



CALL TO ORDER - The Governing Body met for a regular meeting and the following commission members were present in the commission chambers: Mayor Camalla Leonhard, Mayor Pro-Tem Jermaine Wilson, Commissioners Nancy Bauder, Edd Hingula and Griff Martin.

Staff members present: City Manager Paul Kramer, Assistant City Manager Penny Holler, Finance Director Roberta Beier, Police Chief Patrick Kitchens, Public Works Director Brian Faust, Project Manager Michael Stephan, Planning & Community Development Director Julie Hurley, City Attorney David E. Waters and City Clerk Sarah Bodensteiner.

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

PROCLAMATIONS & AWARDS:

MARC 50 – Forward Day – Mayor Leonhard read the proclamation proclaiming June 10, 2022 as MARC 50 – Forward Day. The proclamation was accepted by MARC Director of Transportation and Environment Ron Achelpohl.

ACEC Engineering Excellence Award – Thornton Street Improvements – The City of Leavenworth was presented the American Council of Engineering Companies (ACEC) 2022 Engineering Excellence Award for the Thornton Street Improvements. City Manager Paul Kramer accepted the award. Mr. Kramer recognized former Public Works Director Mike McDonald and current staff on all their efforts on this project.

OLD BUSINESS:

Consideration of Previous Meeting Minutes:

Commissioner Martin moved to accept the minutes from the May 10, 2022 regular meeting. Commissioner Wilson seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 5-0.

Public Comment: *(Public comment on non-agenda items or receipt of petitions- limited to 2-3 minutes)*

Wyatt Galloway 713 Oak Street:

- At 3rd and Maple Street he is asking for the City to change Maple Street to Andrew Newton Street, who was the founder of American Legion Post 94
- Special Olympics hasn't been an event in years, would like to bring the event back
- There are no military discounts offered in Leavenworth at restaurants or stores
- Dougherty Park needs picnic tables, backstops at ballfield
- Stated the city of Nicodemus is the first city of Kansas

Commissioner Bauder:

- Advised that the Leavenworth County Special Olympics committee intends to have Special Olympics back this year

Karen Auxier 550 McDonald:

- Works at the Leavenworth Assistance Center Quilt Shop providing quilts to the homeless
- The Leavenworth Assistance Center is closing
- Providing a service for the community and throughout the country
- Need a free facility to move into after the Leavenworth Assistance Center is closed

General Items:

Mayor's Appointment

Mayor Leonhard moved to appoint to the Convention & Tourism Committee Marianne Tennant to a term ending January 31, 2025; to appoint to the Leavenworth Planning Commission Brian Stephens to a term ending May 1, 2025; to appoint to the Leavenworth Preservation Commission Kenneth Bateman to a term ending April 15, 2025; to appoint to the Parks & Community Activities Advisory Board Jeffery Porter to a term ending January 15, 2025; to reappoint to Grow Leavenworth County Development Corporation Board Lisa Weakley, Wendy Scheidt, Ted Davis and Thomas Meier to terms ending May 31, 2024. Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 5-0.

7 Brew Coffee Site Plan Appeal – 4900 S. 4th St. – Planning & Community Development Director Julie Hurley presented an appeal of the decision of the Development Review Committee(DRC) to reject the submitted site plan for 7 Brew Coffee located at 4900 S. 4th Street. The Development Regulations places responsibility for review and approval or rejection of site plans for specified projects with the Development Review Committee, with the option to appeal the DRC's decision to the Planning Commission and City Commission. The subject site is located at 4900 S. 4th Street and is .49 acres in size. It is situated in front of the existing Home Depot store and to the south of the existing UHaul self-storage facility and Starbucks store. Access to the site is proposed to be directly from 4th Street, which is a State/National highway and falls under KDOT jurisdiction for approval for access. There is an existing curb cut and driveway on the site used for maintenance of the billboard located on the site. This section of 4th Street has a posted speed limit of 45 mph, and handles a high volume of traffic, with multiple existing commercial access points in close proximity to the subject site. Ms. Hurley reviewed the identified primary concerns related to the site plan and Traffic Impact Study(TIS):

- Section 5.05 of the Development Regulations requires a 50' separation between non-residential access driveways. Staff has asked for 50' of "stand up curb" between the proposed driveway entrance to the site and the existing commercial driveway to the north. This has not been provided
- The KDOT Access Management Policy requires a minimum driveway spacing of 450' along a Class B highway. Failure to meet this requirement necessitates approval of a variance from KDOT
- There is an existing driveway servicing U-Haul/Starbucks directly to the north, the turn lane for access to Home Depot beginning directly to the south, and existing commercial driveway directly to the east, and 4 lanes of high volume traffic on 4th Street with a two-way left turn lane. The proposed development results in an additional 19 points of conflict in an already congested area of a State highway, causing significant traffic safety concerns

- The TIS indicates that the proposed development would require a right turn lane on 4th Street for entrance to the site, based on KDOT standards. Failure to meet this requirement necessitates approval of a second variance from KDOT
- Based on predicted peak customer volume of 88 vehicles in the morning plus a midday peak of 66 vehicles as indicated in the TIS, it is anticipated that stacking could back up onto 4th Street, posing additional points of conflict with southbound traffic on 4th Street and traffic exiting from the U-Haul site
- The existing billboard base on the site is located approximately even with the stop bar indicated on the site for exiting traffic, posing significant sight distance issues for exiting traffic

Based on those factors, the DRC reached a unanimous decision to withhold approval of the site plan. The Planning Commission considered the appeal of the DRC decision on May 9, 2022, and voted 4-1 to recommend approval contingent upon the applicant receiving the necessary approval and variances from KDOT.

Public Works Director Brian Faust:

- Julie did a great job covering our concerns on this
- Top priority is safety whenever we look at a new project
- When we have access controls it is a good idea to maintain those so we don't create a less-safe intersection or traffic on the roadway

Ryan Barrett Area Engineer for KDOT:

- A lot of the same concerns as Ms. Hurley and Mr. Faust
- Regarding the existing 12' driveway, a variance was provided for that current use of the site, which is the billboard
- Per KDOT's Access Management Policy, they would require the 450' driveway spacing
- At its current state, the site is not adequate to safely facilitate this project
- This is an unsafe situation for the traveling public

Commissioner Hingula:

- Will the billboard be removed

Ms. Hurley:

- The billboard will remain

Police Chief Patrick Kitchens:

- Principal concern is cars stacked on 4th Street
- Police would be unable to direct traffic
- Concerned about safety

John Kollhoff with 7 Brew Coffee:

- Drive thru only beverage company
- Anticipate hiring 50 people
- U-Haul has been unwilling to allow cross-access requests, reached out to Home Depot, but has not heard back

- Service time is 3-5 minutes, traffic flows magically
- Doesn't feel there will be as many traffic safety issues once constructed

Mayor Leonhard:

- In your Topeka location, you didn't have to go through KDOT
- Is there an option for another location if it can't work here

Mr. Kollhoff:

- Correct, we dealt with the City of Topeka
- We think the highest and best use of the area is our business

Commissioner Martin:

- Not sold on there not being issues when it comes time for people to leave and exit

Mr. Bliss with 7 Brew Coffee:

- Traffic Impact Study was conducted which is the best way to quantify traffic issues
- Thinks that in the study if they consider 88 vehicles coming in, they assume they all can get out

Commissioner Hingula:

- Concerned about traffic wanting to turn north and crossing 3 lanes of traffic

Mr. Kollhoff:

- Location in Topeka is in front of the Home Depot and we don't share the same concerns that staff has

Mayor Leonhard:

- Doesn't feel it's safe
- Safety of individuals over a cup of coffee

Commissioner Bauder:

- Feels that the DRC rejected the plan for very valid reasons

Commissioner Wilson:

- Not in favor due to the safety concerns

Commissioner Hingula:

- So Home Depot just hasn't responded and you've given up

Mr. Kollhoff:

- I've reached out and our engineer reached out to his contacts and no one has responded

Mr. Bliss:

- Feels the 50' stand up curb is an interpretation and not clearly stated as a requirement in the code, and the proposed site plan does meet the 50' separation in his interpretation

- TIS doesn't describe additional points of conflict, hasn't received documentation as to the 19 points of conflict
- Feels that KDOT would approve the variances
- Doesn't feel that the other points of disapproval are code driven, even if they are safety related
- Existing billboard is only in the site triangle because of the space left for sidewalks
- Non-conformance is already in the area, so the precedent has been set
- A lowering of the speed limit to 40 mph would be beneficial to the area
- Hard to find properties that would accommodate the requirements along the 4th street corridor

Attorney Waters:

- There is language in the code "unless no other practical alternative exists", but it doesn't mean anything goes
- Article 2 goes over some other criteria, safety being one of them
- Reviewed the options for the Commission to consider

Mr. Kollhoff:

- Discussed the terrain differences between the Home Depot site and their proposed site as well as U-Haul site and the proposed site

Mr. Bliss:

- Provided and read an excerpt from Smith v. State Highway Commission

Attorney Waters:

- This site has access to 4th Street for purposes it is currently being used for, and that access is not being revoked
- There is not inverse condemnation on this property

Commissioner Bauder:

- Feels that the DRC recommendation of denial should be upheld

Commissioner Wilson moved to disapprove the site plan for 7 Brew Coffee located at 4900 S. 4th Street. Commissioner Martin seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 5-0.

Bids, Contracts and Agreements:

River City Community Players Agreement – City Manager Paul Kramer presented for consideration the updated agreement between the City of Leavenworth and the River City Community Players(RCCP) for providing performing arts in the City of Leavenworth, operating at the Performing Arts Center. The following changes were made to the agreement:

- Season ticket levels corrected to match current season ticket offerings
- Point-of-contact limited to one contact at RCCP to eliminate duplicate or confusing requests
- Play licensing and materials process streamlines to make RCCP a direct contact with the theatre companies. All purchasing approval and processing to remain with the Leavenworth Parks and Recreation Department

- Timelines added to keep financial records within the same fiscal year whenever possible
- Agreement review/renewal period changed to bi-annually

Mr. Mazzia with the River City Community Players:

- Last agreement was signed in the late 90's
- Streamlining of the play licensing and materials needed to occur to improve the process and make it more efficient

Commissioner Hingula:

- Would the City send back the materials

Mr. Mazzia:

- Sometimes we still have to package it up and send it back, but others we get a PDF and just print it out
- We are involved in terms of coordination, contractual items will stay with Parks and Recreation

Commissioner Martin:

- Can you provide the budgetary impacts
- What Financial responsibilities would fall on the City

Mr. Kramer:

- If Mr. Mazzia hits his numbers the City would subsidize about \$7,000
- RCCP handles the plays and things, the City is responsible for the building; it is similar to the relationship with the Library

Mr. Mazzia:

- Provided a cost overview of the plays and musical costs and revenues

Commissioner Hingula moved to approve the memorandum of agreement with the River City Community Players as written. Commissioner Wilson seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 5-0.

Agreement with Home Depot for Right-of-Way and Easement Acquisition – Public Works Director Brian Faust presented for consideration an agreement with Home Depot associated with the acquisition of right-of-way and easements needed to construct the intersection improvements at K-7/4th Street and Eisenhower. The plans for the intersection improvements identified a need for a temporary construction easement, a permanent drainage easement and for additional right-of-way. On November 9, 2021, the City Commission approved Resolution B-2300 regarding the appropriation of private property for public purposes. This started the condemnation process required before KDOT would permit bidding to occur. On January 26, 2022, the District Court approved the petition of eminent domain and appointed appraisers to apprise the value of the land and to determine damages resulting from the takings. All through this process the City, SMH Consultants and our attorney from Morrison, Frost, Olsen, Irvine & Schartz, LLP worked with the Home Depot attorney to arrive at an agreement prior to court proceedings. While this has been a long and challenging process, the City and Home Depot are very close to an agreement.

Mr. Kramer:

- If the substance of the contract changes, this will be null and void and would come back to the Commission for approval

Mr. Faust provided a brief overview of the project and the benefits of the improvements being made at the intersection

Commissioner Hingula moved to authorize the Mayor to sign the final agreement for the acquisition of right-of-way and easements associated with Home Depot for the K-7/4th Street and Eisenhower Intersection Improvement Project. Commissioner Wilson seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 5-0.

Consider Award of Bid for Mowing Services – Planning & Community Development Director Julie Hurley presented for consideration acceptance of the proposal for mowing services for the mowing clusters. Each year, the City of Leavenworth uses contract services to mow and maintain City owned properties such as rights-of-way, drainage ditches, and parcels obtained through the County tax sale. These properties are grouped into clusters and bids are solicited for each cluster. In addition, the City’s Code Enforcement efforts require corrective action for properties with property maintenance violations regarding grass and weeds. These contract services are offered through an open competitive bidding process. The previously awarded contract for these services had been terminated when the contractor advised the City on April 25, 2022, that due to theft of equipment and termination of staffing, he would not be able to fulfill the contract for the season. Bids were solicited and one bid was received for the 5 clusters, no bids were received for the Code Enforcement Mowing. Ms. Hurley reviewed the bid amounts for the 5 clusters and how the City will handle the Code Enforcement mowing’s for this season.

Commissioner Wilson moved to approve the proposal received from Affordable Lawn & Cemetery Care in an amount not to exceed \$54,175.00 for mowing services of the 5 clusters. Commissioner Martin seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 5-0.

First Consideration Ordinance:

First Consideration Ordinance Rezoning 1830 South Broadway Street – Planning and Community Development Director Julie Hurley presented for first consideration an ordinance rezoning 1830 South Broadway Street from PUD, Planned Unit Development to R-MX, Residential Mixed Use District. The item was heard by the Planning Commission at their May 9, 2022 meeting and was voted 5-0 to approve the proposed change. A public hearing was first held by the Planning Commission for a rezoning on the subject property on March 7, 2022. At that time the request was to rezone the property from R1-6, High Density Single Family Residential District to R-MX, Residential Mixed Use District. After the public hearing was held, it came to staff’s attention that the zoning designation of R1-6 was incorrect, and that the property had been previously rezoned to PUD in 2009. The City Attorney advised staff that even though no changes were made to the current proposal, a new application would need to be submitted indicating the correct zoning designation of PUD, with new legal notification sent to property owners within 200’ and a new public hearing would need to be conducted. Notices were sent, and the Planning Commission conducted a public hearing on May 9, 2022, reflecting the correct zoning designation of PUD. Ms. Hurley reviewed the request:

- The property owner requested the rezone

- The property is 9.32 acres in size
- Current tenants in the building is the Council on Aging, who is anticipated to relocate in 2022
- Owner wants to renovate the building to residential and business/office space, 30 multi-family units
- Reviewed Golden Factors when reviewing Rezoning Requests:
 - Character of neighborhood
 - The zoning and use of properties nearby
 - The suitability of the subject property for the uses to which it has been restricted
 - The extent to which removal of the restrictions will detrimentally affect nearby property
 - The length of time the subject property has remained vacant as zoned
 - The relative gain to economic development, public health, safety, and welfare by the reduction of the value of the landowners property as compared to the hardship imposed by such reduction upon the individual landowner
 - The recommendations of permanent or professional staff
 - The conformance of the requested change to the adopted or recognized Comprehensive Land Use Plan being utilized by the city
 - Such other factors as may be relevant to a particular proposed amendment

Commissioner Hingula:

- Asked about Garland Street being on the Pavement Management Program this year

Mr. Faust:

- A portion is on the list for this year

Attorney Waters:

- It would be good to have comments and conversation in regards to the factors that are taken into account for rezoning a property, whether at this meeting or at the second consideration

Commissioner Bauder:

- Supports the rezoning and stated the property needed to be rezoned for some time and it will be good to see a use out of that building which would help make that neighborhood nicer with its improvements

Mayor Leonhard:

- It's a beautiful big piece of land and a nice building, and it would be nice to have the building be more than an empty building once the Council on Aging moves out

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

Consent Agenda:

Commissioner Martin moved to approve claims for May 7, 2022 through May 20, 2022, in the amount of \$736,045.10; Net amount for Payroll #10 effective May 20, 2022 in the amount of \$355,517.00 (Includes Police and Fire Pension in the amount of \$9,038.36). Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 5-0.

Other:

Executive Session – Attorney Client Privilege – Mayor Leonhard moved to recess into executive session to discuss legal options pursuant to the consultation with an attorney for the public body or agency which would be deemed privileged in the attorney-client relationship exception per K.S.A. 75-4319 (b) 2. The open meeting to resume in the City Commission Chambers at 8:20p.m. City Manager Paul Kramer and City Attorney David E. Waters are requested to be present during the Executive Session. Commissioner Martin seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 5-0.

Mayor Leonhard, Commissioners Bauder and Wilson returned to open session at 8:19 p.m. Commissioner Bauder moved to extend the executive session until 8:30 p.m., Commissioner Wilson seconded the motion and the motion carried 3-0.

The Leavenworth City Commission returned to open session at 8:30 p.m.

Commissioner Hingula:

- When will we get a report or status update on the Bird Scooters

Ms. Holler:

- That is a part of the pilot program for that information to be provided, but there have been some technology issues with accessing the Bird website, their IT is troubleshooting, but as soon as its available, we'll share them

Commission briefly discussed some feedback they've received with the scooters

Commissioner Hingula:

- Be safe and enjoy the upcoming holiday

Commissioner Wilson

- Be safe, God bless and pray for the families in Texas

Commissioner Martin:

- Expressed that the City wants to welcome and help businesses

Mayor Leonhard:

- Stay safe and have a good holiday

Adjournment:

Commissioner Martin moved to adjourn the meeting. Mayor Leonhard seconded the motion and the motion was unanimously approved and the meeting was adjourned.

Time Meeting Adjourned 8:34 p.m.

Minutes taken by City Clerk Sarah Bodensteiner, CMC