
S=Kansas, C=US  
Date: 2020.09.30  
08:37:28-0500

for Tod L. Salfrank  
Assistant Bureau Chief

mjs/tls/lmr

Enclosures

cc: Bill Legge, P.E., BLP Project Manager  
Nelda Buckley, P.E., BLP Road Team Supervisor  
Mr. Leroy Koehn, P.E., District One Engineer  
File

# Kansas Department of Transportation

## PROJECT SCHEDULE

Bureau of Local Projects (785) 296-3861

Date Prepared:	September 30, 2020
Prepared for:	City of Leavenworth
KDOT Project Number:	052 KA-5990-01
Funding Program:	CCLIP-PR
Current Tentative Letting Date:	3/15/2023

### NOTICE

The following dates are furnished as a guide to aid in maintaining this project on a schedule which will insure the letting date indicated. The letting date has been tentatively set and the amount of funds and/or the obligation authority available could cause the schedule to be revised. If the letting date is revised or the completion of items fluctuate significantly from the established dates listed, this schedule will be revised to indicate the new tentative letting date and project schedule.

*Plans forwarded to BLP will not be processed without a current detailed estimate.*

ITEMS TO BE COMPLETED	Months to Letting	DEADLINE COMPLETION DATE	DATE COMPLETED <small>-For Your Use Only-</small>
Consultant Design Contract to be Executed by	22.0	May 24, 2021	
Pre-Design Field Check	20.0	July 23, 2021	
Field Check Complete	15.0	December 20, 2021	
Office Check Plans and Estimate to BLP	11.0	April 19, 2022	
Office Check Plans Complete	9.0	June 18, 2022	
Final Check Plans and Estimate to BLP	6.0	September 16, 2022	
Begin CE Agreement	6.0	September 16, 2022	
Final Check Complete	5.0	October 16, 2022	
R/W Clearances (1306 Form) to BLP	4.0	November 15, 2022	
Utility Form (1304 Form) to BLP	4.0	November 15, 2022	
Status of Permits (1307 Form) and Required Permits to BLP	4.0	November 15, 2022	
PSE Plans to BLP	3.5	November 27, 2022	
PSE Plans Complete	1.5	January 29, 2023	
Final Letting Plans to BLP	1.2	February 05, 2023	
CE Agreement Executed	1.1	February 08, 2023	
Advertise	1.0	February 13, 2023	

**KANSAS DEPARTMENT OF TRANSPORTATION  
PROJECT AUTHORIZATION**

Program Addition						Sheet 1 of 6
<b>Project Number:</b>	KA-5990-01	<b>Prog. Cat / Subcat:</b>	LC/K2R	<b>District:</b>	01	
<b>Primary Route:</b>	U073	<b>Env. Class:</b>	CLASS IIB	<b>MPO Area:</b>	MARC	
<b>Primary County:</b>	052	<b>Route Class-MFV:</b>	C	<b>Sales Tax Exempt:</b>	Exempt	
<b>Prim Fed Proj Num:</b>	ACNHP-A599(001)	<b>NHS Project:</b>	Y	<b>Leaders</b>		
<b>Length (mi):</b>	0.140	<b>FHWA Func. Class-MFV:</b>	OPA	<b>Proj. Mgr:</b>	Bill Legge	
<b>FY Programmed:</b>	2023	<b>Design Criteria:</b>	3R	<b>Area Engineer:</b>	Jason Van Nice	
<b>Sched. Best Let (M17):</b>	March-2023	<b>FHWA Oversight:</b>	STAAS	<b>Road Design:</b>		
<b>Letting Type:</b>	KDOT	<b>KDOT Program:</b>	ELTP	<b>Bridge Design:</b>		
<b>Technical Name:</b>	Leavenworth CCLIP-PR: US-73 from Choctaw to Delaware					
<b>Technical Location:</b>	Leavenworth CCLIP-PR: US-73/K-92/K-7 from Choctaw Street to Delaware Street					
<b>Technical Scope:</b>	Pavement replacement with curb and gutter, storm sewer, sidewalks, relocate traffic signal					
<b>Friendly Name:</b>	Road Improvements in Leavenworth					
<b>Friendly Location:</b>	4th Street from Choctaw Street to Delaware Street					
<b>Friendly Scope:</b>	Surfacing					
<b>Reason / Justification for Change:</b>	Program Addition: Project was requested and approved for State FY 2023 CCLIP-PR funds. Funding will be 85/15 for PE, Construction and CE work phases up to a maximum of \$1,000,000. The city will be responsible for 100% of any non-participating construction costs and anything over the maximum of \$1,000,000. The Bureau of Local Projects needs to be notified if there is a cost increase by more than 10%.					

**Initiated By:** Local Projects ( Salfrank ) **Signature:** Signed by Tod L Salfrank at 9/18/2020 1:27:52 PM on PC DT17LP81

Comments:

Signed by Mark K Taylor at 9/21/2020 4:14:22 PM on PC  
DT16PC04  
**Chief of Program & Project Management**

<b>FHWA Concurrence</b> <input checked="" type="checkbox"/> Proposed Environment Classification  Signed by Javier Ahumada at 9/21/2020 2:49:12 PM on PC DT0FHA01	<b>STE PROJECT AUTHORIZATION</b> <input checked="" type="radio"/> Approve <input type="radio"/> Disapprove Comments:  Signed by Burton K Morey at 9/29/2020 10:09:17 AM on PC DT02AD06L
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**KANSAS DEPARTMENT OF TRANSPORTATION  
PROJECT AUTHORIZATION**

Initiated Date: 9/18/2020

KA-5990-01 Leavenworth CCLIP-PR: US-73 from Choctaw to Delaware

Sheet 2 of 6

Work Phase	Original Estimate	Current Estimate	WP Fund Category	Prorata	Fund Max
PE	79,500	79,500	K	85.00%	0
			U0430	15.00%	0
CONST	838,897	838,897	ACNHP	80.00%	0
			NHPP	0.00%	0
			STATE	5.00%	0
			U0430	14.99%	0
CE	130,060	130,060	ACNHP	80.00%	0
			NHPP	0.00%	0
			STATE	5.00%	0
			U0430	15.00%	0
<b>Totals:</b>	1,048,457	1,048,457			

Project Fund Category	Project Fund Prorata	Sum Of WP Maximums	Project Maximum
ACNHP	73.93%	0	0
K	6.44%	0	0
NHPP	0.00%	0	0
STATE	4.62%	0	0
U0430	14.99%	0	0

**KANSAS DEPARTMENT OF TRANSPORTATION  
PROJECT AUTHORIZATION**

**Initiated Date:** 9/18/2020

KA-5990-01 Leavenworth CCLIP-PR: US-73 from Choctaw to Delaware

Sheet 3 of 6

**Project Schedule**

<u>MI/CP</u>	<u>Name</u>	<u>Sched Start</u>	<u>Act Start</u>	<u>OBSE</u>	<u>Responsible OBSE Manager</u>
M15	Kauth	8/26/2020		ELP	
C86	Begconsel	9/24/2020		ELP	
C07	Bgagr	2/23/2021		ELP	
C13	Cycoa	5/21/2021		ELP	
C87	Endconsel	5/28/2021		ELP	
M10	Fcrec	7/29/2021		ELN	Nelda Buckley
C29	Fdchk	12/24/2021		ELN	Nelda Buckley
C50	Ocrec	4/25/2022		ELN	Nelda Buckley
C23	Envcl	5/19/2022		ELN	Nelda Buckley
C92	Dessumapr	5/24/2022		ELN	Nelda Buckley
M20	Offck	6/22/2022		ELN	Nelda Buckley
C33	Fnckr	9/19/2022		ELN	Nelda Buckley
M12	Finck	10/18/2022		ELN	Nelda Buckley
C60	Prpcl	11/16/2022		ELN	Nelda Buckley
C74	Utcom	11/16/2022		ELN	Nelda Buckley
C78	Wrrec	11/16/2022		ELN	Nelda Buckley
C15	Darec	11/16/2022		ELN	Nelda Buckley
C56	Plcom	11/29/2022		ELN	Nelda Buckley
M22	Prcom	11/29/2022		PPT	
C08	Bgpse	12/2/2022		OCR	
C48	Oblap	12/16/2022		PPT	
M14	Fnpic	2/7/2023		ELN	Nelda Buckley
C89	Ceagree	2/9/2023		ELP	
C03	Adver	2/14/2023		PPT	
M17	Lettg	3/15/2023		PPT	
C02	Aaout	3/23/2023		ELP	
C01	Aacom	4/6/2023		ELP	
C47	Notpr	4/14/2023		OC0	Greg Schieber
M19	Notac	9/15/2023		OC0	Greg Schieber
M11	Final	3/19/2024		AF0	Pamela Murray-Anderson
M41	FedEnd	9/17/2025		PPF	Susie Lovelady

**KANSAS DEPARTMENT OF TRANSPORTATION  
PROJECT AUTHORIZATION**

Initiated Date: 9/18/2020

KA-5990-01 Leavenworth CCLIP-PR: US-73 from Choctaw to Delaware

Sheet 4 of 6

	Official Estimated 2021 Base Year Cost	Official Estimated 2023 Inflated Cost @ 0.0920
<b>Total Roadway</b>	768,203	838,896
<b>Total Structures</b>	0	0
<b>Grand Total</b>	768,203	838,896

Roadway Type	Roadway Type Name	FHWA Imp Type	Official Estimated 2021 Base Year Cost	Official Estimated 2023 Inflated Cost @ 0.0920
PAVMK	Pavement Marking	004	7,500	8,190
GR	Grading	004	230,380	251,581
SU	Surfacing	004	289,323	315,948
CULV	Culvert	004	98,500	107,564
SG	Signing	004	7,500	8,190
PATH	Pedestrian/bicycle Pathways	004	90,000	98,282
TRSGN	Traffic Signals	004	45,000	49,141

Bridge No. Str. No.	Structure Location Desc./ Featured Cross Desc.	KDOT Imp. Code FHWA Imp. Code	Fed Fund Cat.	FHWA Suff. Rating	Length Width Feet	Base Year Cost	Prog Year Cost

**KANSAS DEPARTMENT OF TRANSPORTATION  
PROJECT AUTHORIZATION**

**Initiated Date:** 9/18/2020

KA-5990-01 Leavenworth CCLIP-PR: US-73 from Choctaw to Delaware

Sheet 5 of 6

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**Baseline Reason for Change:**

**Project Baseline Last Date & Note -- 8/17/2020**

Program Addition: Project was requested and approved for State FY 2023 CCLIP-PR funds. Funding will be 85/15 for PE, Construction and CE work phases up to a maximum of \$1,000,000. The city will be responsible for 100% of any non-participating construction costs and anything over the maximum of \$1,000,000. The Bureau of Local Projects needs to be notified if there is a cost increase by more than 10%.

**Workphase Baseline Last Date & Note -- 8/17/2020**

Program Addition: Project was requested and approved for State FY 2023 CCLIP-PR funds. Funding will be 85/15 for PE, Construction and CE work phases up to a maximum of \$1,000,000. The city will be responsible for 100% of any non-participating construction costs and anything over the maximum of \$1,000,000. The Bureau of Local Projects needs to be notified if there is a cost increase by more than 10%.

**Funding Baseline Last Date & Note -- 8/17/2020**

Program Addition: Project was requested and approved for State FY 2023 CCLIP-PR funds. Funding will be 85/15 for PE, Construction and CE work phases up to a maximum of \$1,000,000. The city will be responsible for 100% of any non-participating construction costs and anything over the maximum of \$1,000,000. The Bureau of Local Projects needs to be notified if there is a cost increase by more than 10%.

**Schedule Baseline Last Date & Note -- 8/17/2020**

Program Addition: Project was requested and approved for State FY 2023 CCLIP-PR funds. Funding will be 85/15 for PE, Construction and CE work phases up to a maximum of \$1,000,000. The city will be responsible for 100% of any non-participating construction costs and anything over the maximum of \$1,000,000. The Bureau of Local Projects needs to be notified if there is a cost increase by more than 10%.

**KANSAS DEPARTMENT OF TRANSPORTATION  
PROJECT AUTHORIZATION**

**Initiated Date:** 9/18/2020

KA-5990-01 Leavenworth CCLIP-PR: US-73 from Choctaw to Delaware

Sheet 6 of 6

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**Project Notes:**

Program Addition: Project was requested and approved for State FY 2023 CCLIP-PR funds. Funding will be 85/15 for PE, Construction and CE work phases up to a maximum of \$1,000,000. The city will be responsible for 100% of any non-participating construction costs and anything over the maximum of \$1,000,000. The Bureau of Local Projects needs to be notified if there is a cost increase by more than 10%.

**POLICY REPORT  
FIRST CONSIDERATION ORDINANCE TO  
RESCIND SPECIAL USE PERMIT – 1700 10<sup>TH</sup> AVENUE**

**MAY 25, 2021**

Prepared by:



Carla K Williamson, CMC  
City Clerk

Reviewed by:



Paul Kramer  
City Manager

**ISSUE:**

The issue before the City Commission is to place on first consideration an ordinance to rescind the Special Use Permits (SUP) allowing Video Rental & Sales at 1700 10<sup>th</sup> Avenue.

**BACKGROUND:**

The Special Use Permit allowing Video Sales and Rental at 1700 10<sup>th</sup> Avenue was approved on August 8, 2006 by passage of Ordinance 7700. 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.

**ACTION REQUIRED:**

Consensus to place an ordinance on first consideration to rescind the Special Use Permit as presented.

Attachments:

- Draft Ordinance

(Summary Published in the Leavenworth Times on \_\_\_\_\_, 2021)

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO RESCIND THE SPECIAL USE PERMIT ALLOWING VIDEO RENTAL & SALES AT 1700 10<sup>th</sup> AVENUE, LEAVENWORTH KANSAS.**

**WHEREAS**, under Appendix A of the City of Leavenworth Code of Ordinances, Development Regulations, Section 2.04 C, the Governing Body of the City of Leavenworth is given the power to administratively discontinue or rescind a special use permit; and

**WHEREAS**, current zoning and use of the property no longer requires a special use permit.

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAVENWORTH:**

**Section 1.** That the following special use permit is hereby rescinded:

Name	Location	Use	Original Special Use Ordinance to Rescind	Date Approved
Keith Hoogland Limited Partnership	1700 10 <sup>th</sup> Avenue	Video Rental & Sales	7700	08/08/2006

**Section 2.** This Ordinance shall take effect and be in force from and after its passage by the Governing Body, and its summary publication once in the official City newspaper.

**PASSED AND APPROVED** by the City Commission of the City of Leavenworth, Kansas, on this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Nancy D. Bauder, Mayor

{Seal}

ATTEST:

\_\_\_\_\_  
Carla K. Williamson, City Clerk

**POLICY REPORT  
FIRST CONSIDERATION ORDINANCE  
2021-12 SUP  
2137 BIRCH STREET**

**MAY 25, 2021**

**SUBJECT:**

Place on first consideration an ordinance to approve 2021-12-SUP.



**Prepared By:**

Julie Hurley  
Director of Planning and  
Community Development



**Reviewed By:**

Paul Kramer  
City Manager

**NATURE OF REQUEST**

The applicants, Duane and Kimberly Reece, are requesting a Special Use Permit to allow the operation of Child Care Center in their home located at 2137 Birch Street. The property is currently zoned R1-6 (High Density Single Family Residential). Child Care Centers are allowed in the R1-6 zoning district with issuance of a special use permit.

The applicant is licensed by the State of Kansas to care for a maximum of 12 children, dependent upon the ages of the children in care, and operated a licensed child care facility in her previous home in the City of Leavenworth.

**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.*

Notification was sent to property owners within 200' of the subject property, as required by Kansas statute. Since notifications were mailed, staff has received communication from 4 property owners opposed to the Child Care Center. The Planning Commission considered this item at their May 3, 2021 meeting and voted 4-1 to recommend

approval of the Special Use Permit, subject to the conditions as recommended by staff. One person spoke in opposition to the request during the meeting.

**STAFF RECOMMENDATION:**

Staff recommends approval of the Special Use Permit request based on the analysis and findings included herein, subject to the following conditions:

1. A minimum of 1,200 square feet of open space 100% enclosed by a minimum 4' high fence or wall shall be provided and maintained in good condition.
2. A copy of the permanent Group Day Care Home license shall be provided annually upon renewal by the State of Kansas.
3. The operation shall be limited to a maximum of 12 children.
4. No additional home occupations may be carried out at the residence.

Failure to maintain compliance with all conditions shall result in revocation of the Special Use Permit.

**ACTION/OPTIONS:**

- Place an ordinance on first consideration to approve the Special Use Permit request to allow a daycare operation at 2137 Birch Street, subject to the noted conditions.
- Deny the Special Use Permit request to allow a daycare operation at 2137 Birch Street.

(Summary Published in the Leavenworth Times on \_\_\_\_\_, 2021)

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE ALLOWING A SPECIAL USE FOR A CHILD CARE CENTER TO BE LOCATED AT 2137 BIRCH STREET IN THE CITY OF LEAVENWORTH, KANSAS.**

**WHEREAS**, under Appendix A of the City of Leavenworth Code of Ordinances, Development Regulations of the City of Leavenworth, Kansas, Sec 2.04, the Governing Body of the City of Leavenworth is given the power to locate special uses in each zoning district by ordinance within said City; and

**WHEREAS**, the City Planning Commission, after fully complying with the requirements of the Ordinances of the City of Leavenworth, Kansas, held a public hearing on the 3<sup>rd</sup> day of May, 2021 in the Commission Room, 1<sup>st</sup> Floor of City Hall, 100 N. 5<sup>th</sup> Street, Leavenworth, Kansas. The official date and time set as was published in the Leavenworth Times newspaper on the 8<sup>th</sup> day of April 2021 and mailed to all property owners within 200 feet of the said property were given notice of the public hearing; and

**WHEREAS**, upon a motion made, duly seconded, and passed, the City Planning Commission adopted findings of fact and recommended approval of the request for a child care center at 2137 Birch Street, Leavenworth, Kansas.

**WHEREAS**, upon a roll call vote duly passed, the Governing Body adopted the findings of fact and conclusions to allow special use for a child care center for the property described herein.

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAVENWORTH, KANSAS:**

**Section 1.** That a special use permit be issued for a child care center on the following described property:

Lot 11, THE BRANCHES ADDITION NO. 2, a subdivision in the City of Leavenworth, Leavenworth County, Kansas. And more commonly referred to as 2137 Birch St., Leavenworth, Kansas.

**Section 2.** That this special use permit is subject to the following:

- a.) A minimum of 1,200 square feet of open space 100% enclosed by a minimum 4' high fence or wall shall be provided and maintained in good condition;
- b.) To operate a childcare center for up to twelve (12) children;
- c.) A copy of the permanent Child Care Center License shall be provided annually upon renewal by the State of Kansas; and
- d.) No additional home occupations may be carried out at the resident.

**Section 3:** That this Ordinance shall take effect and be in force from and after its passage by the Governing Body, and its summary publication once in the official City newspaper.

**PASSED AND APPROVED** by the Leavenworth City Commission of the City of Leavenworth, Kansas on this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Nancy D. Bauder, Mayor

{Seal}

ATTEST:

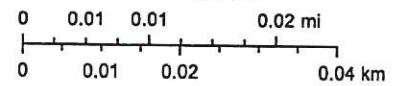
\_\_\_\_\_  
Carla K. Williamson, CMC, City Clerk

# 2137 Birch St Aerial Map



4/27/2021, 4:47:37 PM

1:1,128

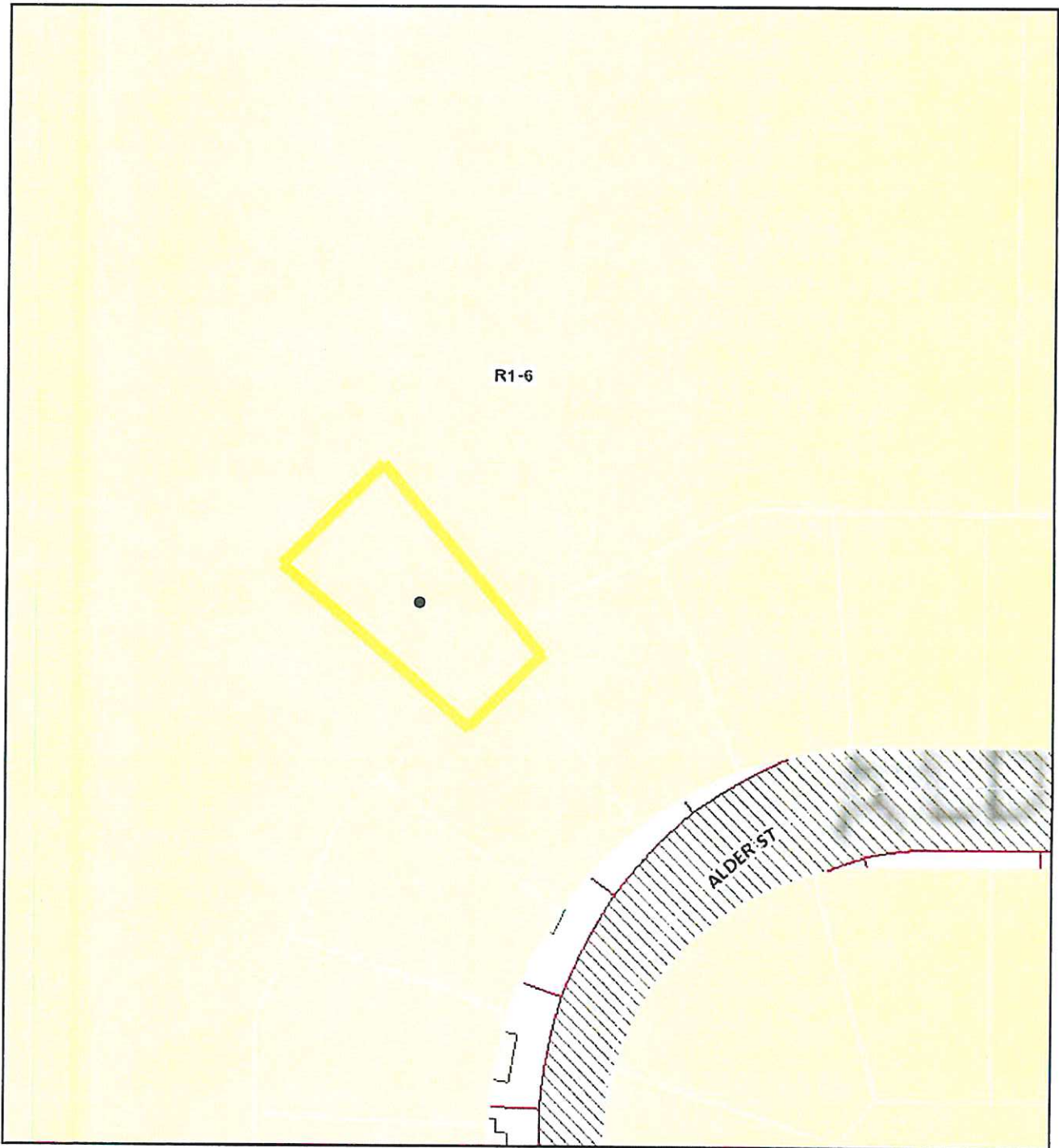


- Override 1
- Missouri River
- Parcels (City Owned)
- Lansing City Limits
- Parcels\_Current
- Ft Leavenworth Military Installation
- Buildings
- Leavenworth City Limits
- Address (Points)
- City Right-of-Way
- RoadCenterline

Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community











Web AppBuilder for ArcGIS

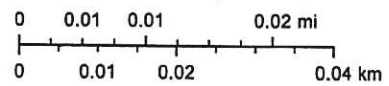
# 2137 Birch St Zoning Map



4/27/2021, 4:49:54 PM

1:1,128

- |  |  |
|--|--|
|  Override 1 |  MP   |
| <b>Zoning_CURRENT</b>  |  NBD  |
|  CBD        |  OBD  |
|  GBD        |  PUD  |
|  I-1        |  R-MF |
|  I-2        |  |



Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

Web AppBuilder for ArcGIS



**SPECIAL USE PERMIT**  
CITY OF LEAVENWORTH, KANSAS

OFFICE USE ONLY

CASE NO.: 2021-12 SUP

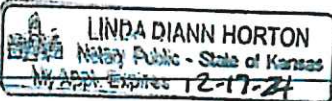
Application No.	<u>9034</u>
Fee (non-refundable)	\$350.00
Filing Date	<u>3-19-21</u>
Received By	<u>WJH</u>
Hearing Date	<u>5-3-21</u>
Publication Date	<u>4-8-21</u>

As provided in Section 2.04 of the 2016 Development Regulations, application is hereby made for a SPECIAL USE PERMIT for the operation of a: daycare - Luv n' Growth

in accordance with the attached site plan on the following described property:

Subject Property:	<u>2137 Birch St. Leav. KS 66043</u>		
Legal Description:	<u>(Attach a full legal description provided by the Register of Deeds Office)</u>		
Real Estate PID #:	<u>1051500000083000</u>		
Zoning:	<u>R1-6</u>	Historic District:	<u>n/a</u>

I/We, the undersigned, depose and state we are the owners of the above described property:

Name(s) of Owner (print):	<u>Duane and Kimberly Reece</u>		
Owner Address:	<u>2137 Birch Street Leavenworth, KS 66048</u>		
Contact No.	<u>(850)284-7121</u>	Email:	<u>cupid302002@yahoo.com</u>
Signature of Owner(s):	<u>Duane Reece SR. ; Kimberly Reece</u>		
State of <u>Kansas</u>			
County of <u>Leavenworth</u>	(SEAL)		
Signed or attested before me on:	<u>19 March 2021</u>		
Notary Public:	<u>Linda Diann Horton</u>		
My Appointment Expires:	<u>17 Dec 2024</u>		

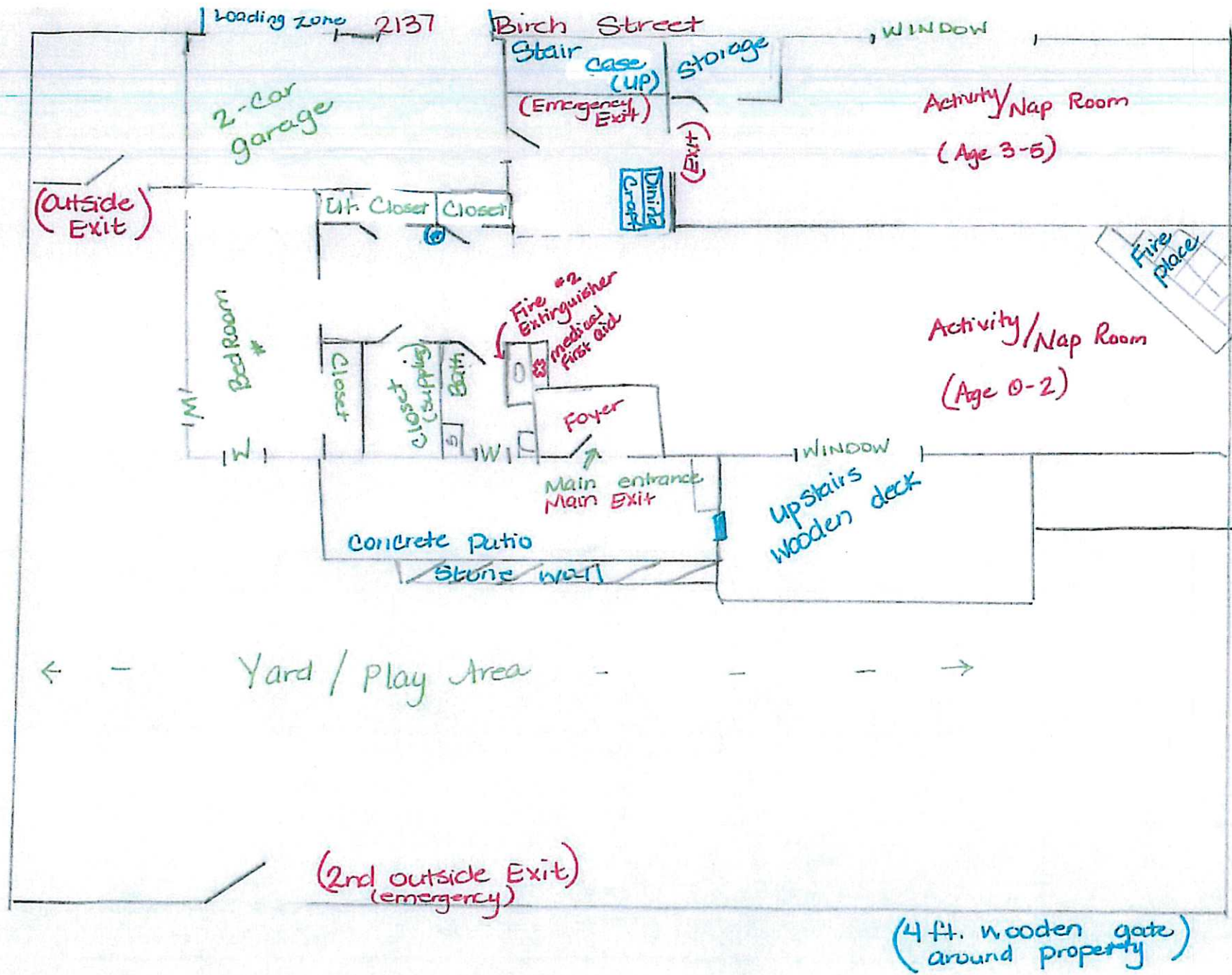
If business is operated by someone other than the owner, provide name and address of operator(s).

Name of Lessee:			
Address:			
Contact No.		Email:	

**NOTE:** All signatures must be in ink. Signature of owner(s) must be secured and notarized.

**Check list below...**

<input checked="" type="checkbox"/>	Non-Refundable Fee of \$350.00 is due at time of application
<input checked="" type="checkbox"/>	Certified list of property owners within two hundred (200) feet of the subject property
<input checked="" type="checkbox"/>	Attach <b>full</b> legal description obtained through the Register of Deeds Office
<input checked="" type="checkbox"/>	Site Plan drawn to scale (See General Instructions)
<input checked="" type="checkbox"/>	Supporting documentation (See General Instructions)





# Kansas Department of Health and Environment License

Group Day Care Home  
License No. 0070288-013

Licensee: Kimberly Michele Reece

Facility: Luv N Growth Daycare

Located at: 2137 Birch St  
Leavenworth, KS 66048



04/30/2022

In the county of: Leavenworth

Having complied with the laws and regulations of the State of Kansas governing Group Day Care Homes, Kimberly Michele Reece is hereby authorized to care for a maximum of 12 children, under one of the following options:

**MAXIMUM LICENSED CAPACITY IF ONE ADULT IS PRESENT WITH THE CHILDREN:**

- 9 children, at least 2 ½ years but under 11 years of age\*; or
- 10 children, at least 3 years but under 11 years of age\*; or
- 12 children, at least 5 years but under 11 years of age; or refer to Table I in K.A.R. 28-4-114(e) if children under 2 ½ years of age are in attendance.

**MAXIMUM LICENSED CAPACITY IF TWO ADULTS ARE PRESENT WITH THE CHILDREN:**

- 12 children, infancy to 11 years of age\*, with not more than 9 children under 5 years of age, 3 of whom may be under 18 months of age; or
- 10 children, infancy to 11 years of age\*, with not more than 8 children under 5 years of age, 4 of whom may be under 18 months of age; or
- 12 children, at least 18 months but under 11 years of age\*, with not more than 5 children, 18 months to 2½ years of age.

\*Children five years of age and over may be substituted for younger children in the license capacity. Children under 11 years of age who are related to the applicant with a temporary permit, the licensee, or any other provider shall be included in the maximum number of children in each age group. Children at least 11 years of age but under 16 years of age who are unrelated to the provider shall be included in the license capacity if child care for this age group as a whole exceeds three hours a week.

This License is effective 04/03/2021 and remains in effect until the expiration date noted by the above sticker unless invalidated by a change of owner, operator, location or it is administratively closed.

Smoking is prohibited inside the day care home during hours of operation.

\*\* Local codes and ordinances may prescribe other requirements for the legal operation of this facility.

A handwritten signature in black ink that reads 'Lee A. Norman MD'. The signature is written in a cursive style.

Secretary  
Kansas Department of Health and Environment

To: Julie Hurley

Re: 2137 Birch Street special permit for Daycare

The below link is referenced in this email.

[https://www.visitleavenworthks.com/sites/default/files/fileattachments/planning\\_amp\\_community\\_development/page/5001/special\\_use\\_permit\\_application\\_july\\_2020\\_fillable.pdf](https://www.visitleavenworthks.com/sites/default/files/fileattachments/planning_amp_community_development/page/5001/special_use_permit_application_july_2020_fillable.pdf)

Section G: The commission may recommend issuance of a special use permit whenever it finds that:

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

4: C Off-street parking and loading areas whether on the premises or auxiliary to the premises will be provided in accordance with the standards set forth in this ordinance and such areas adjoining residential uses will be located so as to protect such residential uses from any injurious effect;

#### **Opening a Childcare Center**

Section 1. Child care center for seven (7) or more children:

A: Shall not be located along an arterial street as designated on the Major Street Plan Map unless provided indirect vehicular access to that street, such as with a frontage road.

C: Shall provide a loading zone capable of accommodating at least two (2) automobiles for the easy picking up and discharging of passengers.

Statement:

While we can appreciate the need and benefits of home childcare for under 6 children, we feel there will be additional traffic congestion, signage, and vehicles that will take away from the residential neighborhood of this newer subdivision. The home at 2137 currently has a large passenger van, paper-type signage, and multiple vehicles at this property. Vehicles typically park on the street and the drive is usually full.

We have witnessed parents parking in the right of way and going to the house to gather their kid(s) causing traffic to stop. There are many children in this neighborhood that ride bikes, play, and walk the sidewalks and streets, additional traffic that is unfamiliar with our neighborhood could create unnecessary hazards.

Regarding the values of our homes, we feel that excess vehicles and traffic flow are undesirable and will negatively impact home values by making it less appealing to move into this neighborhood.

This neighborhood has only two entrances and exits for the 90 homes located in this horseshoe road layout. With additional home construction potentially starting summer of 2021 to the North,

and uncertainty for an additional outlet in this new development, we will see almost double the traffic on these streets. We feel these few streets we have would be considered arterial.

Ensuring childcare pickup occurs in the driveway will be difficult to manage or monitor and left to the childcare provider to enforce.

In closing, this is a densely populated neighborhood with crowded streets and a lot of children playing. With the onset of construction and limited roadways, we do not feel having a special permit to allow more than 6 children would be a prudent action at this time.

**Matt & Jean Dedeke**

2132 Birch St

## Julie Hurley

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**From:** Julie Hurley  
**Sent:** Friday, April 30, 2021 8:51 AM  
**To:** 'H W'  
**Cc:** Michelle Baragary; Carla Williamson  
**Subject:** RE: Official Response to Child Care Petition - 2137 Birch St

Mr. & Mrs. Welling-

Your notice was mailed on April 13, 2021. If you would like to see the certification of such mailing provided by the US Postal Office, you may come to our office or contact the City Clerk to file an Open Records Request. We will make sure that your comments are included in the Planning Commission packet. As stated previously, instructions and a link for accessing the GoToMeeting for the Planning Commission meeting on May 3<sup>rd</sup> are posted to the City's website and may be found here:

<https://www.leavenworthks.org/bc-pc/page/planning-commission-regular-meeting-25>

Julie Hurley, AICP  
Director of Planning and Community Development  
City of Leavenworth  
913.680.2616

**From:** H W <hikewelling@yahoo.com>  
**Sent:** Thursday, April 29, 2021 9:53 PM  
**To:** Julie Hurley <jhurley@firstcity.org>  
**Subject:** Official Response to Child Care Petition - 2137 Birch St

Julie,

Good morning!

To date we still have not received your official notification letter in the mail. Thank you for your last email because we have had to reference it to obtain information on how/when to submit a formal reply and access the 3 May meeting.

Please use this email as our official response to other neighbors informing us about your notification letter regarding the special permit request for a child care center (7+ children) by our next door neighbor at 2137 Birch Street. We appreciate your time and consideration into these matters.

Firstly, we the named owners of 2133 Birch Street, affected by the requested special permit described in the above referenced address do hereby protest against said permit to allow a child care center of more than six children. This property directly adjoins our residential property and we oppose any permit or rezoning that will increase the noise, traffic, safety, and business dominance that would detrimentally affect the peaceful enjoyment of our home and surrounding properties.

Secondly, as a disabled veteran with over 3 years of combat experience, this special permit would negatively affect my personal health and well-being and cause increased stress due to the nature of having a commercial child care center next to my personal residence. I also often telework from home.

Thirdly, we feel that this permit and/or any zoning changes of said property would negatively affect the value of our home and surrounding properties. Additionally, we feel have a child care center would negatively affect our ability to sell our home in a timely manner in the future. We feel it's unjust to have invested so much time and money in our retirement home only to have that negatively impacted if this permit is approved.

In closing, we would like to highlight some issues that pertain to the 1978 Kansas case regarding "The 6 Golden Factors" for determining reasonableness.

1. **Character of Neighborhood.** We have lived here for over 5 years. The neighborhood is quiet, secluded, and safe to include minimal traffic. Moreover, the neighborhood is surrounded by owners who take pride and care in improving the aesthetics and value of their properties. Approving this special permit would negatively affect the character of the Branches neighborhood.
2. **Zoning Use of Nearby Properties.** The Branches neighborhood is zoned residential. It would be disingenuous for one property owner to negatively impact 13-15 surrounding properties, within 200 feet, just to operate a commercial business and change our peaceful neighborhood experience. We would ask the City of Leavenworth to seek other means to support an increased need for child care such as a tax break or small business loan in a commercial zone.
3. **Suitability of Property.** Currently, the owners of 2137 Birch maintain 4 personal vehicles which are parked in their driveway and an additional vehicle that is parked in the street for a total of 5 cars. As a result, we have already experience many instances of their customers using our driveway as a drop off and turn around point. Approving the permit would only exacerbate vehicle parking and traffic problems. Moreover, there is Lansing School bus stop directly across from 2137 Birch Street, and on occasion has delayed the school bus.
4. **Extent to which changes would affect Nearby Property.** Already discussed in comment 3.
5. **Vacancy Time.** Not applicable.
6. **Gain in Public Welfare Compared to Hardship Imposed if Request Denied.** We feel the public welfare is best served by keeping the character and integrity of the Branches neighborhood as a residential area without any commercial or larger child care centers. If approved, this home business would dominate the neighborhood during peak times in the morning and afternoon as residents depart and return from work and school. It may also impact the peacefulness of nearby properties during the day.

Although we oppose their special permit request, we respect our neighbor's desire to own and operate a home based business. We strongly feel anything larger than they are currently operating should be done in a commercial zone.

Sincerely  
Hike and Karan Welling

On Tuesday, April 13, 2021, 09:17:11 AM CDT, Julie Hurley <[jhurley@firstcity.org](mailto:jhurley@firstcity.org)> wrote:

Mr. & Mrs. Welling-

We checked our mailing list, and it appears that your property was inadvertently not included in the notification mailing for this Special Use Permit request. We will mail the notification today, meeting the statutory notification requirement.

Due to COVID restrictions, our Planning Commission meetings are closed for in-person attendance by members of the public, but you may submit comments in writing or join the meeting remotely via GoToMeeting. A link to join remotely will be posted on the City's website by the Friday before the Planning Commission meeting, and will also be included in the notification letter. Please let me know if you have any further questions.

Julie Hurley, AICP

Director of Planning and Community Development

City of Leavenworth

913.680.2616

**From:** H W <[hikewelling@yahoo.com](mailto:hikewelling@yahoo.com)>  
**Sent:** Tuesday, April 13, 2021 8:22 AM  
**To:** Julie Hurley <[jhurley@firstcity.org](mailto:jhurley@firstcity.org)>  
**Subject:** Child Care Petition - 2137 Birch St

Ms. Hurley,

Good morning.

I called your office number 913-680-2626 and 913-682-9201 without success.

I'm writing you now to ask why I have not receive a mandatory letter announcing said petition.

I live directly next door to 2137 Birch St, Leavenworth at 2133 Birch St.

I was notified about this petition from another neighbor yesterday. I am opposed to any spot zoning in our residential area.

Also, can I have legal representation at the 3 May hearing?

Is there a number I can call you? Please feel free to call me at 785-341-1348.

Sincerely

**\*\*\* THIS EMAIL CAME FROM AN EXTERNAL SOURCE. PLEASE BE CAUTIOUS WHEN CLICKING ON LINKS OR ATTACHMENTS.**

**\*\*\*The message and documents transmitted with this e-mail contain confidential or privileged information belonging to the sender and it is intended only for the individual or entity to whom it is addressed. Unauthorized use of this communication is strictly prohibited and may be unlawful. If you are not an intended recipient you must not use, disclose, disseminate, copy or print its contents. If you receive this e-mail in error, please notify the sender by reply e-mail and delete and destroy the message and any attachments. \*\*\***

**\*\*\* THIS EMAIL CAME FROM AN EXTERNAL SOURCE. PLEASE BE CAUTIOUS WHEN CLICKING ON LINKS OR ATTACHMENTS.**

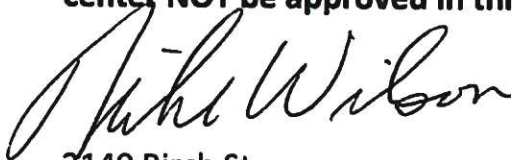
# Regarding 2021-12SUP-2137 Birch

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Our neighbors are to be **commended** in showing the fortitude to open a child care business. However, this would be a **business** and as such should be located in an environment that is **zoned** for that type of operation.

The "Branch's" subdivision was designed by Florence Larrin to be a near-gated community with limited access and exit. There is no thru traffic with almost only those living here coming and going. It is a perfect neighborhood that is safe for walking, riding bikes, jogging, and other forms of exercise. A *child care business* operating in a residential neighborhood will bring outside traffic several times a day with people we don't know and who do not live here. If this business is allowed to exist in a residential subdivision, then it would only open the door for who knows what would be the next business endeavor. Our home across the street from the proposed business is our greatest asset and could be greatly devalued if a non-conforming use is allowed.

The proposed business owners should have known or their real estate agent should have cautioned them about opening a day-care in a location not zoned for any business. As a consequence, **we respectfully request that this day care center NOT be approved in this subdivision.**



2140 Birch St

913-547-2242









City Planner Jackie Porter stated the subject property is owned by LD Development, LLC, plat prepared by Atlas Surveyors. The applicant is requesting approval of an 18 lot final plat for the Adams Valley residential development. The property is currently occupied by a single family home. A request to rezone the property from R1-9, Medium Density Single Family Residential District to R1-6, High Density Single Family Residential District, is also on this agenda for consideration.

The subject property is 4.76 acres in size, and is occupied by one single family home. The site consists of the two existing parcels addressed as 1440 and 1460 Quincy Street. The plat consists of 18 residential lots with an average size of 9,647 sq ft.

The preliminary plat was discussed at the December 17, 2020 Development Review Committee meeting. Items related to utilities, drainage, and improvements to Quincy Street were discussed. Utilities are available to the property, and easements will need to be obtained in order to connect to existing utilities to the east. Grading on lots as they are developed will need to direct drainage to the street, instead of away from individual lots and onto adjoining properties, and will be addressed prior to recording the final plat when site improvement plans shall be submitted for review and approval by the Public Works Department.

The Planning Commission approved the preliminary plat at the January 4<sup>th</sup>, 2021 meeting.

Staff recommends approval of the Adams Valley Final Plat.

**ACTION/OPTIONS:**

- Approve the Final Plat
- Deny the Final Plat
- Table the issue for additional information/consideration.

Chairman Burke called for questions from commissioners about the staff report.

Mr. Wiedower asked if anything has changed since the preliminary plat.

Planning Director Julie Hurley stated nothing has changed.

With no further questions or discussion, Chairman Burke called for a motion. Mr. Wiedower moved to approve the Adams Valley final plat, seconded by Ms. Whitson and approved by a vote of 6-0.

**3. 2021-12 SUP – 2137 BIRCH STREET**

Conduct a public hearing for Case No. 2021-12 SUP – 2137 Birch Street. The applicant is requesting a Special Use Permit to allow the operation of a Child Care Center in their home located at 2137 Birch Street. The property is current zoned R1-6 (High Density Single Family Residential District). Child Care Centers are allowed in the R1-6 zoning district with issuance of a special use permit.

Chairman Burke took a moment to explain the public hearing process for residents who are participating remotely.

Chairman Burke called for the staff report.

City Planner Jackie Porter stated the applicants, Duane and Kimberly Reece, are requesting a Special Use Permit to allow the operation of Child Care Center in their home located at 2137 Birch Street. The property is currently zoned R1-6, High Density Single Family Residential District. Child Care Centers are allowed in the R1-6 zoning district with issuance of a special use permit.

The applicant is licensed by the State of Kansas to care for a maximum of 12 children, dependent upon the ages of the children in care, and operated a licensed child care facility in her previous home in the City of Leavenworth.

**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 sqft., enclosed by a 4' wooden fence. The back yard is adjacent to fenced backyards 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 two sides or one non-illuminated sign affixed to the main structure with a maximum of the 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.***

Notification was sent to property owners within 200' of the subject property, as required by Kansas State Statute. Since notifications were mailed, staff received communication from four property owners opposed to the Child Care Center.

## **STAFF RECOMMENDATION:**

Staff recommends approval of the Special Use Permit request based on the analysis and findings included herein, subject to the following conditions:

1. A minimum of 1,200 square feet of open space 100% enclosed by a minimum 4' high fence or wall shall be provided and maintained in good condition.
2. A copy of the permanent Group Day Care Home license shall be provided annually upon renewal by the State of Kansas.
3. The operation shall be limited to a maximum of 12 children.
4. No additional home occupations may be carried out at the residence.

Failure to maintain compliance with all conditions shall result in revocation of the Special Use Permit.

## **ACTION/OPTIONS:**

- Motion, based upon findings as stated and conditions as presented, to recommend approval to the City Commission with included conditions.

- Motion, to recommend denial to the City Commission.
- Table the issue for additional information/consideration.

Chairman Burke called for questions from commissioners about the staff report.

Mr. Wiedower asked if staff is aware of any concerns or violations the applicant may have had at her child care center located at her prior location in Leavenworth.

Planning Director Julie Hurley responded staff is unaware of any concerns/violations.

Mr. Burke stated he thought the commission has approved a special use permit for a child care center in this neighborhood in the past.

Ms. Hurley stated she is unaware of a child care center in this particular neighborhood but there are 17 active special use permits for home-based child care centers in the city. If the home-based child care center is for six or fewer children, a special use permit is not required from the city; so it is possible there are other child care centers in this neighborhood who are caring for six or fewer children.

Chairman Burke asked if the applicant would like to speak.

Kimberly Reece, applicant 2137 Birch Street, stated their previous daycare was located on Randolph St. She has been running a child care center since 2012. Since she has moved to Birch Street, she has been contacted by several parents in the neighborhood interested in using her daycare facility.

Mr. Henning asked the applicant if this is increasing her existing child care facility from fewer than 6 children to greater than 6 children but fewer than 12.

Mrs. Reece responded the only reason for the special use permit is because she has moved to a new location and the city requires a new special use permit.

Mr. Wiedower asked the applicant if she knew there was a need for child care in that immediate area before applying for the special use permit and if she intends to care for children in the immediate area.

Mrs. Reece responded she is unable to accept any more children as her daycare currently has a waiting list; however, she has been contacted by several parents in the immediate area about using her daycare.

With no other questions/discussions about the staff report, Chairman Burke opened the public hearing. Chairman Burke reiterated there is a 14-day protest petition period after tonight's meeting, and the Planning Commission only makes a recommendation to the City Commission, who will make the final determination.

Hike Welling, 2133 Birch Street, stated no one living in a residential home wants a commercial child care facility adjacent to or across from them. Stated a child care facility will negatively impact the property value of his home. Mr. Welling further stated he is a disabled veteran and the requested daycare would negatively affect his personal health and well-being with undue stress caused by additional traffic and noise of children playing.

Duane Reece, applicant 2137 Birch Street, stated he too is a disabled veteran who served in three separate conflicts. Mr. Reece stated he has served his country for over 20 years and would like to serve his community through childcare.

Mr. Burke asked the applicants about the parking concerns some neighbors have.

Mr. Reece responded parents pull up to the house and stop in front of the driveway so small children do not have to step onto the curb. Mr. Reece addressed some of the concerns mentioned stating the kids are not running around the neighborhood screaming, although they are allowed outside to play and exercise, and his property value has increased in the six months he has lived there.

Mr. Burke asked the applicant if any of his neighbors approached him with their concerns.

Mr. Reece responded in the negative.

Mr. Burke asked if the applicant informed any neighbors about operating a daycare.

Mr. Reece stated he had not. He does have a sign that reads "Daycare Parents Are Appreciated".

Mrs. Reece stated if the kids start getting rambunctious, they take them to the park to burn off energy. (Inaudible). During the pandemic, the number of children in their daycare increased so parents could work. Mrs. Reece further stated, child care facilities are essential.

Ms. Hurley informed the commissioners the yard sign they currently have is a permitted sign.

With no one else wishing to speak, Chairman Burke closed the public hearing and called for discussion among the commissioners.

With no further discussion, Chairman Burke called for a motion. Mr. Burks moved to recommend approval of the special use permit for 2137 Birch Street to the City Commission based upon findings as stated and conditions as presented, seconded by Mr. Murphy and approved by a vote of 5-1. Mr. Wiedower voted against the special use permit.

Ms. Hurley stated this will begin the 14-day protest petition period as required by state statute. This item will be heard by the City Commission Tuesday, May 25<sup>th</sup> at 7:00 p.m. in the Commission Chambers.

**4. 2021-08 REZ – 711 MARSHALL STREET (CUSHING MEMORIAL HOSPITAL)**

Conduct a public hearing for Case No. 2021-08 REZ – 711 Marshall Street. The applicant is requesting a rezoning of the property located at 711 Marshall Street from R1-6 (High Density Single Family Residential District) to GBD (General Business District).

Chairman Burke called for the staff report.

Planning Director Julie Hurley stated the applicant, the Board of County Commissioners of Leavenworth County, is requesting a rezoning of their property located at 711 Marshall from R1-6, High Density Single Family Residential District, to GBD, General Business District. The property is occupied by the former Cushing Memorial Hospital, which closed in October 2020 and is currently vacant.

The rezoning is being requested to allow for reuse of the hospital building with a mix of county offices and private health care providers. The intended use is less intensive than the prior use as a hospital,



**POLICY REPORT  
FIRST CONSIDERATION ORDINANCE  
2021-11-REZ  
5136 LAKEVIEW DRIVE**

**MAY 25, 2021**

**SUBJECT:**

Place of first consideration an ordinance to approve 2021-11-REZ



**Prepared By:**  
Julie Hurley,  
Director of Planning and  
Community Development



**Reviewed By:**  
Paul Kramer,  
City Manager

**ANALYSIS:**

The applicant is requesting a rezoning of their 11.8 acre property located at 5136 Lakeview Drive from R1-9, Medium Density Single Family Residential District, to GBD, General Business District. The subject property is owned by Sandra Harrison, Donna DeMet, Gloria Mercer, and Darlene Lynch, and is under contract to be purchased by 4M Pioneer Holdings, LLC, who is acting as the applicant/agent for the project. The property is currently occupied by one single-family home, which is vacant.

The rezoning is being requested to allow for commercial development of the property, as it is directly adjacent to the Eisenhower Road corridor. A Culver's restaurant is planned for the southeast portion of the property. At this time, no other users have been identified for the remainder of the development. As future users are identified, any proposed site development plans will be reviewed by City staff.

The site plans were reviewed at the April 15, 2021 Development Review Committee meeting. Several items related to traffic, access, internal circulation, stormwater, and utilities were discussed with the applicant. All of these items will be addressed at or prior to the issuance of any building permits for the site. Improvements to a portion of Lakeview Drive adjoining the proposed development are planned as part of the project. The associated preliminary and final plat applications are also on this agenda.

**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*

After the required public notices were sent to property owners within 200' within city limits and 1000' outside of city limits as required by Kansas State Statute, staff received communication from one individual in opposition to the rezoning request. The Planning Commission considered this item at their May 3, 2021

meeting and voted unanimously to recommend approval of the Rezoning request. Four people spoke in opposition to the request during the public hearing.

On May 14, 2021, a protest petition regarding the Rezoning request was delivered to the City Clerk's office. After review by the City Attorney, and based on property areas calculated by City Staff, the City Attorney and City Staff have determined that the protest petition does not meet the threshold requirements of K.S.A. 12-757 so as to require a supermajority vote.

**REZONING ACTION/OPTIONS:**

- Place an ordinance on first consideration to approve the rezoning request of 5136 Lakeview from R1-9 to GBD
- Deny the rezoning request of 5136 Lakeview from R1-9 to GBD

(Summary Published in the Leavenworth Times on \_\_\_\_\_, 2021)

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING THE DEVELOPMENT REGULATIONS, APPENDIX A OF THE CODE OF ORDINANCES OF THE CITY OF LEAVENWORTH, KANSAS BY REZONING 5136 LAKEVIEW DRIVE FROM MEDIUM DENSITY SINGLE FAMILY RESIDENTIAL DISTRICT (R1-9) TO GENERAL BUSINESS DISTRICT (GBD).**

**WHEREAS**, under the Development Regulations, Appendix A of the Code of Ordinances of the City of Leavenworth, Kansas, the Governing Body of the City of Leavenworth is given the power to amend, supplement or change existing zoning regulations within said City; and

**WHEREAS**, the City Planning Commission, after fully complying with the requirements of the Code of Ordinances of the City of Leavenworth, Kansas, held a public hearing on the 3<sup>rd</sup> day of May 2021 in the Commission Room, 1<sup>st</sup> Floor of City Hall, 100 N. 5<sup>th</sup> Street, Leavenworth, Kansas. The official date and time set as was published in the Leavenworth Times newspaper on the 8<sup>th</sup> day of April 2021 and notice of the public hearing was mailed to all property owners as required by K.S.A. 12-757(b); and

**WHEREAS**, upon a motion made, duly seconded, and passed, the Planning Commission adopted findings of fact and recommended approval of the request Rezoning of 5136 Lakeview Drive, Leavenworth Kansas from medium density single family residential district (R1-9) General Business District (GBD); and

**WHEREAS**, upon a roll call vote duly passed, the Governing Body adopted the findings of fact and conclusions to rezone the property described herein.

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAVENWORTH, KANSAS:**

**Section 1:** That the following described properties, to-wit, is hereby rezoned medium density single family residential district (R1-9) General Business District (GBD).

Commencing at a point 330 feet North of the SE corner of the West 1/2 of the NW 1/4 of Section 13, Township 9, Range 22; thence West 580 feet on a line parallel to the South line of said Section; thence North 300 feet on a line parallel to the West line of said Section; thence East 580 feet on a line parallel to the North line of said Section; thence South 300 feet to the place of beginning; (all being in the West half of the NW 1/4 of Section 13, Township 9, Range 22) Leavenworth County, Kansas. The South 1/2 of the South 1/2 of the SW Quarter of the NW 1/4 of Section 13, Township 9, Range 22; Leavenworth County, Kansas. A tract of land in the Southwest Quarter of the Northwest Quarter of Section 13, Township 9 South, Range 22 East. Beginning at a point 330.00 feet North from the Southwest corner of said

Northwest 1/4; thence North 300.00 feet along the West line of said Northwest 1/4; thence East 744.90 feet parallel to the South line of said Northwest 1/4; thence South 300.00 feet parallel to the East line of the Southwest 1/4 of said Northwest 1/4; thence West 745.00 feet to the point of beginning. Except that part deeded for street right-of-way. All in Leavenworth County. Less the following-described tract: A tract of land in the Southwest Quarter of the Northwest Quarter of Section 13, Township 9, Range 22 East of the Sixth P.M., City of Leavenworth, Leavenworth County, Kansas, more fully described as follows: Commencing at the Southwest corner of said Northwest Quarter; thence North 00 degrees 06'50" West for a distance of 161.00 feet; thence North 89 degrees 53'10" East for a distance of 33.0 feet to the true point of beginning; thence North 00 degrees 06'56" West for a distance of 469.89 feet along the East right-of-way line of Shrine Park Road; thence North 88 degrees 19'57" East for a distance of 360.00 feet; thence South 00 degrees 06'50" East for a distance of 570.88 feet to the North right-of-way of Eisenhower Road; thence South 88 degrees 53'35" West for a distance of 193.68 feet along said North line; thence North 60 degrees 28'13" West for a distance of 191.23 feet to the point of beginning, less any part thereof taken or used for road purposes.

And **more commonly referred to as 5136 Lakeview Drive**, Leavenworth, Kansas

**Section 2:** That the "Zoning District Map" adopted under the Development Regulations, Appendix A of the Code of Ordinances of the City of Leavenworth, Kansas shall be and the same is hereby amended to conform to the rezoning as set forth in Section 1 above.

**Section 3:** That this Ordinance shall take effect and be in force from and after its passage, approval and summary publication in the official City newspaper of the City of Leavenworth, Kansas, as provided by law.

**PASSED and APPROVED** by the Governing Body on the \_\_\_\_\_ day of \_\_\_\_\_ 2021.

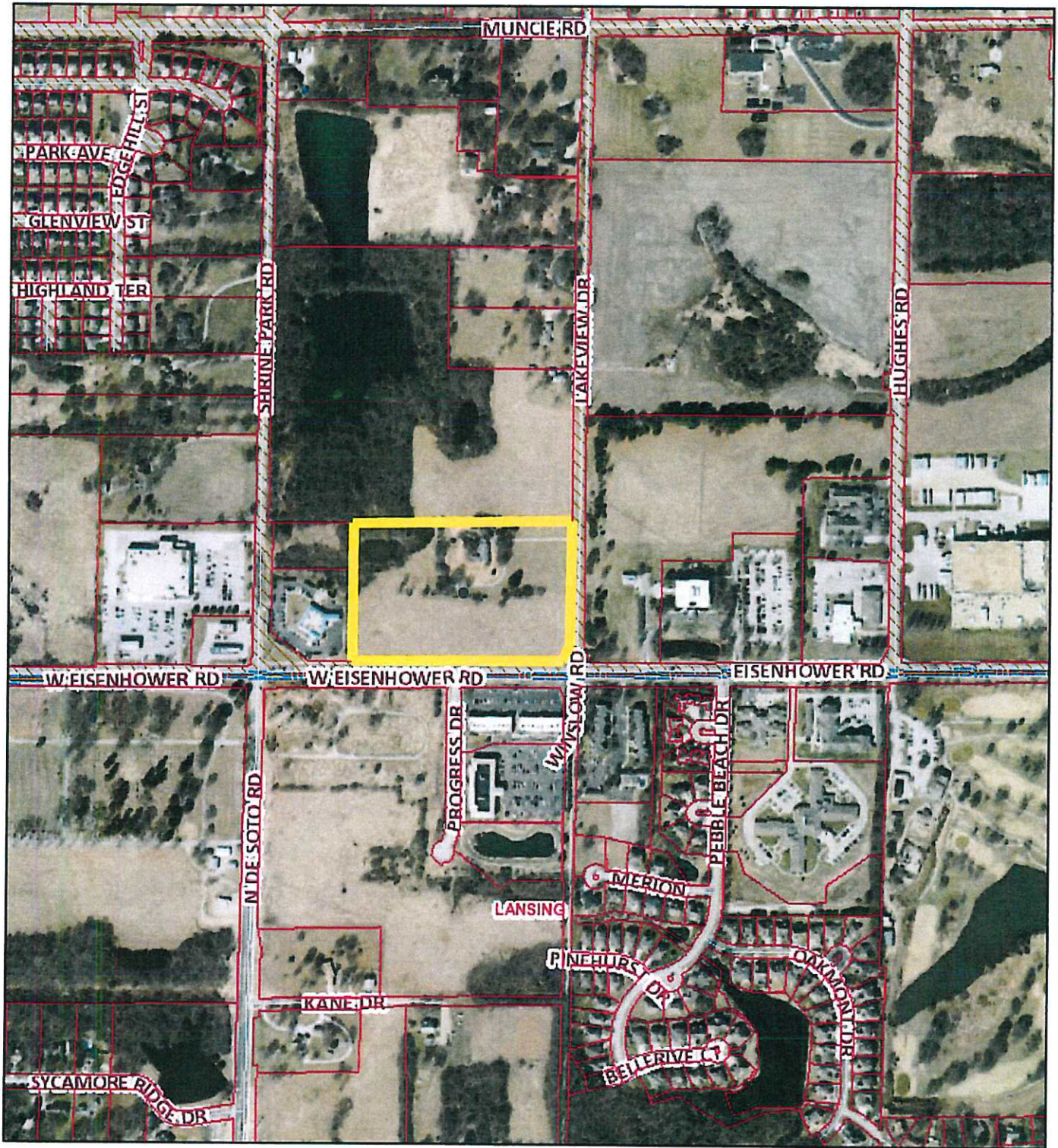
\_\_\_\_\_  
Nancy D. Bauder, Mayor

{Seal}

ATTEST:

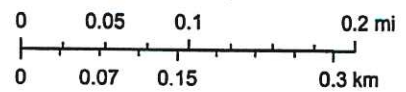
\_\_\_\_\_  
Carla K. Williamson, CMC, City Clerk

# 5136 Lakeview



4/29/2021, 9:51:23 AM

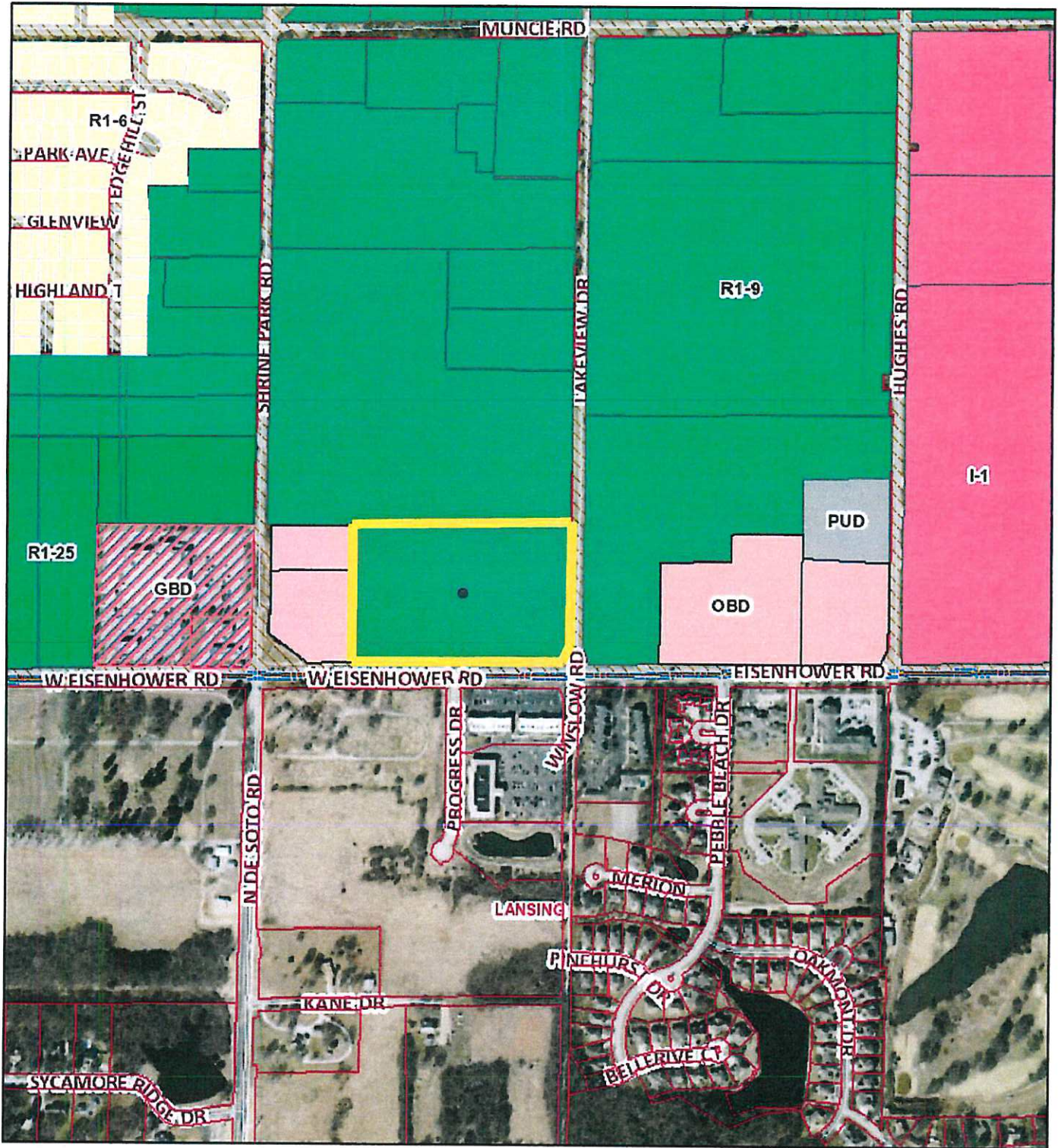
1:9,028



Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

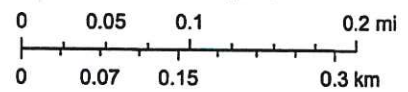
Web AppBuilder for ArcGIS  
Esri, HERE |

# 5136 Lakeview - Zoning



4/29/2021, 9:52:28 AM

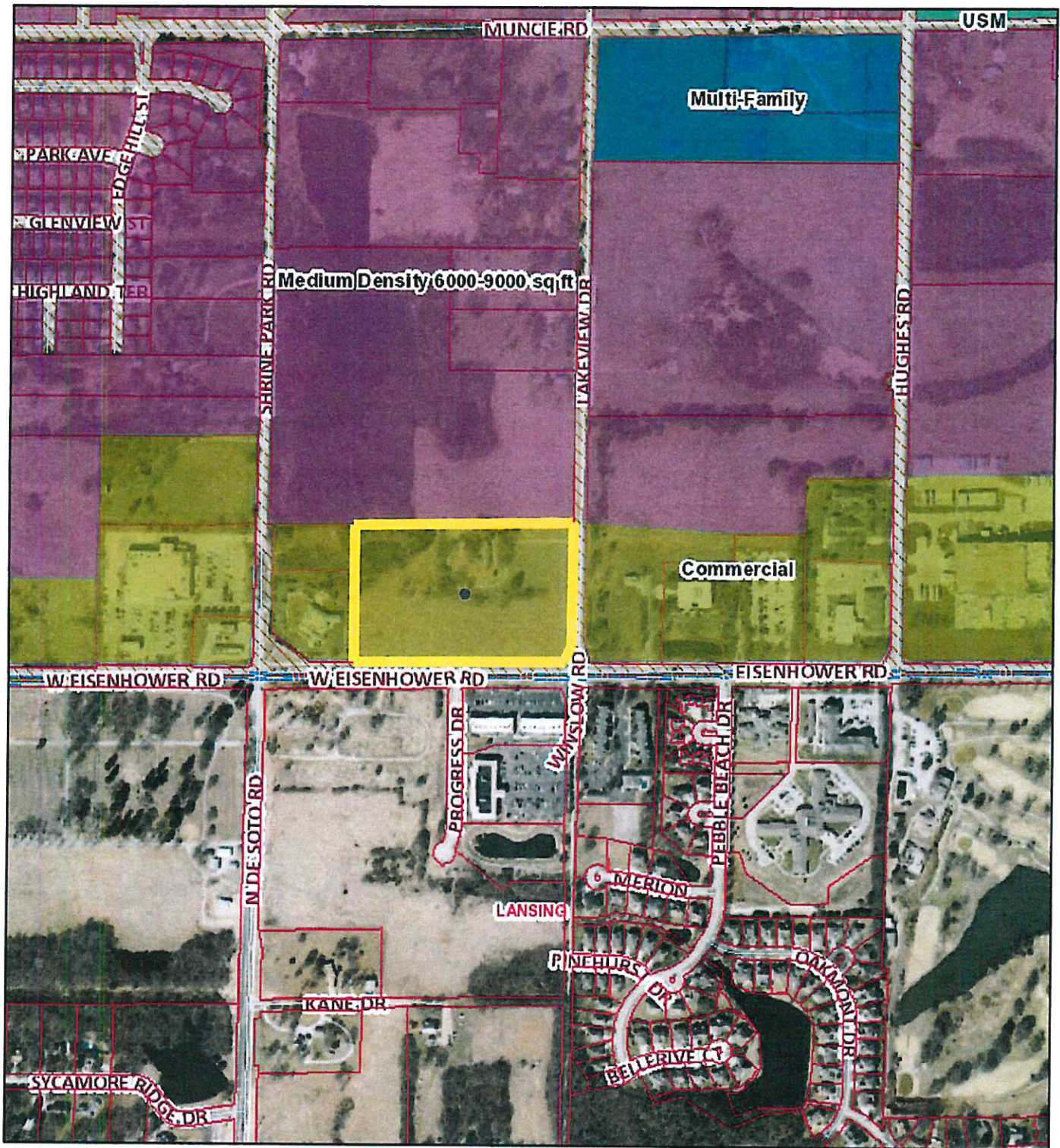
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Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

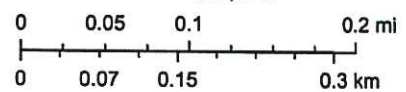
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Esri, HERE |

# 5136 Lakeview - Future Land Use



4/29/2021, 9:53:31 AM

1:9,028



Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

Web AppBuilder for ArcGIS  
Esri, HERE |





**APPLICATION FOR REZONING**  
CITY OF LEAVENWORTH, KANSAS

OFFICE USE ONLY

CASE NO. 2021-11 REZ

Application #	9024
Fee (non-refundable)	\$350.00
Filing Date	3-19-21
Received By	WJH
Hearing Date	5-3-21
Publication Date	4-8-21

The undersigned owner(s)/agent for the owner(s) of the property described below, herein petition for a change in the zone of the following legally described property: (agent must have authorization to make application).

Subject Property:	5136 Lakeview Dr, Leavenworth, KS 66048		
Rezoning:	Present classification of: R1-9	district to: General Business District	
Legal Description:	(Attach full legal description provided by the REGISTER OF DEEDS OFFICE)		
Real Estate PID #:	1061300000016000	Historic District:	

I/We, GLORIA J. MERCER being duly sworn, depose and say that I am the owner/agent for the owner of the property involved in this petition and that the statements and answers herein contained and then information herewith submitted are in all respects true and correct to the best of my knowledge and belief.

Name(s) of Owner (print or type):	Gloria J. Mercer		
Address:	79360 Briarwood, La Quinta, CA 92253		
Contact No.	760-972-4521	Email Address:	
Signature of Owner(s):			

State of <u>CALIFORNIA</u> )	(SEAL)	
County of <u>RIVERSIDE</u> )		

Signed or attested before me on <u>03/17/2021</u> by <u>GLORIA J. MERCER</u>	
(date) (name(s) of person(s))	
Notary Public:	My Appointment Expires: <u>01/20/2025</u>

**NOTE:** All signatures must be in black or blue ink. Signature of owner(s) must be secured and notarized.

***If necessary, use additional sheets to respond to the following:***

Briefly describe the present use and character of the property and of the surrounding area: 11.8 acres  
with a vacant home with no current use of the land other than haying. Site has approx 900 ft  
of frontage on Eisenhower Road with businesses to the West, South, and East.

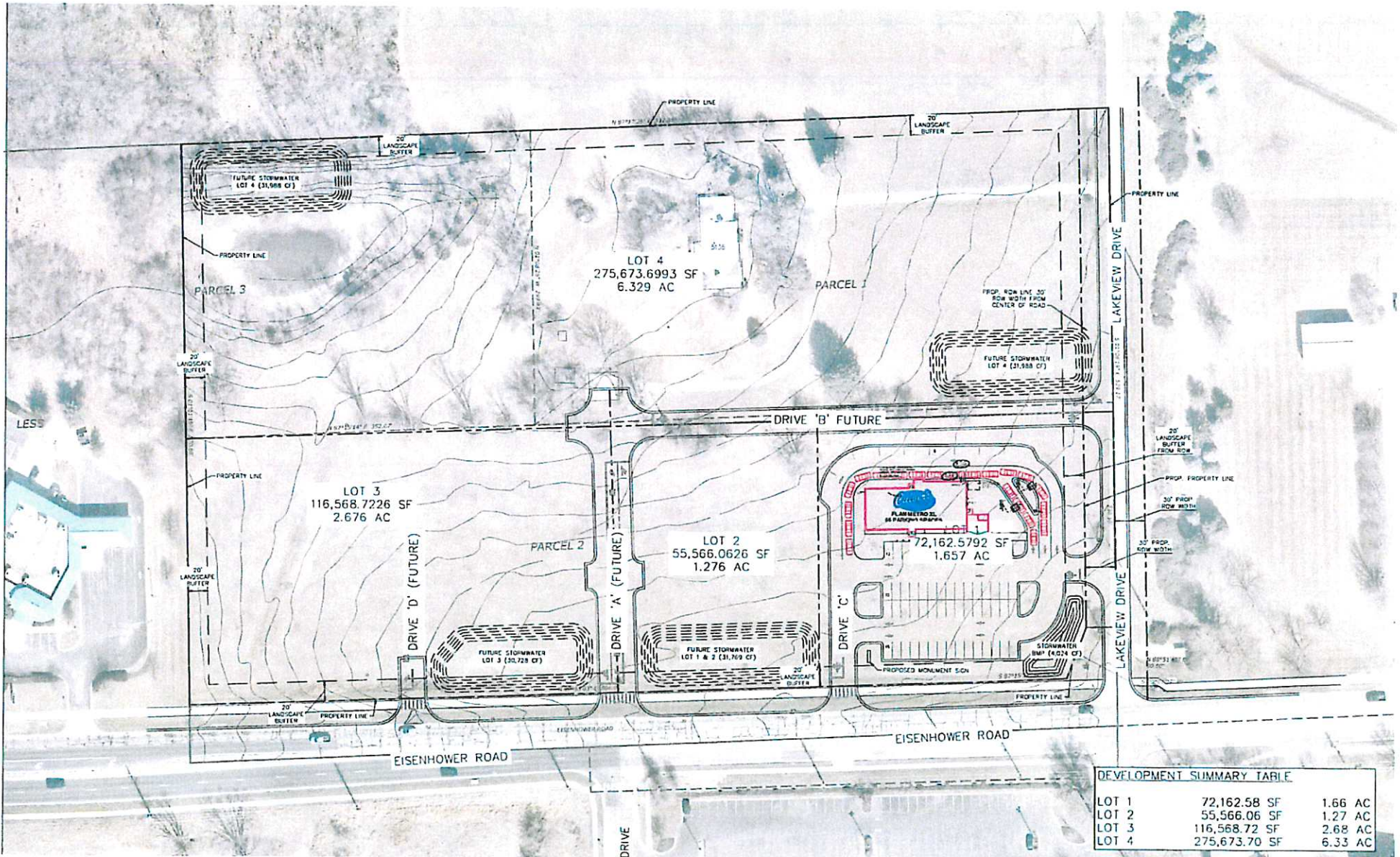
Briefly describe the intended use and character of the property: General business development  
including a proposed restaurants in the Southeast corner of the site. Southern part of the site is  
open field while the northern part of the site has a vacant home

Briefly describe why you believe the land use (zoning) being requested is the most appropriate for this  
property: Site is directly off Eisenhower Road which is a growing business corridor.  
Site plan is under development and will be provided to the Planning and Development Department  
by April 12th in advance of the Development Review Committee meeting and May 3rd Planning  
Commission meeting.

Give the reason(s) why you believe this proposal will not be materially detrimental to the public welfare  
and surrounding properties and/or measures you have taken or intend to take to prevent detrimental  
impacts: Rezoning will provide desired business development in the community including a  
restaurant.

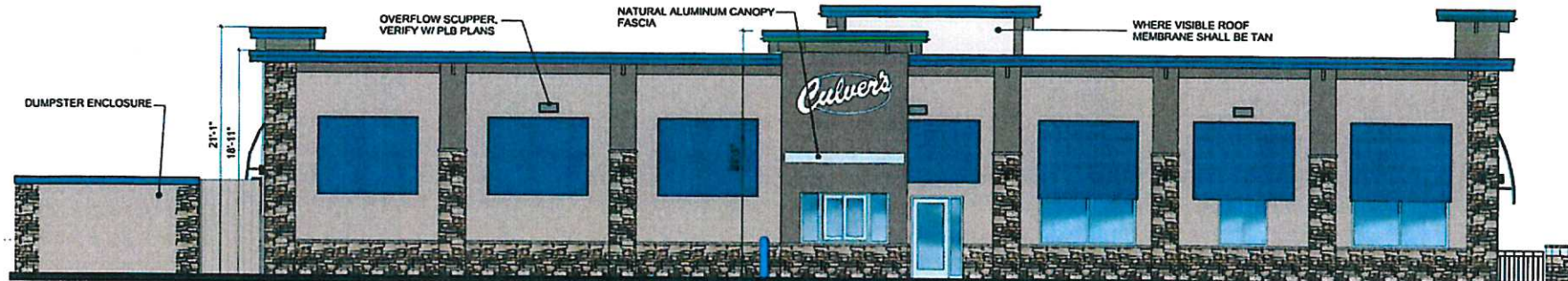
Is the property affected by any easements, deed/plat restrictions or other conditions arising from previous  
Special Use Permits, Subdivisions, rezoning or variances? If so, briefly explain the origin and effect of  
such conditions: N/A

Check List:	
<input checked="" type="checkbox"/>	Non-refundable fee of \$350.00 is due at time of application
<input checked="" type="checkbox"/>	Certified list of the property owners within two hundred (200) feet of the subject property
<input checked="" type="checkbox"/>	Full legal description obtained through the Register of Deeds Office
<input checked="" type="checkbox"/>	Site plan drawn to scale (see General Instructions)
<input checked="" type="checkbox"/>	Supporting documentation (see General Instructions)

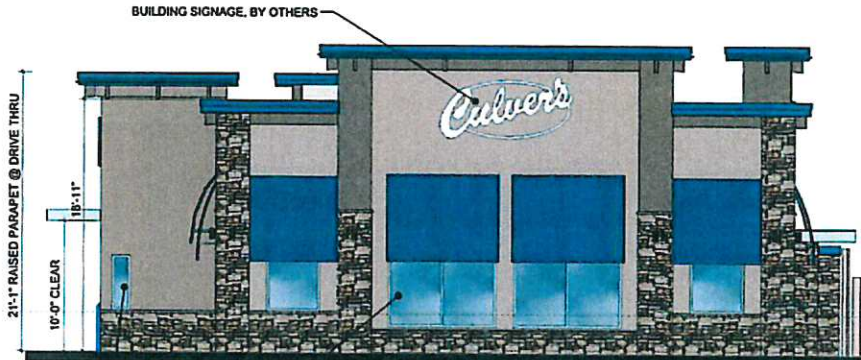


DEVELOPMENT SUMMARY TABLE		
LOT 1	72,162.58 SF	1.66 AC
LOT 2	55,566.06 SF	1.27 AC
LOT 3	116,568.72 SF	2.68 AC
LOT 4	275,673.70 SF	6.33 AC

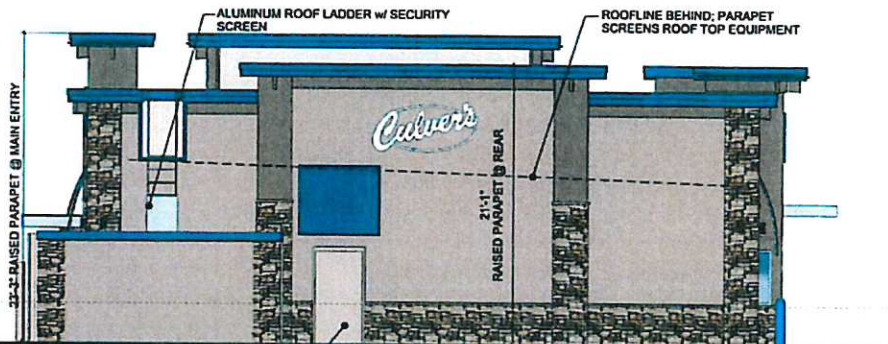




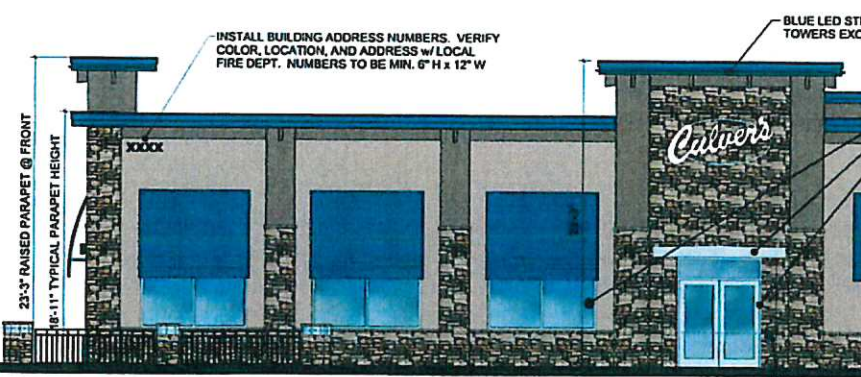
**DRIVE THRU ELEVATION**



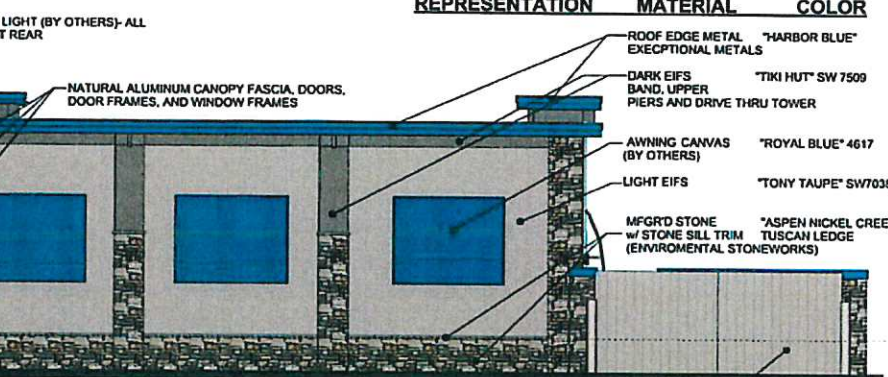
**FRONT ELEVATION**



**REAR ELEVATION**



**MAIN ENTRY ELEVATION**



REPRESENTATION	MATERIAL	COLOR
[Image of roof edge metal]	ROOF EDGE METAL	"HARBOR BLUE" EXCEPTIONAL METALS
[Image of dark eifs]	DARK EIFS	"TIKI HUT" SW 7509
[Image of awning canvas]	AWNING CANVAS (BY OTHERS)	"ROYAL BLUE" 4617
[Image of light eifs]	LIGHT EIFS	"TONY TAUPE" SW7038
[Image of mfg'd stone]	MFG'D STONE w/ STONE SILL TRIM (ENVIRONMENTAL STONERWORKS)	"ASPEN NICKEL CREEK" TUSCAN LEDGE
[Image of synthetic wood]	SYNTHETIC WOOD OR CEDAR 2x6 PLANK BOARDS @ DUMPSTER GATE.	COLOR TO MATCH EIFS.

2021

**NEW CULVER'S RESTAURANT**  
**Eisenhower Rd. at Lakeview Dr.**  
 Leavenworth, KS 66048  
 County of LEAVENWORTH

*Culver's*  
 Culver's Restaurant System, Inc.  
 1200 West Street  
 Leavenworth, KS 66048  
 Phone: 815-544-7790

**CULMANN ERNEST MARTIN**  
 ARCHITECTS  
 200 South State Street  
 Leavenworth, Kansas 66048  
 Phone: 815-544-7790

**ELEVATIONS**  
 NOTE: THOUGH THESE IMAGES HAVE PHOTO REALISTIC QUALITIES, THE ACTUAL BUILDING MATERIALS MAY VARY IN APPEARANCE.

Date: 6-14-2021

2021-020

A2



REAR LEFT VIEW (NEC)



REAR RIGHT VIEW (SEC)



FRONT RIGHT PERSPECTIVE



FRONT LEFT PERSPECTIVE



LEFT PERSPECTIVE (NORTH VIEW)



RIGHT PERSPECTIVE (SOUTH VIEW)

	<p>NEW CULVER'S RESTAURANT  <b>Eisenhower Rd. at Lakeview Dr.</b>          Leavenworth, KS 66048          County of LEAVENWORTH</p>
<p>OLLIVANN ERNEST MARTIN          ARCHITECTS          200 South State Street          Bensenville, Illinois 61008          815-544-7790 Phone</p>	<p>©2021          2021.028          A3</p>

**ELEVATIONS**  
 NOTE: THOUGH THESE IMAGES HAVE PHOTO  
 REALISTIC QUALITIES, THE ACTUAL BUILDING  
 MATERIALS MAY VARY IN APPEARANCE.



**Development Review Committee Meeting**  
**Thursday, April 15, 2021 at 1:30 p.m.**

Committee members present: City Manager Paul Kramer, Assistant City Manager Taylour Tedder, Director Public Works Brian Faust, Public Works Project Manager Mike Stephan, Sr. Engineer Technician Justin Stewart, Chief Building Inspector Hal Burdette, Fire Marshall Andy Brooks, City Clerk Carla Williamson, Planning Director Julie Hurley, City Planner Jackie Porter and Administrative Assistant Michelle Baragary.

**NEW BUSINESS:**

**1. 2021-11 REZ – rezoning 5136 Lakeview Dr. – Culver’s**

- Attendees – Mark Schuler, Matt Kist (Kimley Horn, civil engineer), Christopher McGuire (McCon Building Corp)
  - Project – rezone property to GBD, plat into two parcels (Culver’s will be on lot 1). Conceptually, there are 3 lots on the south side with potentially a fourth lot on the south side and one large lot to the north. To support four lots on Eisenhower, a second entrance across from Progress Dr. For Culver’s, the second entrance to the west is needed to support the flow. This entrance would also be useable for the adjacent lot, lot 2. The third entrance (closest to the credit union) is a right-in, right-out only.
- Planning
  - Drive C (west side of Culver’s lot) needs to connect to lot 2
  - Goes to Planning Commission May 3<sup>rd</sup>
- Public Works
  - See attached document from Director of Public Works Brian Faust for PW comments
- City Manager
  - Questions 3 drives on Eisenhower. Drive C may need to function more like a main entrance that can turn both ways (like drive A).
- Fire
  - Bldg size – 4300 sqft (developer stated they typically sprinkler)
- PD – no comment

**2. 2021-17 SUB & 2021-18 SUB – Eisenhower Marketplace (5136 Lakeview Dr) – preliminary and final plat**

- Attendees – same
  - Project – lot 1 will be Culver’s and the rest will be lot 2. Will have utility easements around the perimeter.

- Public Works
  - See attached document from Director of Public Works Brian Faust

**3. Dollar Tree (940 Eisenhower) – conceptual site plan**

- Attendees – Doug Burr, Richard Ogburn, Dwayne Smith (civil engineer), Mike Reilly
  - Project – 10,000 sqft building; 8,260 sqft for public access. Currently has 26 parking spots; 41 required parking stalls required.
- Public Works
  - See attached document from Director of Public Works Brian Faust for PW comments
- Building Inspections
- Police – no comment
- Fire Department – no comment
- Planning
  - Parking – Can only approve a 10% reduction administratively. Would need to go to BZA for a variance for the required parking stalls. Email application to Doug Burr.
    - Developer stated he spoke with the owner of the property to the north about possibly using the four parking spots that come off the road running east and west (5111 10<sup>th</sup> Ave). Additional parking spaces could possibly be added that extends to the east (930 10<sup>th</sup> Ave is a detention pond) through a shared off-site parking agreement.
  - On the west side of the property there is no separation between the parking lot and existing drive
    - Developer will shift building to east which will allow them to put some delineation
  - HVAC needs to be on the roof
  - Drive isle width in the parking lot on west side needs to be 25'
  - Need green space and landscaping on the west side of the parking lot

**OLD BUSINESS:**

None

**OTHER BUSINESS:**

None

Meeting adjourned at 2:08 p.m.

#### **Culver's at 5136 Lakeview Drive:**

- **A Traffic Impact Study is needed for this development. The study will help define peak volumes/times, access spacing, stacking at drive-thru, future signal needs, acceleration/deceleration lanes and any lane modifications to Lakeview.**
- **Preferred configuration – one access point on Eisenhower between lots 2 and 3. With 2 access points to Culver's from Drive B (north side of lot). If this is not possible,**
- **Shift east access on Eisenhower west to straddle property line between lots. This shared drive should eliminate the need for a cross access agreement/easement for Lot 2.**
- **Eliminate middle access (they will take access off shared drive on east property line and Drive B to the north). Drive B would be required to be constructed with development of Lot 2 or 3.**
- **Retain west access point (right in/right out). It should connect to Drive B.**
- **Concerned about drive access on Lakeview – stacking from drive-thru back onto the street. Vehicles heading north on Lakeview and turning left (west) into Culver's will want access to the drive thru lanes. Instead of traveling all the way around the building during peak hours, they could potentially stack back onto Lakeview. With additional development, traffic will increase on Lakeview and vehicles may be waiting to turn into Culver's – potentially backing traffic onto Eisenhower.**
- **Stormwater – need copy of the detailed drainage study for the site.**
  - **4 basins – look to combine into fewer (1 or 2) – result may be more developable ground and less maintenance headaches.**
  - **1 basin NW – what system does it tie into?**
  - **Underground options?**
- **Water – pressure and flow rates?**
- **Sanitary – close to Lakeview – should not be an issue.**
- **Will talk off-line about improvements to Lakeview – ROW needs to be adequate to install a 3 lane with sidewalk/shared use path.**

#### **Dollar Tree:**

- **Developer should shift building east to allow for green space and vehicle overhang on the west side – we agree with these comments.**
- **Any plan to bring sidewalk up from Eisenhower to this site?**
- **Will be very difficult to get delivery trucks/trash truck to the north side with no drive access to the north, west or east (lots of backing up and a 90% turn).**
- **Proposal is to add additional parking north of north private road.**
  - **Can't impact function of detention basin.**
  - **Needs pedestrian access from these spots into the building.**
- **General question – how is responsible for the detention basin?**



Ms. Hurley stated this item will be heard Tuesday, May 25<sup>th</sup> at the City Commission meeting at 7:00 p.m. This does begin the 14-day protest petition period as required by state statute.

**5. 2021-11 REZ – 5136 LAKEVIEW DRIVE**

Conduct a public hearing for Case No. 2021-11 REZ – 5136 Lakeview Drive. The applicant is requesting a rezoning of the property located at 5136 Lakeview Drive from R1-9 (Medium Density Single Family Residential District) to GBD (General Business District).

Chairman Burke called for the staff report.

Planning Director Julie Hurley stated the applicant is requesting a rezoning of their 11.8 acre property located at 5136 Lakeview Drive from R1-9, Medium Density Single Family Residential District, to GBD, General Business District. The subject property is owned by Sandra Harrison, Donna De Met, Gloria Mercer, and Darlene Lynch, and is under contract to be purchased by 4M Pioneer Holdings, LLC, who is acting as the applicant/agent for the project. The property is currently occupied by one single-family home, which is vacant.

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b) The zoning and use of properties nearby;

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- 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 land 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.***

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- 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.***

After the required public notices were sent to property owners within 200' within city limits and 1,000' outside of city limits as required by Kansas State Statute, staff received communication from one individual in opposition to the rezoning request.

#### **REZONING ACTION/OPTIONS:**

- Recommend approval of the rezoning request from R1-9 to GBD to the City Commission
- Recommend denial of the rezoning request from R1-9 to GBD to the City Commission
- Table the issue for additional information/consideration.

Chairman Burke called for questions from commissioners about the staff report.

Mr. Burke asked what the concern was from the individual is opposition of the rezoning request.

Ms. Hurley stated it involves property to the north and some title information that was found during the various title work that was done on the subject property. The City of Leavenworth did speak with the city attorney and the City of Leavenworth is not in the position of enforcing individual title disputes or agreements; that is strictly between two property owners. The city is only to consider the factors that are laid out in state statute and the Development Regulations.

Mr. Burke asked if the applicant would like to speak.

Mark Schuler, 16290 NW 126<sup>th</sup> Street, Platte City, MO, stated he was born and raised in Leavenworth and is a retired Air Force Colonel. He currently owns two Culvers in Platte City, MO and Lawrence, KS. Mr. Schuler stated he has been working with city staff to help find potential properties for Culvers in Leavenworth. Looking at zoning and the Future Use Map, Eisenhower is an appropriate zoning use and great development opportunity for Leavenworth.

Mr. Burke asked the applicant if there are any recommendations or requirements from the DRC meeting that would present an issue.

Mr. Schuler responded in the negative. He has been working with Public Works and the civil engineering plans are good, further stating they are hopeful to break ground the beginning of June. Marketing for the rest of the subject property has not been done at this point but believes there are good opportunities for further development once they begin to look for additional users.

Mr. Burke asked if a traffic impact study has been launched.

Ms. Hurley responded it is her understanding that it is not needed at this time. A traffic impact study may be needed in the future as the rest of the site develops.

Mr. Schuler stated the traffic impact study brought up while looking at the overall development of the property not just specifically the Culvers piece of it.

With no further questions about the staff report, Chairman Burke opened the public hearing.

Stephen Flanagan, 4700 Lakeview Drive, stated his concerns are turning east from Lakeview Drive onto Eisenhower is difficult due to traffic, improvements need to be made all the way to Muncie Road and stormwater flow. Mr. Flanagan stated vacant commercial space is located across the street in the strip center. Furthermore, what will happen to the property values for the properties to the east of Culvers that are zoned R1-9.

Ms. Hurley stated part of the project will include improving Lakeview Drive, at least the northern boundary adjacent to the subject property. There are no plans to improve Lakeview Drive north of that.

Mr. Murphy also has concerns about traffic.

Mr. Flanagan stated he wants to see an environmental impact plan for this project because he foresees a huge water issue.

Ms. Hurley stated the Public Works Department does not require that type of impact plan. However, any development requires a stormwater design/plan that is reviewed/approved by Public Works. Essentially, the stormwater is not allowed to impact any surrounding property.

Bernie Bristow, 16853 Stranger Road, stated his wife (Linda Bristow) and sister-in-law (Deborah Howard) own the property to the north of the subject property. Referring to the 1949 Agreement, Mr. Bristow stated the deed restricts the use of certain aspects of 4 acres of the subject property, which is part of the 6.38 acre north parcel. In Mr. Jahn's autobiography, completed in 2000, Mr. Jahn stated the importance of maintaining his 4 acre home site as residential.

Mr. Bristow further stated he is not adverse to the applicant's changing opportunities. However, the current deed restrictions afford him the opportunity to protect the utility and the aesthetic integrity of his property now and in the future. Mr. Bristow requests the 6.3 acre parcel to be excluded from rezoning at this time. Furthermore, increased traffic can negatively impact the safety and character of the neighborhood.

Elsa Surber, 4900 Lakeview Drive, stated she agrees with the statements provided by Mr. Flanagan and Mr. Bristow. Ms. Surber foresees accidents occurring on Eisenhower.

Henry Green, 4818 Lakeview Drive, stated the rezoning would be a great disadvantage to the neighborhood

(Technical Difficulties)

Michelle Burns, 4630 W. 137<sup>th</sup> Street Leawood KS, stated she is the attorney for Mr. Jahn's daughters who now own the property at 5136 Lakeview Drive. The property has been vacant since 2007. The rezoning of the property to GBD meets all the golden criteria that is required by state statute and state laws. Ms. Burns further stated the property to the north, being the first residential property, is 565' from the subject property line. The existing restriction agreement should not be taken into account for this rezoning request and will be dealt with if and when a development plan is submitted for that portion of the property. Based on the criteria, surrounding uses and what the Development Review Committee has set forth from previous meetings that will require the developer to do traffic impact and stormwater plans; the city will make sure these are done appropriately but really are not a factor to be taken into account with this rezoning.

Ms. Burns ended by stating the owners of the subject property, Ms. Mercer, Ms. Lynch, Ms. Harrison and Ms. De Met, all support the rezoning of their family property.

With no one else wishing to speak, Chairman Burke closed the public hearing and called for discussion among the commissioners.

Mr. Murphy stated he is thinking future development for that area. Traffic may become a concern but will be addressed at that time.

Mr. Burks stated Eisenhower is one of the highest traffic volume streets already. He does not see a near-term increase in traffic issues just because of a rezoning. Mr. Burks does hear the concern about turning onto Eisenhower from Lakeview Drive and would assume that would be looked at and addressed at some point.

Mr. Burke stated he sees growth with these undeveloped areas along Eisenhower and all traffic on Eisenhower will need to be reviewed at some point.

Ms. Whitson mentioned a concern about the strip mall on the south side of Eisenhower and the many vacancies they have.

Ms. Hurley stated that is located in Lansing, not Leavenworth.

Mr. Henning stated because there is not much room for growth along 4<sup>th</sup> Street Leavenworth grows by developing on Eisenhower. He understands the concerns from the neighboring properties but from the city's standpoint believes this is a great move for Leavenworth.

With no further discussion, Chairman Burke called for a motion. Mr. Murphy moved to recommend approval of the rezoning request for 5136 Lakeview Drive from R1-9 to GBD to the City Commission, seconded by Mr. Burks and approved by a vote of 6-0.

Ms. Hurley stated this begins the 14-day protest petition period. This item will be heard by the City Commission Tuesday, May 25<sup>th</sup> at 7:00 p.m. in the Commission Chambers.

#### **6. 2021-18 SUB – EISENHOWER MARKETPLACE PRELIMINARY PLAT**

Consider a preliminary plat for Eisenhower Marketplace.

Chairman Burke called for the staff report.

Planning Director Julie Hurley stated the subject property is owned by Sandra Harrison, Donna DeMet, Gloria Mercer, and Darlene Lynch, plat prepared by Herring Survey Company. The property is under contract to be purchased by 4M Pioneer Holdings, LLC, who is acting as the applicant/agent for the project.

The applicant is requesting approval of a 11.8 acre, 2 lot preliminary plat for the Eisenhower Marketplace, located at the northwest corner of Eisenhower Road and Lakeview Drive. The property is currently zoned R1-9, Medium Density Single Family Residential District. An accompanying request to rezone the property to GBD, General Business District, is also on this agenda. The property is currently occupied by one single-family home, which is vacant.

The plat was reviewed at the April 15, 2021 Development Review Committee meeting. No issues of note were identified with the plat.

The associated final plat for the development is also on this agenda.

Staff recommends approval of the Eisenhower Marketplace, Preliminary Plat.

#### **ACTION/OPTIONS:**

- Approve the Preliminary Plat
- Deny the Preliminary Plat
- Table the issue for additional information/consideration.

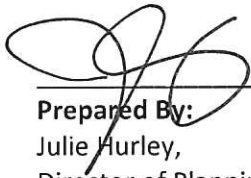
Chairman Burke called for questions from commissioners about the staff report.

**POLICY REPORT  
FIRST CONSIDERATION ORDINANCE  
2021-08-REZ  
711 MARSHALL**

**MAY 25, 2021**

**SUBJECT:**

Place on first consideration an ordinance to approve 2021-08-REZ.



**Prepared By:**  
Julie Hurley,  
Director of Planning and  
Community Development



**Reviewed By:**  
Paul Kramer,  
City Manager

**ANALYSIS:**

The applicant, the Board of County Commissioners of Leavenworth County, is requesting a rezoning of their property located at 711 Marshall from R1-6, High Density Single Family Residential District, to GBD, General Business District. The property is occupied by the former Cushing Memorial Hospital, which closed in October, 2020 and is currently vacant.

The rezoning is being requested to allow for reuse of the hospital building with a mix of county offices and private health care providers. The intended use is less intensive than the prior use as a hospital, and will utilize existing parking facilities. No expansion of the building footprint is proposed. The use of the building will be within traditional business hours with limited use on evenings or weekends.

The existing building was constructed as a hospital in the late 1800's with several additions in the intervening years, and has functioned as a hospital since that time until it's recent closure in October, 2020. The property is considered legal-nonconforming, as the previous use of the property as a hospital is not in compliance with the current Development Regulations. Any nonconforming use of a structure may be changed to another nonconforming use, as an exception granted by the Board of Zoning Appeals. Additionally, when a nonconforming use is abandoned for a period of 24 consecutive months, any subsequent use must comply with the regulations of the zoning district. Given the intended use of multiple occupants, staff advised the applicant that a Rezoning request would be the best option, providing the highest degree of transparency and avoiding potential future legal complications and multiple requests for exceptions.

**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*

After the required public notices were sent to property owners within 200' as required by Kansas State Statute, staff received communication from one individual in opposition to the rezoning request. The Planning Commission considered this item at their May 3, 2021 meeting and voted 4-1 to recommend approval of the Rezoning request. One person spoke in opposition to the request during the public hearing.

**REZONING ACTION/OPTIONS:**

- Place an ordinance on first consideration to approve the rezoning request of 711 Marshall from R1-6 to GBD.
- Deny the rezoning request of 711 Marshall from R1-6 to GBD.



(Summary Published in the Leavenworth Times on \_\_\_\_\_, 2021)

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING THE DEVELOPMENT REGULATIONS, APPENDIX A OF THE CODE OF ORDINANCES OF THE CITY OF LEAVENWORTH, KANSAS BY REZONING 711 MARSHALL STREET FROM HIGH DENSITY SINGLE FAMILY RESIDENTIAL DISTRICT (R1-6) TO GENERAL BUSINESS DISTRICT (GBD).**

**WHEREAS**, under the Development Regulations, Appendix A of the Code of Ordinances of the City of Leavenworth, Kansas, the Governing Body of the City of Leavenworth is given the power to amend, supplement or change existing zoning regulations within said City; and

**WHEREAS**, the City Planning Commission, after fully complying with the requirements of the Code of Ordinances of the City of Leavenworth, Kansas, held a public hearing on the 3<sup>rd</sup> day of May 2021 in the Commission Room, 1<sup>st</sup> Floor of City Hall, 100 N. 5<sup>th</sup> Street, Leavenworth, Kansas. The official date and time set as was published in the Leavenworth Times newspaper on the 10<sup>th</sup> day of April 2021 and notice of the public hearing was mailed to all property owners within 200 feet of the said property; and

**WHEREAS**, upon a motion made, duly seconded, and passed, the Planning Commission adopted findings of fact and recommended approval of the request Rezoning of 711 Marshall Street, Leavenworth Kansas from high density single family residential district (R1-6) General Business District (GBD); and

**WHEREAS**, upon a roll call vote duly passed, the Governing Body adopted the findings of fact and conclusions to rezone the property described herein.

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAVENWORTH, KANSAS:**

**Section 1:** That the following described properties, to-wit, is hereby rezoned from high density single family residential district (R1-6) General Business District (GBD).

TRACT 1: Lots 1, 2, 3, 4, 5 and 6, Block 9, James Davis Addition, a subdivision in the City of Leavenworth, Leavenworth County, Kansas. Also a strip of land 14 x 198 feet West of Lots 1, 2 and 3, Block 9 and East of Lots 4, 5 and 6 Block 9, James Davis Addition, a subdivision in the City of Leavenworth, Leavenworth County, Kansas. Said strip being a vacated alley in Block 9, James Davis Addition, a subdivision in the City of Leavenworth, Leavenworth County, Kansas. Also a part of Block Evergreen in James Davis Addition, a subdivision in the City of Leavenworth, Leavenworth County, Kansas, described as follows: Beginning at the Southwest corner of Lot 4, Block 9, James Davis Addition, a subdivision in the City of Leavenworth, Leavenworth County, Kansas; thence South on the West line of Block Evergreen, 66 feet; thence East and parallel with the

South line of Lot 4, 140 feet; thence North 66 feet to the Southeast corner of Lot 4; thence West along the South line of Lot, 140 feet to the place of beginning. Also the North 66 feet of Lot 10, Carroll's Subdivision, a subdivision in the City of Leavenworth, Leavenworth County, Kansas. Also Lots 1, 2, 3, 4, 5, 6 and 7, Block 12, Day's Subdivision City of Leavenworth, Leavenworth County, Kansas. Also a triangular tract of land in Lot 10, Carroll's Subdivision of the City of Leavenworth, described as follows: Beginning at a point 66 feet South of the Northeast corner of said Lot 10 and on the East line thereof; thence West parallel to North line of said Lot 10, 40 feet; thence in a Southeasterly direction 85.88 feet, more or less, to the Southeast corner of said Lot 10; thence North along the East line of Lot 10, 76 feet to the point of beginning. CAMA/PIN No. 077-35-0-40-14-001.00-0 TRACT 2: The west 78 feet of Lot 7, all of Lots 8 and 9, and the West 78 feet of the South 71 feet of Lot 10, Carroll's Subdivision, City of Leavenworth, Leavenworth County, Kansas. CAMA/PIN No. 077-35-0-40-14-002.00-0;

And **more commonly referred to as 711 Marshall Street**, Leavenworth, Kansas.

**Section 2:** That the "Zoning District Map" adopted under the Development Regulations, Appendix A of the Code of Ordinances of the City of Leavenworth, Kansas shall be and the same is hereby amended to conform to the rezoning as set forth in Section 1 above.

**Section 3:** That this Ordinance shall take effect and be in force from and after its passage, approval and summary publication in the official City newspaper of the City of Leavenworth, Kansas, as provided by law.

**PASSED and APPROVED** by the Governing Body on the \_\_\_\_\_ day of \_\_\_\_\_ 2021.

\_\_\_\_\_  
Nancy D. Bauder, Mayor

{Seal}

ATTEST:

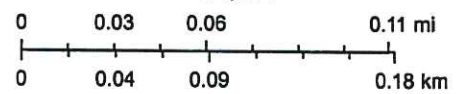
\_\_\_\_\_  
Carla K. Williamson, CMC, City Clerk

# 711 Marshall



4/29/2021, 10:17:14 AM

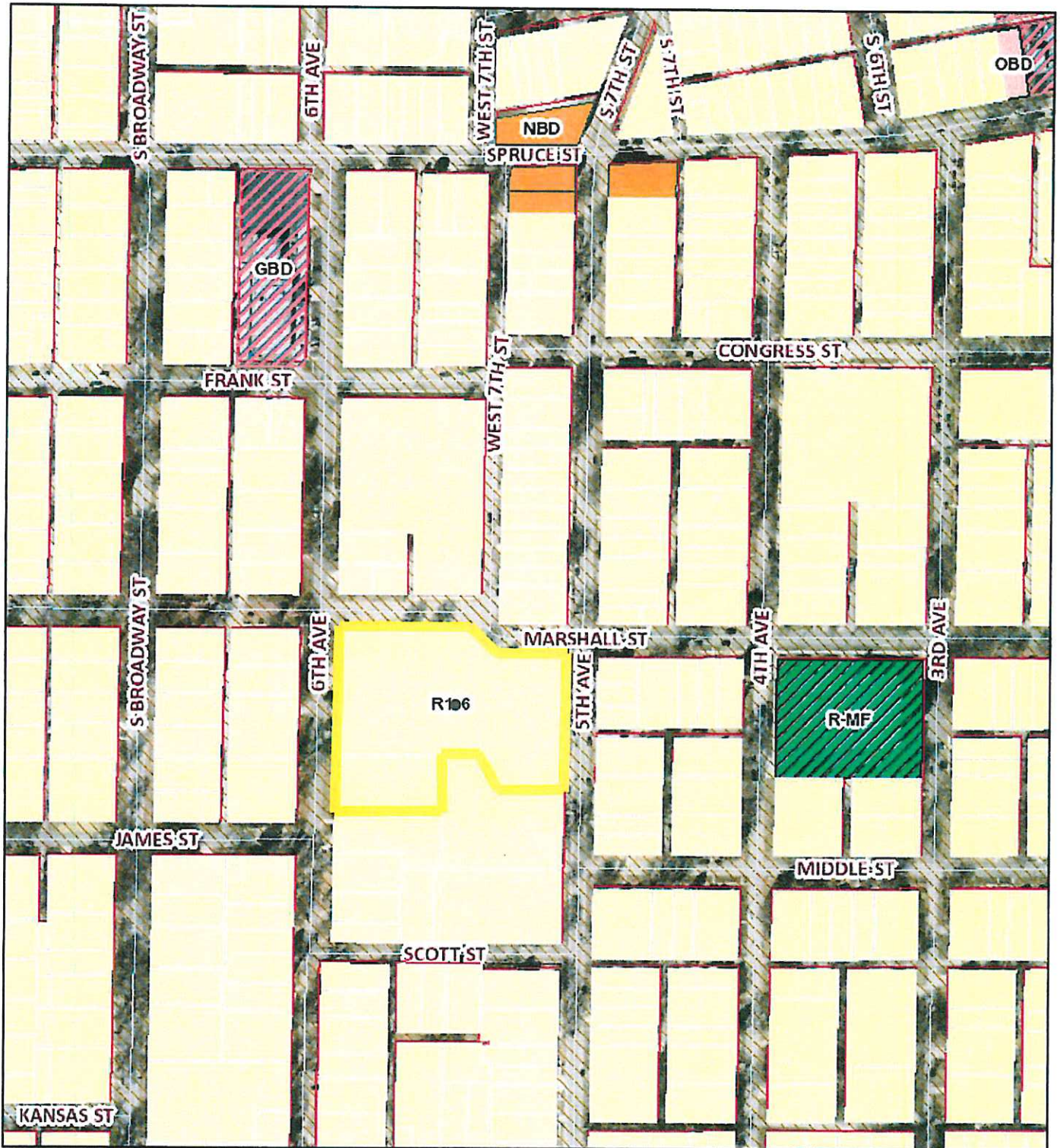
1:4,514



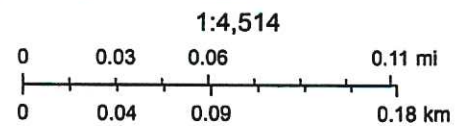
Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

Web AppBuilder for ArcGIS

# 711 Marshall - Zoning



4/29/2021, 10:18:00 AM



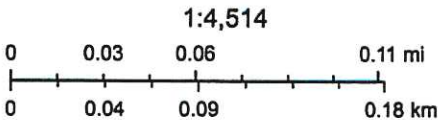
Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

Web AppBuilder for ArcGIS

# 711 Marshall - Future Land Use



4/29/2021, 10:18:45 AM



Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community



**APPLICATION FOR REZONING**  
CITY OF LEAVENWORTH, KANSAS

**OFFICE USE ONLY**

CASE NO. 2021-08 REZ

Application #	8898
Fee (non-refundable)	\$350.00
Filing Date	2-19-21
Received By	Cathy L. Collins d. 23/1
Hearing Date	4-5-21
Publication Date	3-11-21

The undersigned owner(s)/agent for the owner(s) of the property described below, herein petition for a change in the zone of the following legally described property: (agent must have authorization to make application).

Subject Property:	Former Cushing Memorial Hospital 711 Marshall St.		
Rezoning:	Present classification of: R1-C6	district to: GBD	
Legal Description:	(Attach full legal description provided by the REGISTER OF DEEDS OFFICE)		
Real Estate PID #:	077-35-0-40-14-001.00-0	Historic District:	

I/We, \_\_\_\_\_ being duly sworn, depose and say that I am the owner/agent for the owner of the property involved in this petition and that the statements and answers herein contained and then information herewith submitted are in all respects true and correct to the best of my knowledge and belief.

Name(s) of Owner (print or type):	Board of County Commissioners of LVCO, KS		
Address:	300 Walnut, Leavenworth, KS 66048		
Contact No.	913-684-0415	Email Address:	dvanparys@leavenworthcounty.gov

Signature of Owner(s): (AGENT)	<i>David C. Van Parys</i> 2/19/2021 DAVID C. VAN PARYS AGENT FOR BOCC OF LVCO, KS
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State of <u>KANSAS</u> )	
County of <u>LEAVENWORTH</u> )	

DAVID C. VAN PARYS, AGENT FOR BRO. OF COUNTY COMMRS. OF LVCO, KS

Signed or attested before me on Feb. 19, 2021 by Stephanie M. Sloop  
(date) (name(s) of person(s))

Notary Public: <u>Stephanie M. Sloop</u>	My Appointment Expires: <u>11/30/24</u>
--	---

NOTE: All signatures must be in black or blue ink. Signature of owner(s) must be secured and notarized.



***If necessary, use additional sheets to respond to the following:***

Briefly describe the present use and character of the property and of the surrounding area: Former site of Cushing Memorial Hospital, now owned by Leavenworth County. Area is largely residential, adjoining Leavenworth Historical Museum

Briefly describe the intended use and character of the property: Mixed use of county offices, private health care providers. Current parking facilities adequate for intended use and intended use less intensive than prior use (no ambulances, Life-Flight helicopters)

Briefly describe why you believe the land use (zoning) being requested is the most appropriate for this property: GBD provides for intended use and intended use not incompatible with character of neighborhood due to long established use as a hospital

Give the reason(s) why you believe this proposal will not be materially detrimental to the public welfare and surrounding properties and/or measures you have taken or intend to take to prevent detrimental impacts: Intended use less intensive than prior use. Intended use will use existing parking and facilities with no expansion of building footprint or substantial reconstruction. Use of building will largely be during traditional business hours with limited use outside of those hours, if any.

Is the property affected by any easements, deed/plat restrictions or other conditions arising from previous Special Use Permits, Subdivisions, rezoning or variances? If so, briefly explain the origin and effect of such conditions: Not aware of any such conditions.

Check List:	
<input checked="" type="checkbox"/>	Non-refundable fee of \$350.00 is due at time of application
<input checked="" type="checkbox"/>	Certified list of the property owners within two hundred (200) feet of the subject property
<input checked="" type="checkbox"/>	Full legal description obtained through the Register of Deeds Office
<input type="checkbox"/>	Site plan drawn to scale (see General Instructions)
<input type="checkbox"/>	Supporting documentation (see General Instructions)



## The Leavenworth County Historical Society, Inc. & Carroll Mansion Museum

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1128 Fifth Avenue • Leavenworth, Kansas 66048 • (913) 682-7759  
www.leavenworthhistory.org • Email: museum@leavenworthhistory.org

April 30, 2021

Leavenworth Planning Commission  
City of Leavenworth  
100 N. 5<sup>th</sup> Street  
Leavenworth, KS 66048

RE: Board of County Commission Rezoning Request for 711 Marshall Street, Leavenworth, KS.

Dear Sirs:

The Leavenworth County Historical Society at the Carroll Mansion Museum is opposed to the rezoning of the property at 711 Marshall Street from Single Family Residential (R1-6) to General Business District (GBD).

Despite the long-term presence of Cushing Hospital, and later the addition of the medical office buildings, the character of the neighborhood has been single family residential with detached single-family homes and townhouses. Rezoning the proposed property to GBD allows for a variety of commercial retail and service businesses and wholesale and storage uses normally found within the commercially developed districts of a city. These uses are out of place with the current residential neighborhood; hospitals and medical and dental offices are typically fitting for areas zoned GBD.

The commission needs to consider not only the present requested use, but the impact future commercial development will have on this residential area. GBDs holds a wide variety of functions which would have a negative effect on property values, the historical integrity of the neighborhood, and commercial traffic on these residential streets. Additionally, this spot zoning request falls outside of the City's economic development goals as stated in the Comprehensive Plan.

With the County as the new owner of the property, government offices and facilities are more suitable for the currently zoned R1-6. Also compatible are assisted living facilities, nursing homes, and senior housing facilities, which are in sync with the past deliberations of the county commission for considered uses of the property.

For these reasons, please do not approve this rezoning request.

Respectfully,

The Board of the Leavenworth County Historical Society



Mr. Burke asked the applicants about the parking concerns some neighbors have.

Mr. Reece responded parents pull up to the house and stop in front of the driveway so small children do not have to step onto the curb. Mr. Reece addressed some of the concerns mentioned stating the kids are not running around the neighborhood screaming, although they are allowed outside to play and exercise, and his property value has increased in the six months he has lived there.

Mr. Burke asked the applicant if any of his neighbors approached him with their concerns.

Mr. Reece responded in the negative.

Mr. Burke asked if the applicant informed any neighbors about operating a daycare.

Mr. Reece stated he had not. He does have a sign that reads "Daycare Parents Are Appreciated".

Mrs. Reece stated if the kids start getting rambunctious, they take them to the park to burn off energy. (Inaudible). During the pandemic, the number of children in their daycare increased so parents could work. Mrs. Reece further stated, child care facilities are essential.

Ms. Hurley informed the commissioners the yard sign they currently have is a permitted sign.

With no one else wishing to speak, Chairman Burke closed the public hearing and called for discussion among the commissioners.

With no further discussion, Chairman Burke called for a motion. Mr. Burks moved to recommend approval of the special use permit for 2137 Birch Street to the City Commission based upon findings as stated and conditions as presented, seconded by Mr. Murphy and approved by a vote of 5-1. Mr. Wiedower voted against the special use permit.

Ms. Hurley stated this will begin the 14-day protest petition period as required by state statute. This item will be heard by the City Commission Tuesday, May 25<sup>th</sup> at 7:00 p.m. in the Commission Chambers.

**4. 2021-08 REZ – 711 MARSHALL STREET (CUSHING MEMORIAL HOSPITAL)**

Conduct a public hearing for Case No. 2021-08 REZ – 711 Marshall Street. The applicant is requesting a rezoning of the property located at 711 Marshall Street from R1-6 (High Density Single Family Residential District) to GBD (General Business District).

Chairman Burke called for the staff report.

Planning Director Julie Hurley stated the applicant, the Board of County Commissioners of Leavenworth County, is requesting a rezoning of their property located at 711 Marshall from R1-6, High Density Single Family Residential District, to GBD, General Business District. The property is occupied by the former Cushing Memorial Hospital, which closed in October 2020 and is currently vacant.

The rezoning is being requested to allow for reuse of the hospital building with a mix of county offices and private health care providers. The intended use is less intensive than the prior use as a hospital,

and will utilize existing parking facilities. No expansion of the building footprint is proposed. The use of the building will be within traditional business hours with limited use on evenings or weekends.

The existing building was constructed as a hospital in the late 1800's with several additions in the intervening years, and has functioned as a hospital since that time until its recent closure in October 2020. The property is considered legal-nonconforming, as the previous use of the property as a hospital is not in compliance with the current Development Regulations. Any nonconforming use of a structure may be changed to another nonconforming use as an exception granted by the Board of Zoning Appeals. Additionally, when a nonconforming use is abandoned for a period of 24 consecutive months, any subsequent use must comply with the regulations of the zoning district. Given the intended use of multiple occupants, staff advised the applicant that a Rezoning request would be the best option, providing the highest degree of transparency and avoiding potential future legal complications and multiple requests for exceptions.

### **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, General Business District, 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 Residential 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 would have a positive effect on the public health and welfare by providing space for needed health services, while preserving and adaptively reusing a 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.***

After the required public notices were sent to property owners within 200' as required by Kansas State Statute, staff received communication from one individual in opposition to the rezoning request.

#### **REZONING ACTION/OPTIONS:**

- Recommend approval of the rezoning request from R1-6 to GBD to the City Commission
- Recommend denial of the rezoning request from R1-6 to GBD to the City Commission
- Table the issue for additional information/consideration.

Chairman Burke called for questions from commissioners about the staff report.

Mr. Wiedower asked for clarification that the rezoning request would not be in conflict with anything in the future for that area.

Ms. Hurley responded in the affirmative stating the rezoning is in conformance with the Future Land Use.

Mr. Burke stated essentially there are two options for the subject building: 1) either use the building as it exists or 2) tear the building down.

Ms. Hurley stated since the property is zoned single family residential, it is limited in the types of uses that can occur in the single family zoning district even with a special use permit. Again, as it stands there is really no productive use of this building with the current zoning. The building needs to be rezoned to allow reuse of the building.

Mr. Murphy stated in full disclosure that his wife is now president of the Leavenworth County Historical Society. Mr. Murphy further stated it seems the city has bad luck with rezoning a building for general use, which allows anybody to use the building for whatever is permitted in that zoning

district, and then you end up with a welding shop or auto repair shop in half the building, which would disrupt the neighborhood.

Mr. Burks stated if the building is not rezoned then you are left with a vacant building for the next 40 to 80 years.

To address Mr. Murphy's concern, Ms. Hurley stated unfortunately, there is no medical office zoning so we are limited in our zoning district options. The commercial zoning districts allow for a wide variety of uses by design, and does allow for multiple uses not just medical office.

Chairman Burke asked the applicant to speak.

David Van Parys, County Counselor and representative for the applicant, stated this whole process started when the County discussed with the City the County's plan to use the subject building, which was donated to the County by St. Luke's. Currently there is no plan for any welding shops, retail stores, etc. to go into this facility. The plan is to locate some County offices. There has already been discussions with one healthcare provider that would utilize the entirety of the third floor and possibly the fourth floor. Mr. Van Parys further stated it would be in everyone's interest to find some useful purpose for the building.

With no further questions about the staff report, Chairman Burke opened the public hearing.

Lisa Weakley, representing the Leavenworth County Historical Society located at 1128 5<sup>th</sup> Avenue, stated the Leavenworth County Historical Society is opposed to the rezoning request. The character of this neighborhood has been predominately single family and townhomes in nature. Rezoning to GBD would allow too much variety of commercial, retail, wholesale, etc. that are normally found in a commercially developed district of the city. These uses are incompatible with the current residential neighborhood.

Ms. Weakley further stated the Historical Society would like the commission to consider the impact this may have on any future development, especially if the County decides to leave this property as they have done in two previous properties.

Ms. Weakley continued by stating the general business district would have a negative impact on property values, commercial traffic would increase in residential neighborhoods and this is a spot zoning request that falls outside of the City's economic development plan. If the County wants government offices, assisted living, nursing homes or senior housing, all of these are compatible uses under its present R1-6 zoning.

With no one else wishing to speak, Chairman Burke closed the public hearing and called for discussion among the commissioners.

Mr. Wiedower stated he is in favor of the rezoning.

With no further discussion, Chairman Burke called for a motion. Mr. Wiedower moved to recommend approval of the rezoning request from R1-6 to GBD for 711 Marshall Street to the City Commission, seconded by Ms. Whitson and approved by a vote of 5-1. Mr. Murphy voted against the rezoning request.

**POLICY REPORT  
FIRST CONSIDERATION ORDINANCE  
DEVELOPMENT REGULATIONS TEXT AMENDMENTS**

**MAY 25, 2021**

**SUBJECT:**

Place on first consideration an ordinance to amend the Development Regulations



**Prepared By:**  
Julie Hurley  
Director of Planning and  
Community Development



**Reviewed By:**  
Paul Kramer  
City Manager

**DISCUSSION:**

The Development Regulations were adopted by the City Commission in June, 2016 after a year-long comprehensive update process. Through the daily use of the Regulations by staff, minor items arise that may necessitate possible updating. This process is not uncommon, and it is anticipated that an annual review of the Development Regulations will be performed in order to ensure that they remain up to date and comprehensive. On May 3, 2021, the Planning Commission held a public hearing for the proposed text amendments and voted unanimously to recommend approval of the amendments as presented.

- **Section 2.02; Platting**
  - Add criteria for Administrative Plats that all property involved must have been previously platted.
  - Add requirement that Administrative Plats be recorded within 18 months of approval.
  - Add requirement that Minor Subdivision Plat be recorded within 18 months of approval.
  
- **Section 4.03; Property Development Standards**
  - Clarify language regarding side and rear setback requirements for accessory structures.
  
- **Section 4.04; Use Standards**
  - Clarify language regarding calculation of accessory structures to include any second story of such structures.
  
- **Section 5.03; General Parking Requirements**
  - Add allowance for partial gravel driveways on residential lots over 2 acres in size.
  
- **Section 8.04.C; Signs Excluded From Permit**
  - Correct reference related to garage sale permits in City Ordinance.
  - Add language to allow temporary signs without permit for "Public Service Organizations".
  - Revise language related to Political Signs, addressed more specifically in later section of chapter.
  
- **Section 8.08; Signs Permitted in Residential Districts**
  - Remove RMX and MP zoning districts from section, addressed in later sections of chapter.
  - Increase allowable sign area for Home Based Business Signs from ½ sqft to 6 sqft.

- Increase allowable sign area for Open House Signs from 4 sqft to 6 sqft.
- Correct inconsistencies to clarify that 3 temporary signs, 3 sqft in size, are allowed on any lot.

- **Section 8.10; Signs Permitted in the Neighborhood Business District (NBD)**

- Add Residential Mixed Use District to this section.

- **Section 8.12; Temporary Signs**

- Add language and specific requirements regarding temporary signs allowed in the right-of-way for 45 days preceding any election, as required in Kansas State Statute.

- **Section 8.15; Nonconforming, Hazardous, Dangerous, Illegal and Prohibited Signs**

- Add language to allow issuance of sign permits for nonconforming uses.

- **Section 11.03; BZA Powers and Jurisdiction**

- Add language referencing State Statute authorizing such powers and duties.
- Remove criteria for Exceptions, such criteria not required by State Statute.

- **Appendix A; Use Table**

- Complete update to uses allowed By Right and by Special Use. Please see attached Appendix A.

**ACTION/OPTIONS:**

Place an ordinance on first consideration to amend the Development Regulations as presented.

(Summary Publish in the Leavenworth Times on \_\_\_\_\_, 2021)

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING VARIOUS SECTIONS OF APPENDIX A OF THE CODE OF ORDINANCES, DEVELOPMENT REGULATIONS, OF THE CITY OF LEAVENWORTH, KANSAS BY AMENDING AND PROVIDING ADDITIONAL AND SUBSTITUTE PROVISIONS.**

**WHEREAS**, an ordinance of the City of Leavenworth, Kansas, Amending various sections of Appendix A; Development Regulations of the Code of Ordinances; repealing any and all other ordinances and parts of ordinances in conflict therewith.

**NOW, THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAVENWORTH, KANSAS:**

**Section 1.** That the following amendments to sections 2.02, 4.03, 4.04, 5.03, 8.04, 8.08, 8.09, 8.10, 8.12, 8.15, 11.03, and Appendix A of the Development Regulations; Appendix A of the City Code of Ordinances, City of Leavenworth, Kansas be and are hereby repealed and amended to read as follows:

**Sec. 2.02. Platting.**

- A. *Applicability.* Plat applications are required to establish or alter the legal boundaries of property, and may be the owners or agents of any property affected.
- B. *Platting procedures.* Applications for platting shall be proposed on forms established by the director of the planning department and filed with the city clerk. Applications shall be processed according to the following specific procedures:
  - 1. *Types of plats.* Plat applications are classified and processed as one of the following types:
    - a. Administrative plats, which are routine applications for lot splits or combinations that do not alter development patterns or impact public services; or
    - b. Minor subdivisions, which are platting of five or fewer new lots, including any remainder parcel, that do not alter development patterns or impact public services; or
    - c. Major subdivisions, which larger subdivisions are with new ownership and development patterns that impact public services.
  - 2. *Pre-application conference.* Prior to the filing of any plat, the applicant shall (preferably with two copies of a rough sketch plan of the proposed subdivision) contact the city staff to determine:
    - a. Classification of the plat.
    - b. Procedure for filing plats.
    - c. Availability of city sewers and water, and other major utilities, including a letter or similar proof of availability from any utility.
    - d. Comprehensive land use plan requirements for major streets, land use, parks, schools and public open spaces.
    - e. Zoning requirements for the property in question and adjacent property.

- f. Special setback requirements for arterial, collector and local streets.
3. *Administrative plat.* Administrative plats shall be processed according to the following criteria and procedures.
- a. *Criteria.* An application may be classified as an administrative plat if the director determines that all of the following are met. Any application not classified as an administrative plat shall be processed as a minor or major subdivision.
    - (1) No new street or alley right-of-way, or other public dedication is needed.
    - (2) No significant increase in service requirements (utilities, schools, traffic control, streets, etc.), or the ability to maintain existing service levels will result.
    - (3) For lot split, involves a single split of one lot resulting in two separate lots, or for a lot combination involves the combining of two separate lots into one lot.
    - (4) All lots meet the legal standards of the subdivision regulations and applicable zoning districts.
    - (5) The lot patterns are consistent with the surrounding area. In determining consistency, the size and dimension of lots previously developed, the layout and design of existing subdivisions and rights-of-way, and the degree of deviation from previous development shall be considered.
    - (6) No other significant issues exist with potential development enabled by the plat that could impact planning policies, development regulations or adjacent property owners.
    - (7) **All property involved must have been previously platted.**
  - b. *Filing requirement.* An administrative plat shall include all applicable information required for final plats.
  - c. *Review and approval.* Upon review by the director, development review committee, or any affected departments or agencies, and within 60 days of filing, the director shall approve any administrative plats that meet all requirements of these regulations, or deny the application and recommend any further processing as a major subdivision.
  - d. *Effect of decision.* Approval of an administrative plat requires the applicant to record the plat with the city register of deeds. Denial or recommendation of major subdivision shall be processed according to major subdivision review requirements.
  - e. **The Administrative Plat shall be recorded with the Register of Deeds within 18 months of approval by the Director. Plats which are not recorded within said time period shall be deemed null and void.**
4. *Minor subdivision.* Minor subdivisions shall be processed according to the following criteria and procedures.
- a. *Criteria.* An application may be classified as minor subdivision if the director determines that all of the following are met. Any application not classified as a minor subdivision shall be processed as a major subdivision.
    - (1) No new street or alley right-of-way, or other public dedication is needed.



- (2) No significant increase in service requirements (utilities, schools, traffic control, streets, etc.), or the ability to maintain existing service levels will result.
  - (3) The application results in five or fewer new lots, including any remainder parcel.
  - (4) All lots meet the legal standards of the subdivision regulations and applicable zoning districts.
  - (5) The lot patterns are consistent with the surrounding area. In determining consistency, the size and dimension of lots previously developed, the layout and design of existing subdivisions and rights-of-way, and the degree of deviation from previous development shall be considered.
  - (6) No other significant issues exist with potential development enabled by the plat that could impact planning policies, development regulations or adjacent property owners.
- b. *Filing requirement.* A minor subdivision shall include all applicable information required for final plats.
  - c. *Review and approval.* Within 60 days after submission of a plat, the planning commission shall approve, disapprove, conditionally approve, or with approval of the applicant, table the plat. If the planning commission approves the plat, the plat shall have house numbers assigned and shall be recorded with the office of the Leavenworth County Register of Deeds.
  - d. **The plat shall be recorded with the Register of Deeds within 18 months of approval by the Planning Commission. Plats which are not recorded within said time period shall be deemed null and void.**
5. *Major subdivision.*
- a. *Preliminary plat.* A preliminary plat shall be processed according to the following criteria and procedures.
    - (1) *Development review committee.* At least seven days prior to the planning commission review, the development review committee shall review the preliminary plat and submit their recommendation to the planning commission.
    - (2) *Planning commission review.* Within 60 days after the submission of a preliminary plat, the planning commission shall approve, disapprove or, with the approval of the applicant, table the plat. Action by the planning commission shall be conveyed to the applicant in writing within ten days after the official planning commission meeting at which the plat was considered. In case the plat is disapproved, the applicant shall be notified of the reason for such action and what requirements shall be necessary to meet the approval of the planning commission.
    - (3) *Effect of decision.* The approval of the preliminary plat does not constitute an acceptance of the subdivision, but is deemed an authorization to proceed with the preparation of the final plat. If the planning commission rejects or withholds approval of a preliminary plat, the applicant may request that said plat be submitted to the city commission and the planning commission shall forward the proposed plat, together with their report, stating the reason or reasons for the action taken. The city commission may make such finding and determinations as are deemed proper.

- (4) *Effective date.* The approval of the preliminary plat shall be effective for one year.
- b. *Final plat.* After approval of the preliminary plat, the applicant may submit a final plat for all or portions of the preliminary plat area.
  - (1) *Planning commission.* Within 60 days after submission of a final plat, the planning commission shall approve, disapprove, conditionally approve, or with approval of the applicant, table the final plat. If the planning commission approves or conditionally approves the final plat, it shall be forwarded to the city commission with a recommendation that they accept dedication of easements and rights-of-way.
  - (2) *Dedication of land for public purposes.* The city commission shall approve or disapprove the dedication of land for public purposes within 30 days after the first meeting of the city commission following the date of the submission of the planning commission action to the clerk. The city commission may defer action for an additional 30 days to allow modifications to comply with requirements established by the city commission. If the city commission defers or disapproves such dedication, it shall advise the planning commission of the reasons therefor.
  - (3) *Recording.* If the city commission accepts the proposed easements and rights-of-way, the final plat shall have house numbers assigned and shall be recorded with the office of the county register of deeds.
  - (4) *Effective Date.* Final plats shall be recorded with the Register of Deeds within 18 months following City Commission approval of land dedicated to public purposes. Final plats which are not recorded within said time period shall be deemed null and void
- c. *Disposition of final plats.* After the plat has been recorded, the secretary of the planning commission is responsible for distribution of the final plat as follows:
  - (1) Original Mylar and one print to register of deeds, reproducible Mylar and one print to director of public works.

C. *Improvement procedures.*

1. *General.* After the approval, but prior to the recording of the final plat, the applicant may do the grading and any drainage work that is required, all according to plans approved by the director of public works. Prior to the issuance of building permits, all street paving, sanitary sewer, storm drainage, and utility lines must be installed in accordance with the most recent version of the engineering and public works department's infrastructure design and construction manual and plans approved by the appropriate utility company.
2. *Plans and specifications.* Upon the approval of the final plat, the applicant shall have a licensed professional engineer prepare engineering drawings for proposed required improvements which will be constructed by the developer containing information and details required by the Infrastructure Design and Construction Manual or public works department standards. The director of public works shall review all engineering drawings in order to determine whether such drawings are consistent with the approved final plat and comply with their design standards.
3. *Construction of improvements.* No improvements shall be constructed nor shall any work preliminary thereto be done until such time as a final plat and the engineering drawings accompanying it have been approved and there has been compliance with all of the

requirements relating to an agreement, bond or deposit specified in these regulations. The developer may install six inches by five feet sidewalks in conjunction with the street paving and forgo the required sidewalk bond.

4. *Inspections.* All improvements constructed or erected shall be subject to inspection by the city or its designated representative responsible for setting and enforcing the applicable design and construction standards of the required improvement. The cost attributable to all inspections required by this regulation shall be charged to and paid by the applicant. Before any required inspections take place, the applicant may be required to post a deposit with the city clerk to cover the cost of such inspections. On-site inspections may be conducted at any times and work may be terminated if it does not comply with standards of final drawings.
5. *Final inspection.* Upon completion of all improvements within the area covered by the final plat, the applicant shall notify the director of public works who shall conduct a final inspection of all improvements installed. If the final inspection indicates that there are any defects or deficiencies in any the improvements as installed, or if there are any deviations in the improvements as installed from the final engineering plans and specifications, he shall notify the applicant in writing of such defects, deficiencies, or deviations, and the applicant shall, at his sole cost and expense, correct the defects or deviations. When the defects, deficiencies, or deviations have been corrected, the applicant shall notify the official that the improvements are ready for final re-inspection.
6. *Acceptance.* Upon receipt by the city commission of the certificate of the director of public works that all improvements have been installed in conformance with the approved engineering drawings, and with the requirements of these regulations, and all other applicable statutes, ordinances and regulations, the city commission and/or such appropriate utility shall thereupon, by letter or motion, formally accept such improvements. The improvements shall become the property of the city commission or appropriate utility company involved.

**Sec. 4.03. Property development standards.**

A. *Dimension table.* Lot and building dimension standards for zoning districts shall be according to table 4-01.

TABLE 4-01. ZONING DISTRICT DIMENSION STANDARDS

	Lot Standards			Minimum Setbacks				Building Height
	Min. Size	Min. Width	Max. Coverage	Front	Interior Side	Corner Side	Rear	
R1-25	25,000 s.f.[1]	160'	50%	25'	10'	25'	25'	35'
R1-9	9,000 s.f.	75'	50%	25'	6'	25'	25'	35'
R1-7.5	7,500 s.f.	75'	50%	25'	6'	15'	10'	35'

R1-6	6,000 s.f.	48'	50%	25'	6'	25'	25'	35'
R-MF	6,000 s.f.[2]	48' (1 to 2 units) 72' (3 units) 96' (4+ units)	50%	25'	6' (1-story) 10' (2-story) 15' (3-story)	25'	25'	40'
R4-16	6,000 s.f.[3]	48' (1 to 2 units) 96' (3 to 4+ units)	50%	25'	6' (1-story) 10' (2-story) 15' (3-story)	25'	25'	40'
RMX	See table 4-2							
MP	10 acres	300'	50%	25'	6'	25'	25'	35'
NBD	6,000 s.f.	48'	50%	25'	6' (1-story) 10' (2-story) 15' (3-story)	25'	25'	45'
OBD	6,000 s.f.	48'	80% [8]	25'	6' (1-story) 10' (2-story) 15' (3-story)	25'	25'	45'
CBD	2,000 s.f.	48'	100%	0'[4]	0'[4]	0'[4]	0'[4]	none
GBD	6,000 s.f.	48'	80% [8]	25'	0'[5]	25'	25'	45'
ROD	See section 4.05							
I-1	15,000 s.f.	160'	80% [8]	30'	10'[6]	20'[6]	25'	50' or 4 stories
I-2	15,000 s.f.	160'	80% [8]	30'	10'[7]	20'[7]	25'	none

- [1] Only with public water and sewer. See KDHE 4-2 and the county sanitary code: minimum lot size is two acres without public water or sewer.
- [2] Lots in the R-MF District shall have 3,000 square feet per dwelling unit.
- [3] Lots in the R-4-16 District shall have 4,000 square feet per dwelling unit.
- [4] There are no yard requirements in the CBD except that a 25-foot setback shall be provided on any side of a lot which abuts a residential district.
- [5] There are no interior side yard requirements in the GBD except that a 25-foot setback shall be provided on any side of a lot which abuts a residential district.
- [6] In the I-1 District a 25-foot setback shall be provided abutting any dedicated street or residential district.
- [7] In the I-2 District a 100-foot setback shall be provided abutting residential district, unless the use was located and platted prior to adoption of these regulations in which case a 25-foot setback shall be provided. Setbacks abutting any dedicated street shall be 25 feet.
- [8] Maximum lot coverage requirements shall be subject to stormwater quality and quantity requirements as determined by Public Works Department for individual projects.

B. *Dimension standards for RMX.* The dimension standards for the RMX district shall be:

TABLE 4-02. DIMENSIONS FOR THE RESIDENTIAL MIXED-USE DISTRICT

Dwelling/Building Type	Lot Standards			Minimum Setbacks				Building Height
	Min. Size	Min. Lot Width	Max. Lot Cov.	Front	Interior Side	Corner Side	Rear	
SF detached and duplex	2,400 sf	40'	80%	10'	0'[1]	10'[1]	10'[2]	35'
Townhouse/ multifamily, mixed-use	[3]	48'	80%	10'	0'[1]	10'[1]	10'[2]	38'
Commercial, mixed-use	[3]	n/a	80%	0'	0'[1]	10'[1]	5'[2]	38'

- [1] An RMX use abutting a residential district shall match the side yard setback standards of that district.
- [2] When abutting a public street, alley, or public right-of-way. The rear setback for RMX abutting a residential district shall be 20 feet, regardless of the location of any street, alley, or ROW.
- [3] Must meet setback requirements.

C. *Yard regulations.*

1. *Front yards.* In areas where parcels were created previous to the adoption of subdivision regulations in July 1966, where structures have been built observing a setback other than the setback required by the applicable zoning district, new structures shall observe the following setback:
  - a. Front setbacks may be the average setback of all lots within 150 feet of either side of the lot, but along the same block.
  - b. If only two buildings exist within 100 feet of either side of the lot, the front setback may be the average of those buildings.
2. *Structural projections.* Every part of a required yard shall be open to the sky unobstructed, except:
  - a. The ordinary projection of skylights, sills, belt courses, cornices, and ornamental features projecting not to exceed 12 inches.
  - b. Open or lattice-enclosed fire escapes, fireproof outside stairways, and balconies opening upon fire towers projecting into a rear yard not more than five feet.
  - c. The ordinary projection of chimneys and flues.
  - d. The projection of roof overhangs up to four feet into any front or rear yard and two feet into any side yard. In no case may an overhang project into an easement.
  - e. An open unenclosed deck or paved terrace may project into a required rear yard for a distance not exceeding ten feet, but no closer to the property than 15 feet in any case. A deck or paved terrace under this exception may not be more than 36 inches above grade surrounding the structure and shall be opened to the sky with no roof or wall structure (except reasonable railing).
  - f. An open and unenclosed porch or stoop may project into a required front setback a distance not exceeding ten feet, but no closer to the property line than 15 feet in any case. A porch or stoop under this exception shall be no higher than the first-floor elevation of the front entry feature, may include a single-story roof structure integrated with the materials and style of the building, but shall only include support posts or pillars and railings or low walls up to three feet, but no windows, screens or other enclosures in the front-setback encroachment.
3. *Yard requirements for open land.* If a lot is, or will be, occupied by a permitted use without structures, then the minimum setback and minimum side and rear yards that would otherwise be required for the lots shall be provided and maintained unless some other provision of these regulations requires or permits a different minimum front or side or rear yard setback. The front, side, and rear yards shall not be required on lots used for garden purposes without structures, or lots used for open public recreation areas. If the permitted use is the display of new or used automobiles or other vehicles for sale that display may be allowed in the front yard setback, except the first five feet thereof.

D. *Height regulations.*

1. In all districts, one additional foot of height above the specified height limitations shall be permitted for commercial or industrial buildings for each one foot of additional setback on all sides provided over the minimum requirements, if no such building exceeds 100 feet in height.

2. Single-family, two-family, and multiple-family dwellings in the residential districts may be increased in height by one foot for each one foot of additional setback on all sides, provided that no residential building may exceed 50 feet in height.
3. Chimneys, cooling towers, elevator hothouses, fire towers, grain elevators, monuments, stacks, stage towers, or scenery lofts, tanks, water towers, ornamental towers, and spires, church steeples, radio and television towers or necessary mechanical appurtenances, usually required to be placed above the roof level and not intended for human occupancy, may be erected to a height not to exceed 25 percent above the maximum height for the district in which it is located.

E. *Accessory structures.*

1. No accessory buildings shall be erected in any required front or side yard, or at any other place forward of the main building line.
2. No accessory use except for permitted signs, fences, and permitted off-street parking shall be permitted in any required front or side yard.
3. All accessory buildings in ~~residential districts~~ the rear yard shall maintain a three-foot ~~side setback and a three-foot rear setback~~ setback from the side and rear property lines as measured from the nearest part of the structure, including any overhangs. ~~(to the nearest part of the structure, that is no overhang may encroach on the setback).~~
4. If the accessory structure has a vehicular alley entrance the sum of the right-of-way width and the setback of the structure shall not be less than 20 feet.
5. Accessory structures located elsewhere on the lot shall maintain setbacks applicable to the principal structure.
6. All accessory buildings in residential districts shall be five feet from any primary building on the site. In all other zoning districts accessory structures and uses shall not occupy required setbacks and are not subject to size restrictions except that all other requirements of the development regulations must be met.
7. All accessory structures shall be constructed from material customary to detached structures.
8. In no case shall an accessory structure be constructed from materials or equipment originally designed for another use, such as, but not limited to, packing crates or a part of a motor vehicle truck or trailer regardless if wheels, axles, etc., have been removed and the structures are placed on more permanent foundations.
9. No shipping containers may be used as accessory buildings.
10.     —Accessory structures which are equal to or more than 15 percent of the footprint of the main structure shall be architecturally compatible or complementary to the architectural style of the principal building, with similar materials, color, arrangement of massing, roof forms and other details and ornamentation.

**Sec. 4.04. Use standards.**

- A. *Permitted and special uses.* Permitted and special uses for each zoning district are identified in appendix [attachment] A use table.
- B. *Accessory uses.*

1. *Principal use required.* Accessory uses are permitted in any zoning district in connection with any principal use which is permitted.
2. *Accessory uses.* Accessory uses are a structure or use which:
  - a. Is subordinate to and serves a principal building and principal use;
  - b. Is subordinate in area, extent, or purpose of the principal use or building served;
  - c. Contributes to the comfort, convenience or necessity of occupants, business or industry in the principal building or principal use served;
  - d. Is located on the same lot as the principal building or principal use served; and
  - e. The total square footage of all detached structures, **including second stories of any such structures**, functioning as accessory use in residential districts shall be less than the square footage of the primary use on the parcel. In determining square footage of the primary use (residential), attached garages and unfinished space shall not be counted. No more than two detached accessory structures shall be allowed per building lot or parcel whichever is larger in area.
3. *Permitted accessory uses.* Any structure or use that complies with the terms of these development regulations may be allowed as an accessory use or structure (accessory structures and uses include, but are not limited to, the following list of examples), provided that in each case such structure must fit the general definition:
  - a. *Private garages or carports.* Not to exceed the following capacity:
    - (1) *For single-family residences.* A garage not to exceed 900 square feet on parcels less than one acre, and 1,200 square feet on parcels one acre or larger. Detached garages require construction of driveways to provide access in conformance with the parking provisions of the Code.
    - (2) *For multifamily residence.* Two cars per dwelling unit. Not to exceed 600 square feet per unit.
    - (3) *[Garage requests; approval.]* Requests for garages in excess of 900 square feet on parcels less than one acre and in excess of 1,200 square feet on parcels one acre or larger, may be approved by the board of zoning appeals.
  - b. *Storage buildings.* A structure for storage incidental to a permitted use provided no such structure that is accessory to a residential building shall exceed 250 square feet in gross floor area.
  - c. *Play structures.* A child's playhouse, including tree houses.
  - d. *Pools and courts.* A private swimming pool, bathhouse, or tennis court.
  - e. *Miscellaneous yard decor.* Statuary, arbors, trellises, barbecue stoves, flagpoles, fences, walls, hedges, and solar collectors.
  - f. *Shelters.* Fallout and tornado shelters, provided that they shall not be used for any principal or accessory use not permitted in the zoning district.
  - g. *Signs.* Signs, when permitted by article 8, sign regulations.
  - h. *Parking.* Off-street parking and loading spaces as required by these regulations.



- i. *Recreational vehicles, campers, trailers, and boats.* Storage of major recreational equipment, such as boats, boat trailers, camping trailers, converted buses or trucks, house trailers, provided such storage area is in accordance with all other requirements of these development regulations.
  - j. *Commercial accessories.* Restaurants, drug stores, gift shops, swimming pools, tennis courts, clubs and lounges and newsstands when located in a permitted hotel, motel or office building.
  - k. *Supplemental employee services.* Employee restaurants and cafeterias when located in a permitted business or manufacturing or industrial building.
  - l. *Office space.* Offices for permitted business and industrial uses when the office is located on the same site as the business or industry to which it is an accessory.
  - m. *Retail sales.* Retail sales in conjunction with permitted industrial uses when located on the same site as the industrial use.
  - n. *Indoor retail storage.* The storage of retail merchandise when located within the same building as the principal retail business.
  - o. *Auto sales.* The retail sale of automobile parts and used automobiles on a tract of land not to exceed one acre in area when located on the same site as and in conjunction with an automobile race track.
  - p. *Amateur Radio Towers:* Amateur radio towers and antennae shall not exceed the height of 50 feet in residential districts. A tower and antennae must maintain a setback of one foot per one foot of height from all property lines and must be located in a side or rear yard of the principal structure and the owner of the tower and property maintains and shows proof of a current federal license as an amateur radio operator. The construction of the tower must follow the manufacturer's installation specifications.
  - q. *Agriculture Buildings:* In residential districts an agricultural accessory building not to exceed two percent of the total square footage of the lot on which is it located on parcels two acres or larger, up to a maximum of 3,400 square feet.
  - r. *Apiaries:* In residential districts, bee hives or boxes may not be kept within 50 feet of any dwelling (except the dwelling of the owner of such bees), or within 15 feet of any lot line, sidewalk, alley, or other right-of-way. Notwithstanding, bees may be kept within 15 feet of a lot line, sidewalk, alley, or other right-of-way when a barrier at least 6 feet high is placed between the bee hives or boxes and the lot line, alley, or right-of-way which adequately impairs bee flight. No more than 3 hives shall be placed or kept in a location which is less than 200 feet from a house or other building used for residential purposes other than the residence of the keeper of such bees.
4. *Prohibited accessory uses.* None of the following shall be permitted as an accessory use:
- a. Outdoor storage or overnight parking in a residential district of commercial trucks or trailers as defined herein, or other on, or off-road items exceeding 10,000 GVW (gross vehicle weight).

- b. Outdoor storage, of dismantled, inoperative and/or unlicensed motor vehicles; parking and/or storage of construction machinery and equipment, tracked or wheeled; farm machinery and/or equipment except as specifically permitted in district regulations in conjunction with a permitted use.
5. *Accessory uses permitted by special use permit.* The following accessory uses shall only be permitted upon approval of a special use application by the city commission:
- a. Commercial communication towers and antennas. Including television and radio towers, transmitting and receiving towers, dishes, and appurtenances, subject to the provision included in article 10, supplemental standards.
  - b. Renewable energy facilities, including wind or solar energy facilities, subject to the provisions included in article 10, supplemental standards.
  - c. Childcare centers for seven or more children:
    - (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 arraignments of a childcare center or business appear safe. Appeal of any negative decision shall be to the city commission.
    - (2) Shall provide at least 100 square feet of open space per child. This open space shall be 100 percent enclosed by a minimum four-foot-high fence or wall.
    - (3) Shall provide a loading zone capable of accommodating at least two automobiles for the easy picking up and discharging of passengers.
    - (4) Shall conform to all requirements of the State of Kansas and shall acquire a State of Kansas childcare center license.
    - (5) All childcare centers operated in residential zoning districts shall be the only legal residence of the operator.
    - (6) Childcare centers in residential districts may have one non-illuminated monument sign with no more than three square feet per side and a maximum of two sides, or one non-illuminated sign affixed to the structure of three square feet.
  - d. Accessory dwelling units. Accessory dwelling units (ADUs) may be approved by special use permit in any residential zoning district subject to the following conditions:
    - (1) Shall be compatible with the design of the principal dwelling unit.
    - (2) Shall respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards.
    - (3) Shall not have a separate driveway entrance from the street(s) to which the property is adjacent.
    - (4) Shall be 900 square feet or smaller in size, not to exceed 33 percent of the floor area of the principal dwelling unit.
    - (5) Either the principal dwelling unit or the accessory dwelling unit must be occupied by the owner of the premises.
    - (6) Shall meet all building code requirements for a single-family dwelling unit.

- (7) Lots containing accessory dwelling units shall contain a minimum of two off-street parking spaces, exclusive of garage space.
  - e. Massage therapy establishments as a home occupation may be allowed with issuance of a special use permit. Such establishments are subject to all requirements of home occupations as provided in these regulations, as well as all requirements for massage establishments as provided in the City of Leavenworth Code of Ordinances, chapter 12, article VII.
6. *Home occupations.* A home occupation may be established provided:
- a. That no one, other than members of the immediate family residing on the premises, be employed;
  - b. That no use will occupy more than 25 percent of the gross floor area on one floor nor more than 400 square feet of gross floor area;
  - c. That a carport, garage, or any accessory structure may only be used for home occupations with issuance of a Special Use Permit;
  - d. That there shall be no use of material or mechanical equipment not recognized as being part of normal household or hobby use;
  - e. Home occupations are allowed to display a single non-illuminated sign affixed to the main structure no larger than one-half square foot on a vertical wall below the roof soffit;
  - f. That no offensive noise, vibration, smoke, dust, odors, heat, or glare shall be produced;
  - g. That the home occupation shall be conducted entirely within the principal residential building except with issuance of a Special Use Permit;
  - h. That no machinery or equipment shall be installed which interferes with radio or television reception, and which is not customarily incidental to the practice of such occupation or profession, but in no case shall any machine exceed one rated horsepower;
  - i. That only one type of profession or occupation shall be permitted within the occupied dwelling or building;
  - j. That two off-street parking spaces are provided;
  - k. That there is no keeping of stock in trade for on-site retail or wholesale trade or sales;
  - l. Permitted home occupations shall not in any event be deemed to include:
    - (1) Automobile and vehicular repair on any other than the property owner's personally-owned and currently registered vehicle(s).
    - (2) Antique sales.
    - (3) Equipment rental business.
    - (4) Stables, kennels, veterinarian services, pet shops, and animal hospitals.
    - (5) Eating or drinking places.
    - (6) Mortuaries and embalming establishments.
    - (7) Private clubs, including fraternity and sorority houses.
    - (8) Retail sales (over the counter).

(9) Repair of home appliance and electronic equipment.

C. *Temporary uses permitted.*

1. *Sidewalk sales.* The retail sale of merchandise not within an enclosed structure shall be permitted for a period not to exceed three days and need not comply with the yard and setback requirements. Yard sales are permitted in the residential district after obtaining necessary permits from city clerk. Sidewalk sales are permitted in the commercial and industrial districts after obtaining necessary permits from the city clerk. No merchandise will be displayed in the vision clearance triangle and street right-of-way except in the central business district.
2. *Christmas tree sales.* Christmas tree sales shall be permitted in any commercial or industrial district for a period not to exceed 60 days. Display of these need not comply with the yard and set-back requirements of these regulations, provided that no trees shall be displayed within the vision clearance triangle or in the street right-of-way except in the central business district.
3. *Contractor's office.* Contractor's office and equipment sheds shall be permitted accessories to a construction project only during the duration of such project.
4. *Real estate offices.* Real estate offices (containing no sleeping or cooking accommodations unless located in a model dwelling unit) shall be permitted incidental to a new housing development to continue only until the sale or lease of all dwelling units in the development.
5. *Carnivals and circuses.* A carnival or circus shall be permitted, but only in an OBD, NBD, CBD, GBD, I-1, or I-2 District, and then only for a period that does not exceed three weeks. Such use need not comply with the front yard requirements, provided that structures or equipment which might block the view of operators of motor vehicles on the public streets shall conform to the requirements of the vision clearance triangle as defined by these regulations.
6. *Recreational vehicle storage.*
  - a. *Storage.*
    - (1) Between April 1 and October 31, the storage and parking of major recreational equipment such as boats, boat trailers, pick-up campers or coaches, camping buses or converted trucks and tent trailers shall be allowed in the front and side yard. A maximum of two such recreational vehicles may be stored in the front or side yard of a property at any time. Any recreational vehicles stored in the front or side yard shall be located a minimum of ten feet from the curb or edge of any street, and a minimum of two feet from any interior side lot line and shall not block any sidewalk. Recreational vehicles may be stored or parked in the rear yard. All recreational vehicles must be stored or parked on a paved or aggregate block surface.
    - (2) Between November 1 and March 31, the storage and parking of major recreational vehicles shall be prohibited in the front and side yard for a period in excess of 72 hours per month but may be stored or parked in a rear yard on a paved or aggregate block surface.
  - b. *RV occupation.* No recreational equipment shall be utilized for living, sleeping, or housekeeping purposes when parked on a residential lot or in any location, not approved for such use, for a period in excess of 14 days per calendar year.

**Sec. 5.03. General.**

- A. Use. Required parking used only for parking operable motor vehicles using the site or use. Any other use of parking areas for outside storage, display or commercial activity shall be permitted by different provisions of these regulations
- B. Surfaces and Markings. All off-street parking areas and driveways shall be surfaced and provided with a minimum of:
  - 1. Residential Parking: (All dwelling units) Four inches of Portland Cement concrete, reinforced, or four inches of stone and two inches of asphaltic concrete.
    - a. A gravel parking pad in the rear yard may be installed with a border to contain the gravel. Such gravel parking pad must be accessed directly off the alley.
    - b. For lots over 2 acres in size on which the primary structure will be set back a minimum of 100 feet from the front property line, a gravel driveway may be installed past the required 25' front setback, provided that all other applicable building and fire codes are met.
  - 2. Commercial and Industrial Loading and Parking: Six inches of Portland Cement concrete, reinforced, or six inches of stone and two inches of asphaltic concrete.
  - 3. Parking Lot Marking: Parking spaces in lots of more than six spaces shall be marked by painted lines or curbs or other means to indicate individual spaces. Signs or markers shall be used as necessary to ensure efficient traffic operation of the lot.
  - 4. Bumper Guards: Wheel or bumper guards when used shall be located so that no part of any vehicle shall extend beyond the boundary lines of the parking area, intrude on pedestrian ways, or come in contact with walls, fences, or plantings.
- C. Drainage:
  - 1. Off-street parking facilities shall be drained to eliminate ponding water and prevent damage to abutting property and/or public streets and alleys.
  - 2. No surface water from such parking area shall be permitted to drain onto adjoining private property without adequate drainage precaution being taken by the developer.
  - 3. All new and redeveloped parking areas shall be required to present a drainage study prepared by an engineer licensed in the State of Kansas.

**Sec. 8.04. Permits.**

A. *Permits required.*

- 1. Except as otherwise provided in this chapter[appendix], it shall be unlawful for any person to erect, construct, enlarge, move, modify, alter, or convert any sign in the city, or cause the same to be done, without first obtaining a sign permit for such sign as required by this

chapter. Issuance of a permit is contingent upon the sign being in compliance with all applicable laws and regulations of the city.

2. Every sign permit issued by the director shall become null and void if installation is not commenced within 120 days from the date of approval of such permit. If work authorized by such permit is suspended or abandoned for 120 days from the date of permit approval, a new permit shall be required for such work, even if no changes have been made to the original sign plan.
  3. Required information. Application shall be made upon forms furnished by the planning and community development department and shall be accompanied by such information as may be required to ensure compliance with all appropriate laws and regulations of the city.
- B. *Fee increase for failure to obtain permit.* If the director discovers or is informed of a sign constructed or being constructed that requires a permit that has been constructed, installed, or erected without a permit according to this sign code, s/he shall collect three times the permit fee specified for the type of sign in question.
- C. *Signs excluded from permit.* The following signs are not required to have a permit; however, these signs shall otherwise comply with this section and all other applicable provisions of the sign code.
1. Directional signs.
  2. Holiday decorations.
  3. Home security and neighborhood watch signs.
  4. Identification signs.
  5. Official signs.
  6. Name plate signs. Where multiple tenants share the same rear door, the sign may display the name and address of each tenant. These signs shall not exceed four square feet.
  7. Window signs, as further described in section 8.10 F[E]. of this chapter.
  8. Contractor signs: One free-standing, non-illuminated contractor's sign, not to exceed eight square feet of sign surface, shall be permitted for each contractor if the property is zoned residential, or not to exceed 32 square feet if the property is zoned other than residential. The sign shall not be installed before commencing work on the project or the issuance of a building permit for the project and the sign shall be removed upon completion of the project.
  9. Public interest signs that do not exceed the size limitations.
  10. Address signs.
  11. Commercial real estate signs not exceeding 32 square feet in area per sign face with two faces permitted. Signs shall not exceed eight feet in height. Signs are limited to one sign per street frontage, with a maximum of two signs for each project. Signs must be located at least ten feet from the edge of the curb or behind any existing public sidewalks and may not be illuminated or have an electronic changeable face.
  12. Residential real estate signs not exceeding three square feet in area. Signs are limited to one on-premises sign per street frontage, and two off-premises signs permitted only with permission of property owner. Signs must be located at least ten feet from the edge of the

curb or behind any existing public sidewalks and may not be illuminated or have an electronic changeable face.

13. Garage sale signs may only be placed at the site of the sale. All garage sale signs shall be removed immediately upon completion of the sale. Garage sale signs include sample and yard sale signs. Garage sale signs shall not exceed four square feet per sign, with two faces per sign permitted. A garage sale permit shall be obtained as required by [the] city code of ordinances.
14. Signs carried by a person.
15. Costumed people promoting a business or event.
16. Flags, pennants, emblems, memorial tablets, cornerstone etches, monuments and insignia of any governmental body, public or private school, church, synagogue or other place used primarily for worship, community centers, or other public, semi-public, or civic organizations or other similar noncommercial entity, when not displayed in connection with a commercial promotion or as an advertising device, provided that not more than three flags, pennants or insignia shall be displayed on any building, structure or premises, unless specifically herein provided. Any other provisions as applicable regarding display of the American flag as contained in Title 4, U.S. Code.
17. Integral decorative or architectural features of buildings, so long as these features do not contain letters, trademarks, moving parts or lights.
18. Decorative landscape markers, which may include logos or trademarks.
19. Signs attached to a currently licensed, operational and legally parked or legally moving vehicle.
20. Temporary signs containing noncommercial messages at churches, synagogues and other similar places of worship, community centers, public and private schools and buildings or structures owned or leased and used by other public, semi-public, or ~~civic~~ public service organizations.
21. Special event signs shall be exempt from a permit as follows: Signs of a temporary nature for campaigns, drives, seasonal events of civic or philanthropic organizations not to exceed 32 square feet. These signs must be placed on private property and must be removed within three days after the event.
22. A new sign permit shall not be required unless, (a) the existing sign base, pole, or face is nonconforming to these regulations, or (b) the existing sign base or pole is going to be relocated, changed, or enlarged.
23. Political signs may be placed on private property only after permission has been granted by the owner of the property or his or her authorized agent. ~~No political signs are permitted on public right-of-way or on public property.~~ In commercial or industrial areas, signs shall not exceed 32 square feet in area per face. In residential areas, signs shall not exceed three square feet per face. ~~Signs shall not be placed where they interfere with intersection sight distances, and may not be affixed to any utility poles, trees, street lights, bridges, benches or similar public structures. Signs may not be erected more than 45 days prior to an election, and must be removed within three days after the election.~~
24. Contractor signs as further defined in section 8.07 ~~D~~[C].

- 25. Decorative light pole banners, which may not include any business or advertising information.

**Sec. 8.08. Signs permitted in all residential districts (R1-25, R1-9, R1-6, R1-7.5, R4-16, R-MF, ~~RMX, MP~~).**

TABLE 8-01. RESIDENTIAL SIGNAGE STANDARDS

	Maximum Number	Height	Area
Home-based business signs	1	N/A	<del>½</del> 6 s.f.
Temporary signs	<del>1</del> 3	N/A	3 s.f.
Real estate signs	1	6'	6 s.f.
For sale signs (undeveloped land over 5 acres)	2	10'	40 s.f.
Open house signs	1	6'	4-6 s.f.
Neighborhood identification signs	1 per entrance	8'	50 s.f.
Public and semi-public buildings	See table 8-02		

The following types of signs are permitted in all residential districts, in accordance with the requirements set forth or referred to herein.

- A. All signs as regulated and permitted in section 8.07, signs permitted in all districts.
- B. A ~~one-half~~ ~~six (6)~~ square foot home-based business sign. ~~as described in article 10, supplementary district regulations.~~
- C. Temporary signs, not specifically otherwise identified by sign type, conforming to the restrictions set forth herein are allowed as follows;
  - 1. Three temporary signs are permitted on any lot.
  - 2. These temporary ~~signs shall be a single faced sign, may be double faced,~~ and have a sign face no larger than ~~six three (3)~~ square feet.
- D. In lieu of the temporary signs permitted herein a real estate sign not exceeding six square feet per sign face, with two faces per sign are permitted. The maximum height of the sign shall not exceed six feet. A maximum of one sign per ~~lot~~ ~~street frontage~~ shall be permitted.
- E. Undeveloped land over five acres in size shall be allowed two "for sale" signs not to exceed 40 square feet in area per sign face, with two sign faces permitted. No sign shall exceed ten feet in height.



- F. In lieu of the temporary signs permitted a sign designating an open house may be erected at the site of an open house. No open house sign shall exceed four square feet per sign face with two faces per sign permitted. One sign face shall be allowed in lieu of each one of the temporary signs permitted by subsection B. [of this section]. The maximum height of the sign shall not exceed six feet. Open house signs shall be removed immediately upon completion of the open house. Such signs shall comply with the real estate sign restrictions except as specifically restricted herein.
- G. Permanent property identification signs may be permitted at each entrance to a neighborhood, subdivision, or residential development in accordance with subdivision plat approval.
- H. Public and semi-public buildings. Churches, schools, libraries, community centers, hospitals, or other public/semi-public facilities located in a residentially zoned district shall be allowed signage as regulated and permitted in section 8.10, signs permitted in the neighborhood business district (NBD).

**Sec. 8.09. Signs permitted ~~only~~ in the MP (mobile home park).**

The following signs shall be permitted in the MP Zoning District as set forth herein.

- A. All signs as regulated and permitted in section 8.07, signs permitted in all districts.
- B. For rental and/or management offices, one identification sign not exceeding 12 square feet in sign surface, attached flat against the wall is allowed.
- C. Other signs as reviewed and approved as part of a rezoning request may be allowed.

**Sec. 8.10. Signs permitted ~~only~~ in the neighborhood business districts (NBD) and residential mixed use district (RMX).**

TABLE 8-02. NBD SIGNAGE STANDARDS

	Maximum Number	Maximum Size	Maximum Height
Attached signs	1 per side	96 s.f. or 10% of wall surface[1]	N/A
Free-standing signs	1	32 s.f.	15
Sandwich board (A-frame) Signs	1	6 s.f.	N/A
Window signs	N/A	32 s.f. or 33% of window area	N/A

[1] Projecting signs are allowed as regulated by section 8.10 B.2

The following signs shall be permitted in the neighborhood business district ~~and residential mixed use district~~:

- A. All signs as regulated and permitted in section 8.07, signs permitted in all districts.
- B. Signs attached to a building shall be allowed as follows:
  - 1. One wall sign shall be allowed for each side of the structure. A structure with multiple businesses may have one sign for each separate business. Each separate business shall have clearly defined exterior wall space and the size of that wall space shall be the determining factor on sign size allowance. The sign surface shall not exceed 96 square feet or ten percent of the wall surface, whichever is less. This wall sign may be an electronic changeable message sign, provided it complies with the applicable standards for same.
  - 2. A projecting sign that does not project from a building greater than a distance of six feet, does not encroach in the public right-of-way, and maintains eight feet of clearance from grade is permitted. In computing the square foot allowance for a projecting sign, the total area of the sign surface shall be included in the total area allowed for all wall signs, but shall not be larger than 24 square feet. Projecting signs do not reduce the number of wall signs as regulated by the zoning district, however, only one projecting sign shall be allowed per business.
- C. One free-standing sign shall be allowed per parcel, regulated as follows:
  - 1. Free-standing signs shall not exceed 15 feet in height.
  - 2. No part of a free-standing sign face, frame, or base shall be closer than five feet to the public right-of-way or side or rear property line and shall not obstruct traffic vision.
  - 3. Free-standing signs may have two faces and shall not exceed 32 square feet per face, or one square foot of sign per linear foot of lot frontage, whichever is less.
  - 4. No free-standing sign face, frame or base shall be closer than 50 feet to another free-standing sign.
  - 5. Separate and distinct street frontages shall be computed individually for allowable signage; however, signs shall be located on the street frontage that is used for computation. (No accumulation is allowed for unused street frontages.)
  - 6. The allowed free-standing signs may be electronic changeable message signs, provided they comply with all other standards in this article addressing lighting, safety, and electronic changeable messages.
- D. One sandwich board (A-frame) sign that meets the following requirements per street frontage is allowed as follows:
  - 1. A permit shall be required for sandwich board signs. Permits are good for the life of the sign.
  - 2. Sandwich boards signs shall be on-premises signs.
  - 3. The sign may be located on the public sidewalk or the planting strip adjacent to the edge of the street on which it fronts. Signs shall not be placed in any raised streetscape or publicly-owned planters.
  - 4. The sign may not exceed six square feet in area per side and may have no more than two sides for the display of messages.

5. The spread of the "A" at the open end shall be sufficient to ensure stability and no wider.
6. Signs shall be adequately weighted to resist wind gusts.
7. Chalkboard, whiteboard, changeable letters, and any other non-electronic changeable or erasable surfaces are permitted.
8. All signs shall be in good repair and neatly painted. No attachments to signs are permitted, other than brochure pockets.
9. Creative shapes that reflect the theme of the business are encouraged (e.g., ice cream shops may display a sign in the shape of an ice cream cone).
10. The sign must be constructed of materials that present a finished appearance. Rough-cut plywood is not acceptable. The sign lettering should be professionally painted or applied; a "yard sale" or "graffiti" look with hand-painted or paint-stenciled letters is not acceptable.
11. The sign shall not be an electronic changeable message sign or be an illuminated sign.
12. The sign shall be displayed only during business hours and stored inside after hours.
13. The placement of the sandwich board sign shall not impede pedestrian or wheelchair travel in the vicinity of the sign or otherwise create a traffic or other safety hazard by obstructing vision or otherwise, as determined by the person designated by the director to enforce the provisions of this sign code.
14. The owner must assume liability for damage or injury resulting from the use of a sandwich board sign and provide the city with an appropriate legal document satisfactory to the city clerk holding the city harmless and indemnifying it for any resulting loss or injury.
15. Except as otherwise provided in this sign code, a sandwich board sign may be posted for so long as it remains in good condition. Once a sandwich board sign is tattered or otherwise is no longer in good condition, it shall be removed or replaced.
16. If the director determines that a sandwich board sign is not in good condition, the property owner shall be notified of that determination and shall remove, repair or replace the sign within three days of that notification. Signs that are not removed, repaired, or replaced within three days of the notification shall be deemed a nuisance and shall be subject to abatement or removal by city staff. The director's determination that a sandwich board sign is not in good condition may be appealed to the city commission under the procedures set forth in this article.
17. One temporary sign, as otherwise restricted and permitted herein this sign code, is allowed on any lot.

E. Window signs shall be allowed as follows:

1. The window sign shall not obstruct more than 33 percent of the window area for each front, side or rear wall, provided that the total sign surface shall not exceed 32 square feet, per side of the building. For the purposes of this subsection, the term "window area" includes the non-opaque parts of any doors or other fenestrations.
2. The allowable window sign area as defined herein may be illuminated.

3. Window signs constructed of neon, stained glass, gold leaf, cut vinyl, and etched glass are allowed.
4. Painted signs shall display the highest level of quality and permanence, as determined by the director.
5. No message or identification (i.e., the name of establishment or the services offered) may be displayed more than once within the permitted total sign surface area per each front, side or rear wall.
6. The listing of an establishment's hours of operation shall be exempt from these regulations, provided that the area of the sign containing hours of operation shall be no greater than two square feet.
7. The listing of directional information (i.e., "parking in rear" or "use other door") shall be exempt from these regulations; provided that the area of the sign containing directional information is no greater than three square feet.
8. The use of window framing (i.e., a continuous light source illuminating the perimeter of an individual windowpane or a group of windowpanes) is prohibited.
9. Accessible doors to a business establishment shall be limited to the following types of window signage:
  - (a) Business name;
  - (b) Hours of operation;
  - (c) Phone number;
  - (d) Building or tenant address;
  - (e) Website; and
  - (f) The use of dark, opaque background panels for internally illuminated signs or letter faces is required to reduce the glare or glow of such signs.

**Sec. 8.12. Temporary signs.**

- A. *[Permitted temporary sign restrictions.]* The following restrictions, in addition to any other restriction set forth in this sign code, shall apply to any permitted temporary sign.
1. All temporary signs shall obtain a permit before placement **except as otherwise specifically stated in this sign code.**
  2. Application for a permit after placement shall cause the permit fee to triple.
  3. Temporary signs shall be set back a minimum of six feet from the street line.
  4. Temporary sign permits shall be for no more than 60 days.
  5. A temporary sign permit may be renewed for a second consecutive 60-day period.
  6. No parcel shall display a temporary sign for more than 120 days in any calendar year.
  7. No parcel shall have more than one temporary sign displayed at any time except as otherwise specifically stated in this sign code.

8. No temporary sign, except as otherwise specifically provided, shall have a sign surface greater than 25 percent of the allowable permanent signage which might be permitted per parcel.
9. No temporary sign shall exceed 100 square feet in area. Example: a two-sided sign with 50 square feet of sign surface equals 100 square feet of sign area.
10. No temporary sign shall obstruct or impair access to a public sidewalk, public or private street or driveway, traffic control sign, bus stop, fire hydrant or any type of street furniture, or otherwise create a hazard, including a tripping hazard.
11. Temporary signs shall not be posted on trees or utility poles.
12. No temporary sign shall be placed off-premises or in any road right-of-way **except as otherwise specifically stated in this sign code.**
13. No temporary sign shall be internally or indirectly illuminated or painted with light-reflecting paint.
14. A temporary sign related to an event shall be removed no later than three days after the event has taken place.
15. Except as otherwise provided in this sign code, a temporary sign may be posted for so long as it remains in good condition. Once a temporary sign is tattered or otherwise is no longer in good condition, it shall be removed or replaced.
16. If the director determines a temporary sign is not in good condition, the property owner shall be notified of that determination and shall remove or replace the sign within three days of that notification. Signs that are not removed or replaced within three days of the notification shall be deemed a nuisance and shall be subject to abatement or removal by city staff. The director's determination that a temporary sign is not in good condition may be appealed to the city commission under the procedures set forth in this article.
17. **Temporary signs shall be allowed in the public right-of-way for 45 days immediately preceding any primary, general or special elections as defined by the Leavenworth County Clerk, and shall be removed 2 days following said election. The person, party or parties responsible for the erection or distribution of any such signs shall be jointly and individually responsible for their removal. All temporary signs placed in the public right-of-way during the time period shall be subject to the following size and setback distance regulations:**
  1. **Signs shall be set back a minimum of 6 ~~feet~~-feet from the back of curb.**
  2. **Signs shall not be placed where they interfere with intersection sight distances.**
  3. **Signs shall not exceed 3 square feet in face area and 3 feet in height.**
  4. **Signs shall not be affixed to any utility poles, trees, street lights, bridges, benches, or other similar public structures.**

**B. Excluded temporary signs.**

1. Temporary commercial signs carried by a person(s) are not regulated in these development regulations. However, if the sign is affixed to any structure or the ground at any time it becomes a regulated sign. Carried signs are not permitted within the public right-of-way.
2. People dressed in costumes to further business or civic activities are not regulated in these development regulations.

- C. *Specified types of temporary signs.* In addition to the posting of temporary signs allowed by other sections of this sign code, the following specified types of temporary signs shall be permitted, as set forth herein, and shall be subject to permit fees unless otherwise exempted by this sign code.
1. *Special event banners.* On private property used in commercial and industrial zoning districts banners may be used to announce a grand opening of a new business, special sale, or promotion. Banners may be used for 30 days after which time they must be removed. A new banner may be installed after the lapse of 60 days upon obtaining a new permit. Banners shall be attached securely to a building or structure and shall not create a nuisance as determined by the duly authorized representative.
  2. *Searchlights.* Searchlights may be used for announcing a grand opening and may be located on private property for a period not to exceed three consecutive days unless special circumstances authorized by the director warrant a longer duration. Special circumstances shall be described in writing by the owner or the agent associated with the grand opening promotion and shall be approved by the director prior to the establishment of the search light(s) on the business premises. No light emanating from such a device shall be cast on any adjacent property or building. Lasers are not searchlights and the use of lasers is prohibited.
  3. *Balloons.* Gas-filled balloons and figures up to 1,000 cubic feet in mass may be displayed to announce a grand opening of a new business in a commercial or industrial district, but shall be displayed on or above private property. The balloon or figure may be tethered and shall be permitted to rise to a height not to exceed 50 feet above mean ground level. The balloon or figure shall not be permitted to float above any public right-of-way, and shall not interfere with traffic vision or public safety as determined by the city planner. Any vision or safety interference shall be immediately corrected by the owner or agent upon notice from the director. A partially deflated balloon or figure shall be considered a public safety hazard and shall require immediate removal by the owner or his agent.
  4. *Pennants, flags and light strings.* Flags, pennants, or strings of electric lights or strings of pennants may be strung or hung across or above parking areas on private property used commercially and zoned GBD, but shall not interfere with vision clearance triangles or public safety as determined by the director or the duly authorized representative.
  5. *Banners.* Banners over public rights-of-way or other public property announcing a parade, celebration, festival, play, fund drive or other public promotional activity are allowed as follows:
    - a. Application to install the hanging banner shall be made to the city clerk in accordance with current city procedures. No sign permit shall be required in addition to this application;
    - b. The banner shall maintain a clearance of at least 20 feet as measured from the bottom-most portion of the banner to the highest elevation of the street or land surface below;
    - c. The banner shall be perforated sufficiently to reduce wind resistance and shall be anchored sufficiently to prevent a traffic or safety hazard as determined by the city;
    - d. Banners may be installed up to 14 days prior to an event and shall be removed within 72 hours of the closing of the event. The city reserves the right to reduce the time frame to accommodate multiple requests for a location; and

- e. Not more than the ten percent of a banner's face may be devoted to a commercial space of sponsor's logo.
- 6. *Portable signs.* Portable signs, except sandwich board signs as otherwise restricted and permitted by this sign code, shall be subject to the following:
  - a. Portable signs may only be used in conjunction with special promotions of a temporary nature. The allowable size of a portable sign shall not exceed 40 square feet;
  - b. Portable signs shall only be permitted in GBD, I-1 and I-2 Zoning Districts and shall not interfere with vision clearance triangles or public safety as determined by the director;
  - c. Portable signs shall be located on private property only; and
  - d. A portable sign may be used for 30 consecutive days and a 90-day period must elapse between the use of a portable sign and its next use. A new permit shall be required each time the sign is erected.

**Sec. 8.15. Nonconforming, hazardous, illegal, and prohibited signs.**

- A. *Nonconforming.* A nonconforming sign existing lawfully at the time of the passage of this sign code may be continued under the terms as hereinafter provided that such nonconforming signs shall be modified to conform, replaced with a conforming sign or removed according to the following:
  - 1. If there is a change in business ownership, tenant, name or type of business.
  - 2. Any maintenance, repair or alteration of a nonconforming sign shall not cost more than 25 percent of the current value of the sign as of the date of alteration or repair.
- B. *Hazardous, dangerous, or illegal signs.*
  - 1. *Notification.* If the director shall find that any sign or other advertising structure regulated herein is unsafe and insecure, or is a menace to the public or has been constructed or erected or is being maintained in violation of this sign code, he or she shall give written notice to the owner thereof, to remove or alter the structure so as to comply with the standard herein set forth.
  - 2. *Abatement.* Failure to abate the same shall cause the city to abate such sign with costs assessed to the property owner.
  - 3. *Emergency abatement by city.* When, in the opinion of the city engineer, there is actual or immediate danger to the public caused by a hazardous or dangerous sign, the city shall cause the same to be abated with no written notice or hearing. Costs for such emergency abatement shall be assessed to the property owner.
- C. *Vacated and abandoned signs.* Within six months following discontinuance of the business or usage to which the sign relates, the sign face and structure shall be removed in [its] entirety.
- D. *Reuse.* Reuse of a vacated, nonconforming sign, or any of its appurtenances shall require altering the sign to comply with this sign code. A new business use intending to reuse a conforming sign base or pole properly capped and vacated shall obtain a sign permit in accordance with this sign code.
- E. *Signs for Nonconforming Uses: Nonconforming uses which are otherwise permitted by these regulations may obtain permits for signage in conformance with the least intensive zoning district in which the use is permitted by right.*

### Sec. 11.03. Powers and jurisdiction.

The board shall have ~~the following powers and jurisdictions. Those~~ those powers and duties authorized by this ordinance and by K.S.A. 12-759 and any amendment thereto.

- A. *Appeals.* After proper hearing to decide appeals where it is alleged there is an error in an order, requirement, decision, or determination made by an administrative official in the enforcement of these regulations, except where the city commission is specifically empowered to hear an appeal.
  - 1. Appeals to the board may be taken by the person aggrieved, or by any officer or department of the city government affected by the rigid enforcement of these development regulations. Such appeal shall be filed with the secretary of the board, as shall be herein prescribed. The administrative official shall forthwith transmit to the secretary of the board all papers constituting the record upon which the action appealed from is taken.
  - 2. An appeal stays all proceedings in furtherance of the action appealed from, unless the secretary of the board certifies to the board, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by a court of record.
- B. *Variances.* To authorize in specific cases a variance from the specific terms of these development regulations which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of these development regulations will, in an individual case, result in unnecessary hardship, provided the spirit of these development regulations shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the development regulations of the city in such district. Rather, variances shall only be granted for the detailed requirements of the district such as area, bulk, yard, parking or screening requirements.
  - 1. The applicant must show that his property was acquired in good faith and where by reason of exceptional narrowness, shallowness or shape of this specific piece of property at the time of the effective date of the zoning ordinance, or where by reason of exceptional topographical conditions or other extraordinary or exceptional circumstances that the strict application of the terms of the development regulations actually prohibits the use of his property in the manner similar to that of other property in the zoning district where it is located.
  - 2. A request for a variance may be granted, upon a finding of the board that all of the following conditions have been met:
    - a. The board shall make a determination on each condition, and the finding shall be entered in the record.
    - b. That the variance requested arises from such condition which is unique to the property in question and is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant.



- c. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.
  - d. That the strict application of the provisions of the development regulations from which the variance is requested will constitute unnecessary hardship upon the property owner represented in the application.
  - e. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;
  - f. That granting of the variance desired will not be opposed to the general spirit and intent of the development regulations.
3. In granting a variance, the board may impose such conditions, safeguards, and restrictions upon the premises benefited by the variance as may be necessary to reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood, and to carry out the general purpose and intent of these development regulations.
- C. *Exceptions.* To grant exceptions which are specifically listed as permitted in these development regulations. In no event shall exceptions to the provisions of the development regulations be granted where the exception contemplated is not specifically listed as in the development regulations. An exception is not a variance. Further, under no conditions shall the board have the power to grant an exception when the conditions of this exception, as established by these development regulations, are not found to be present.
- ~~1. The board shall not grant an exception unless it shall, in each specific case, make specific written findings of facts directly based upon the particular evidence presented to it, that support conclusions that:~~
- ~~a. The proposed exception complies with all applicable provisions of these development regulations, including intensity of use regulations, yard regulations, and use limitations.~~
  - ~~b. The proposed exception at the specified location will contribute to and promote the welfare or convenience of the public.~~
  - ~~c. The proposed exception will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.~~
  - ~~d. The location and size of the exception, the nature and intensity of the operation involved or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the exception will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the exception will so dominate the immediate neighborhood, consideration shall be given to:~~
    - ~~(1) The location, nature and height of buildings, structures, walls, and fences on the site, and~~
    - ~~(2) The nature and extent of landscaping and screening on the site.~~
  - ~~e. Off-street parking and loading areas will be provided in accordance with the standards set forth in these development regulations, and such areas will be~~

~~screened from adjoining residential uses and located to protect such residential uses from any injurious effect.~~

~~f. Adequate utility, drainage, and other such necessary facilities have been or will be provided.~~

~~g. Adequate access roads or entrance and exit drives will be provided and shall be so designated to prevent traffic hazards and to minimize traffic congestion on public streets and alleys.~~

D. *Conditions of determination.* In exercising the foregoing powers, the board, in conformity with the provisions of these development regulations, may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination, and to that end shall have all the powers of the administrative official and may attach appropriate conditions, restrictions or safeguards necessary to protect public interest and welfare.

#### **APPENDIX A. - USE TABLE (Attachment A)**

Appendix A Use Table shall be attached to Ordinance No. xxxx and amended.

**Section 2.** That all other ordinances or parts of ordinances in conflict herewith are hereby repealed.

**Section 3.** That if any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Governing Body hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

**Section 4.** That nothing in this ordinance hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in Section 2 of this ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

**Section 5.** That this ordinance and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect from and after the date of its final passage and publication as provided by law.

Passed by the Leavenworth City Commission on this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

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Nancy D. Bauder, Mayor

{SEAL}

ATTEST:

\_\_\_\_\_  
Carla K. Williamson, CMC, City Clerk

DEVELOPMENT REGULATIONS  
APPENDIX A. USE TABLE

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- A. **Table Organization.** Table A1-1 Table of Permitted Uses classifies land uses and activities into general “use categories” and specific “use types” based on common functional or physical characteristics, such as the type and amount of activity, the type of customers or residents, types of products, how goods or services are sold or delivered, and site conditions. Regardless of whether a use is allowed by right or permitted as a special use, there may be additional standards that are applicable to the use. Uses are allowed as follows:
1. *Permitted By-Right Uses.* “P” in a cell indicates that the use is permitted by right in the respective zoning district and overlay district. Permitted uses are subject to all other applicable regulations in this document, including the use-specific standards in this section.
  2. *Special Uses.* “S” in a cell indicates that the use is allowed only if reviewed and approved as a special use in accordance with the procedures of Article II - Administration regarding Special Use Permits. Special uses are subject to all other applicable regulations of this document including the use-specific standards in this section and the requirements of Article IV – Supplementary District Regulations.
  3. *Prohibited Uses:* A blank cell indicates that the use is prohibited in the respective zoning district.
- B. **Classification by Interpretation.** This classification does not list every use or activity that may appropriately exist within the categories and specific uses may be listed in one category when they may reasonably have been listed in one or more other categories. The categories are intended merely as an indexing tool for the specific use type and are not regulatory. When application is made for a use type that is not specifically listed in Table A1-1, Table of Permitted Uses but that appears similar to uses in that table, the Director shall make a determination as to the appropriate classification of any new or unlisted form of land use in the following manner:
1. The Director shall consider the nature of the use and whether it involves dwelling activity; sales; processing; type of product, storage and amount, and nature thereof; enclosed or open storage; anticipated employment; transportation requirements; the amount of noise, odor, fumes, dust, toxic material, and vibration likely to be generated; and the general requirements for public utilities such as water and sanitary sewer.
  2. Standards for new and unlisted uses may be interpreted as those applicable to a similar use.
  3. The Director may choose to send a proposed use to the City Commission for interpretation where classification options are unclear or where the potential impact must be considered in the interpretation process.
  4. When the Director determines that a new or unanticipated use is so similar in impact to a specific use type, or uses generally within the use category the Director may:
    - a. Make the interpretation the use type is generally broad enough to include the use in question; or
    - b. For ease of future application and interpretation add the use to the appropriate category in the table. Such administrative adjustment to the table shall not be considered an amendment to this ordinance provided the criteria above are clearly met, and provided notice and comment of the adjustment is placed on the agenda of both the Planning Commission and Governing Body for review and consent.
  5. Appeal of the Director’s decision shall be made to the City Commission.

DEVELOPMENT REGULATIONS  
APPENDIX A. USE TABLE

Table A1-1, TABLE OF PERMITTED USES P = Permitted, S = Special Use Permit Required																		
Use Category	Residential								Non-Residential							Overlay		
Subcategory	R1-25	R1-9	R1-7.5	R1-6	R-MF	R4-16	MP	RMX	NBD	OBD	CBD	GBD	I-1	I-2	FP	NN	DT	NG
Specific Use Type																		
<b>RESIDENTIAL USES</b>																		
<b>Household Living</b>																		
Dwelling, Single-Family Detached	P	P	P	P		P	S	P	P		S					P	S	
Dwelling, Two-Family	S	S	S	S	<u>S</u>	<u>P</u>		P	P							P	S	
Dwelling, Townhouse				<u>P</u>	P	<u>P</u>		P	<u>P</u>							P	P	
Dwelling, Multi-Family					P	<u>P</u>		P								P	P	
Dwelling in Mixed-Use Structure Note [1]								P	P	P	P	P				P	P	P
Dwelling, Live/Work								P	P	P	P	P				P	P	P
Dwelling, <del>IBC/IRC Modular Home</del> <u>Manufactured</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>			P											
<u>Manufactured/Dwelling</u> , Mobile Home							P											
<u>Community</u>							P											
<b>Group Living</b>																		
Assisted Living Facility	S	S	S	S	<u>S</u>	<u>S</u>		S			P	P				S	S	S
Convent/Monastery	P	P	P	P	P	P	P	P										
Dormitory	S	S	S	S	<u>S</u>	<u>S</u>		<u>S</u>										
Fraternity/Sorority Home	S	S	S	S	S													
Group Home: Disabled (K.S.A. 12-736)	P	P	P	P	P	P	P	P								S	S	S
Nursing Home/Hospice	S	S	S	S	<u>P</u>	<u>S</u>					P					S	S	S
Senior Housing	S	S	S	S	<u>P</u>	<u>P</u>		S			P	P				S	S	S
Shelter, Domestic Violence	P	P	P	P					P	P	P	P				P	P	P
Student Housing	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	P	<u>P</u>	<u>P</u>	P			P	P						
<b>PUBLIC AND INSTITUTIONAL USES</b>																		
<b>Community Services</b>																		
Adult Day Center	S	S	S	S					P	P	P	P				S	P	P

**DEVELOPMENT REGULATIONS  
APPENDIX A. USE TABLE**

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Subcategory	R1-25	R1-9	R1-7.5	R1-6	R-MF	R4-16	MP	RMX	NBD	OBD	CBD	GBD	I-1	I-2	FP	NN	DT	NG
Specific Use Type																		
Cemetery	S	S	S	S														
Mausoleum	P	P	P	P							P	P						
Civic, Social, and Fraternal Organizations	S	S	S	S				S		P	P	P				P	S	P
Community Centers											P	P				P		P
Government Offices and Facilities	S	S	S	S	S	S	S	S	P	P	P	P	P	P	P	P	P	P
Historic and Monument Sites	P	P	P	P	P	P	P	P	P	P	P	P				P	P	P
Jails and Prisons													S	S				
Library	S	S	S	S				S	P	P	P	P				P	P	P
Post Office Branches								P	P	P	P	P				P	P	P
Religious Assembly	P	P	P	P	P	P	P	P	P	P	P	P				P	P	P
Safety Services	P	P	P	P				P	P	P	P	P				P	P	P
<b>Day Care</b>																		
Day Care Center/Preschool	S	S	S	S	S	S	S	S	P	P	P	P				P	P	P
Day Care, Home (6 or less children)	P	P	P	P	P	P	P	P	P	P	P	P				P	P	P
Day Care, Home (7 or more children)	S	S	S	S	S	S	S	S	P	P	P	P				S	P	P
<b>Educational Facilities</b>																		
College or University	S	S	S	S						P	P	P				S	S	S
School, Elementary and Middle (Public and Private)	S	S	S	S	S	S	S	S	S	S	S	S				S	S	S
School, Senior High	S	S	S	S	S	S	S	S	S	S	S	S				S	S	S
School, Vocational-Technical and Trade									S	P	P	P						S
<b>Health Care Facilities</b>																		
Hospitals									S	S	P	P						S
Medical and dental clinics and offices								P	P	P	P	P				P	P	P
<b>Parks and Open Space</b>																		
Arboretum or botanical garden	S											P				P	P	P

DEVELOPMENT REGULATIONS  
APPENDIX A. USE TABLE

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Specific Use Type																			
Campground		S																	
Community playfields, playgrounds, and parks		P	P	P	P				P	P	P	P	P				P	P	P
Golf course, public		S	S	S	S											S			S
Golf course, private		S	S	S	S											S			S
Zoo												P							
<b>Transportation</b>																			
Airport												S	S	S					S
Bus Garage and Equipment Maintenance												P	P	P					
Bus Terminal										S	S	P	P	P	P				
Heliport												S	S	S	S				
Railroad Terminal												P							
Taxi Dispatch										S	S	P	P						
Truck Terminal, Freight, Air Courier Services														P	P				
<b>Utility</b>																			
Private Wind Energy Systems		P	P	P	P	P	P	P	P	P	P		P	P	P		P	P	P
Private Solar Collection Systems		P	P	P	P	P	P	P	S	P	P	P	P	P	P		P	P	P
Commercial Wind Energy Systems		S	S	S	S	S	S	S	S	S	S		S	S	S	S	S	S	S
Commercial Solar Collection Systems		S	S	S	S	S	S	S	S	S	S		S	S	S	S	S	S	S
Communication Tower		S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S
Communication Tower – Alternative Structure		S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S
Communication Facility on Existing Structure		S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S
Water Storage		P	P	P	P	S	S	S	S	S	S	P	P				S	S	S
<b>COMMERCIAL USES</b>																			
<b>Animal Sales and Service</b>																			
Animal Day Care		S	S	S	S	S	S	S	S	P	P	S	P				S	S	S
Animal Confinement and Feed Operations		S																	

DEVELOPMENT REGULATIONS  
APPENDIX A. USE TABLE

Table A1-1, TABLE OF PERMITTED USES																			
P = Permitted, S = Special Use Permit Required																			
Use Category		Residential								Non-Residential							Overlay		
Subcategory		R1-25	R1-9	R1-7.5	R1-6	R-MF	R4-16	MP	RMX	NBD	OBD	CBD	GBD	I-1	I-2	FP	NN	DT	NG
Specific Use Type																			
Kennel												P	P	P	P				
Pet Shops										P		P	P				P	P	
Pet Grooming		S	S	S	S				S	P		P	P				S	S	S
Veterinary Clinic with Boarding										S	S	P	P	P	P		S	S	P
Veterinary Clinic without Boarding										S	S	P	P	P			P	P	P
Assembly																			
Assembly Hall									S	P	P	P	P						
Auction Establishment										S	P	P	P	P					S
Membership Clubs						S				S	P	P	P				S	S	S
Event Venue										S	P	P	P					P	P
Financial Service																			
Financial Institution, with Drive-thru									P	S	S	S	P				S	S	P
Financial Institution, without Drive-thru									P	P	P	P	P				P	P	P
Food and Beverage Services																			
Food and Beverage General									S	P	S	P	P				P	P	P
Bars or Taverns									S	S	S	P	P				S	P	P
Restaurant, with Drive-in or Drive-thru									S	P	S	P	P					S	P
Restaurant, without Drive-in or Drive-thru									S	P	S	P	P				S	S	S
Office																			
Administrative and Professional Offices									P	P	P	P	P				P	P	P
Offices for Nonprofit, Community Health, and Welfare Service Organizations									P	P	P	P	P				P	P	P



DEVELOPMENT REGULATIONS  
APPENDIX A. USE TABLE

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P = Permitted, S = Special Use Permit Required																		
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Subcategory	R1-25	R1-9	R1-7.5	R1-6	R-MF	R4-16	MP	RMX	NBD	OBD	CBD	GBD	I-1	I-2	FP	NN	DT	NG
Specific Use Type																		
<b>Recreation and Entertainment, Outdoor</b>																		
Amphitheater	S										P	P					S	S
Arena and Field House											S	P					S	S
Country Club	S	S	S	S							S	P						
Marina	S										S	S	S					
Outdoor Commercial Recreation and Entertainment	S										S	P	S				S	P
Racing Facilities	S											S	S	S	S			
Riding Academies/Stables	S												S	S	S			
Sports/Entertainment Arena or Stadium									S	S	S	P	S					P
Athletic Facilities	S	S	S	S				P	P	P	P	P	S					
Non- Residential Swimming Pools Public or Private Membership	S	S	S	S							P	P				P		P
<b>Recreation and Entertainment, Indoor</b>																		
Art Gallery or Museum								P	P	P	P	P				P	P	P
Auditorium/Exhibition Hall/Convention Center	S	S	S	S							S	P					S	P
Indoor Commercial Recreation/ Entertainment											P	P	P			P	P	P
<b>Commercial Services</b>																		
Sexually Oriented Business								S					S					
Building Services										P	P	P				S	S	P
Business Support								P	P	P	P	P				P	P	P
Contracting Services, no storage or yard											P	P	P	P				P
Funeral, Mortuary, Crematory	S	S	S	S						S	P	P				S	S	S

DEVELOPMENT REGULATIONS  
APPENDIX A. USE TABLE

Table A1-1, TABLE OF PERMITTED USES P = Permitted, S = Special Use Permit Required																			
Use Category		Residential								Non-Residential							Overlay		
Subcategory		R1-25	R1-9	R1-7.5	R1-6	R-MF	R4-16	MP	RMX	NBD	OBD	CBD	GBD	I-1	I-2	FP	NN	DT	NG
Specific Use Type																			
General Personal Services									P	P	P	P	P				P	P	P
Gun Sales and Service									S	P	P	P	P						
Indoor Shooting Ranges										P	P	S	S	P	P				
Maintenance and Repair										P	S	P	P					S	S
Tattoo Parlor/Body Art									P	P		P	P						
Radio, Television, and Recording Services											S	P	P					P	P
Studio, Music/Movie/TV									P	P	P	P	P						
Retail (Sales)																			
Building Supplies and Equipment												P	P	P				S	P
Consumer Goods									P	S	P	P	P				P	P	P
Sundries, Pharmaceuticals, Convenience Store									P	P	P	P	P				P	P	P
Food, Beverage, and Groceries									P	P	P	P	P				P	P	P
<del>Wearing Apparel and Accessories</del>										S	S	P	P				P	P	P
Vehicles and Equipment																			
Automobile Repair Shop												P	P	P					
Automobile, Boat, Truck, Motorcycle, RV Sales, Rental, and Service										S		P	P	S					
Car Wash/Truck Wash										S		S	P	P					
Gas Station										P	S	P	P	P			S	P	P
Heavy Vehicle/Equipment Sales, Rentals and Service												P	P	P					
Parking Lot or Garage (Commercial, Non-Accessory)		S	S	S	S				S	S	S	P	P	S	S		S	S	S
Visitor Accommodation																			
Bed and Breakfast Inns		S	S	S	S	S	S	S	P	P	P	P	P				S	S	S

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Specific Use Type																			
Bed and Breakfast Guest House		S	S	S	S	S	S	S	P	P	P	P	P	I-1	I-2	FP	S	S	NG
Bed and Breakfast Home Stay		S	S	S	S	S	S	S	P	P	P	P	P				S	S	
Residential Home Stay		S	S	S	S	S	S	S	P	P	P	P	P				S	S	
Boarding and Rooming Houses		S	S	S	S	S	S	S	P	S	S	P	P				S	S	
Camp, Private, Overnight		S																	
Health Resort/Spa		S									P	P	P						
Hotel											P	P	P				P	P	P
Hotel – Limited Service											P	P	P				P	P	P
Residence Hotels									S	S	P	P	P				P	P	P
Retreat House		S	S	S	S														
Travel Trailer Parks		S												P		S			
<b>INDUSTRIAL USES</b>																			
<b>Industrial Service</b>																			
Animal Research Facilities														S					
Builders Supply Yards and Lumberyards (except when indoors as part of a hardware store)													P	S					
Construction Industry Related Businesses (such as general contractors, electrical contractors, plumbing contractors) /Accessory and Incidental uses													P	S	P				
Educational and Scientific Research, Development, and Testing Services											P	P	P	P	P			P	P
Heavy Industrial														P		S			
Light Industrial														P	P	S			
Petroleum Pipeline and Pressure Control Stations		S	S	S	S	S	S	S	S	S	S	S	S	S	S				

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Specific Use Type																		
<b>Manufacturing and Production</b>																		
Manufacturing, Fabrication, and Assembly: Custom												S	P	P				
Manufacturing, Fabrication, and Assembly: Light												P	P	<u>S</u> <u>P</u>				
Manufacturing, Fabrication, and Assembly: Heavy												S	S	P				
<b>Wholesale, Storage, Warehouse, and Distribution</b>																		
Automobile Towing Service Storage Yard; Impound Lot											S	S	P	<u>S</u> <u>P</u>				
Mini-Storage										S	<u>S</u>	P	P					
Moving and Storage Facilities												P	P					
Warehousing											<u>P</u> <u>S</u>	P	P	<u>P</u>				
Wholesale Trade or Storage, General												P	P	<u>P</u>				
Wholesale Trade or Storage, Light											P	P	P					
<b>Waste and Salvage</b>																		
Automobile Parts Recycling Business												S	P	P				
Junkyard, Salvage Yard												S	P	P				
Neighborhood Recycling Center	S	S	S	S	S	S	S	S	S	S	S	S	<u>P</u> <u>S</u>	<u>P</u> <u>S</u>		P	P	P
Recycling Collection Station													<u>S</u> <u>P</u>	<u>S</u> <u>P</u>				
Solid Waste Facility													S	S				
<b>AGRICULTURE</b>																		
<b>Agriculture/Aquaculture</b>																		
Animal Husbandry (other than dairy)	P																	

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Specific Use Type																		
Apiary	P	P	P	P	P	P	P	P										
Farming	P																	
Fish Farm/Hatchery	S																	
Ranching	S																	
Greenhouse/Nursery	S	S							S	S	P	P	S	S				P
Urban Agriculture/Community Garden	<del>P</del>	<del>S</del>	<del>S</del>	<del>S</del>	P	P	<del>S</del>	P								P	S	P

NOTE 1: In the CBD, Residential is not permitted within the front half or front 30' of space, whichever is greater, on the 1<sup>st</sup> floor (Sec 1.17 A,B)