

CITY OF LEAVENWORTH PLANNING COMMISSION

COMMISSION CHAMBERS, CITY HALL
100 N 5th Street, Leavenworth, Kansas 66048
REGULAR SESSION
Monday, June 5, 2017
7:00 PM

CALL TO ORDER:

Commissioners Present

Jay Byrne
Mike Burke
Linda Bohnsack
Camalla Leonhard
Claude Wiedower
Sherry Hanson

Commissioners Absent

John Karrasch

City Staff Present

Julie Hurley
Michelle Baragary

Chairman Byrne called the meeting to order at 7:00pm and noted a quorum was present.

Approval of Minutes: May 1, 2017

Chairman Byrne asked for comments or a motion on the minutes presented for approval: May 1, 2017. Mr. Wiedower moved to accept the minutes as presented, seconded by Mr. Burke. The minutes were approved by a vote of 6-0.

OLD BUSINESS:

None

Item #2 on the agenda, 2017-08 SUP – 3812 Clayton Drive, was moved to the top of the agenda and heard first.

NEW BUSINESS:

1. 2017-08 SUP – 3812 CLAYTON DRIVE

Conduct a public hearing for Case No. 2017-08 SUP, 3812 Clayton Drive. The applicants, Thomas and Michele Jones, are requesting a Special Use Permit to allow the operation of a Child Care Center in their home.

Chairman Byrne called for the staff report.

City Planner Julie Hurley stated the applicants, Thomas and Michele Jones, are requesting a Special Use Permit to allow the operation of a Child Care Center in their home. The property is currently zoned R1-9 (Medium Density Single Family Residential District). Child Care Centers are allowed in the R1-9 zoning district with issuance of a special use permit. Ms. Hurley further stated the applicants are licensed by the State of Kansas to care for a maximum of 12 children, dependent upon the ages of the children in care.

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 at the corner of Clayton Drive and Magnolia Drive, two residential streets.

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 5, 200 sq. ft., in excess of the 1,200 sq. ft. required. The yard is entirely enclosed by a wooden privacy fence.

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 includes a paved driveway capable of accommodating 4 cars at one time.

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 mail structure of 3 square feet.

The applicants are not currently displaying any signage, but any signage displayed at a later date would be required to comply with this provision.

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.

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.

STAFF RECOMMENDATION:

Ms. Hurley stated staff recommends approval of the Special Use Permit request based on the analysis and findings included herein, subject to the following conditions:

1. **A copy of the permanent Group Day Care Home license shall be provided annually upon renewal by the State of Kansas.**
2. **The operation shall be limited to a maximum of 12 children.**
3. **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.

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

With no questions, Chairman Byrne opened the public hearing.

With no one wishing to speak, Chairman Byrne closed the public hearing.

Chairman Byrne called for discussion from commissioners.

Mr. Burke asked if it is known if any other child care centers are within the vicinity.

Michele Jones, applicant, stated there are none that she is aware of.

Ms. Hanson asked what will be the ages of the children.

Michele Jones stated newborn to kindergarten ready.

With no further discussion, Chairman Byrne called for a motion. Ms. Hanson moved to recommend for approval the request for the Special Use Permit 2017-08 SUP to allow for the operation of a home childcare center at 3812 Clayton Drive with the conditions as recommended by staff. The motion was seconded by Ms. Leonhard and passed by a unanimous vote of 6-0.

2. 2017-07 REZ – 920 6TH AVENUE

Conduct a public hearing for Case No. 2017-07 REZ, 920 6th Avenue. The applicant is requesting a rezoning of their property from High Density Single Family Residential District (R1-6) to General Business District (GBD). The property is occupied with the former Medical Arts building, which is currently vacant. The rezoning request is being requested to allow for development of the Freedom Behavioral Hospital.

Chairman Byrne called for the staff report.

City Planner Julie Hurley stated the applicant, H&P Development LLC, is requesting a rezoning of their property located at 920 6th Avenue from R1-6, High Density Single Family Residential District, to GBD, General Business District. The property is occupied with the former Medical Arts building, which is currently vacant.

The rezoning is being requested to allow for development of the Freedom Behavioral Hospital. The proposed facility will be a 24 bed senior adult inpatient behavioral facility. The facility will provide geriatric mental health care for individuals on a short-term stay basis. The primary focus of care is depression and early onset Alzheimer's/dementia; violent patients will not be accepted. All admissions are taken by referral of a primary treating physician, and no walk-in appointments will be offered. Visitation by family members is by appointment only, with no open visiting hours. The hospital will operate under license from the Kansas State Department of Health. Freedom Healthcare currently operates a similar facility in Topeka.

The existing building was constructed as a medical office building in 1956, with an addition constructed in 1972, and has housed various medical office uses since that time. The property is considered legal-nonconforming, as the previous medical office uses are not in compliance with the current Development Regulations, but were in compliance at the time of construction. The proposed use is classified by the current Development Regulations as a hospital and not medical office use. The change in proposed use necessitates a rezoning request.

The applicant will make interior modifications to the existing building to accommodate their model of care and security needs. No exterior changes are proposed as part of this rezoning request.

CONDITIONS OF DETERMINATION

City Planner Julie Hurley reviewed the Conditions of Determination and read through each condition/comment. She noted that 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 Medical Arts building, which is currently vacant. To the southeast is a multi-story medical office building. To the south of the medical office building is St. Luke's Cushing Hospital. The remainder of the neighborhood consists of single-family homes. The property is located along Spruce Street, which is classified as an arterial street and designed to handle a high volume of traffic.

- b) The zoning and use of properties nearby;

All surrounding properties are zoned R1-6, High Density Single Family Residential District.

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

The subject property was built in 1956 as a medical office building, with an addition constructed in 1972. 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 offices since its construction in 1956. No significant effect on nearby property is anticipated due to the rezoning.

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

The existing building has housed medical offices consistently since construction in 1956. The last remaining tenant vacated the building approximately one month ago as the property owner prepares for the proposed change in use.

- 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 a needed health service currently unavailable in the Leavenworth area.

- g) The recommendations of permanent or profession 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.

Chairman Byrne called for questions and comments from board members about the staff report. With no questions/comments, Chairman Byrne called the applicant to the podium.

John Peterson, applicant, 734 Olive Street: Dustin Hundley and Mr. Peterson own the subject property under H&P Development LLC. H&P Development LLC has done several developments throughout the area and always tries to be good neighbors. The Medical Arts building was purchased because Mr. Peterson felt it was a building being underutilized and had potential. They have already chipped off the old stone to bring the building more up to date and the parking lot has been resurfaced. The building was going to be converted to general office space, which would be rented to various businesses; however, H&P Development was approached by Freedom Behavioral Health to use the subject building for geriatric health. Mr. Peterson thought geriatric health would be a great use for this building. Because of the financial risk and the need to terminate all leases, Mr. Peterson investigated the buyer. Mr. Peterson stated he understands where some people within the community may have a concern but if you look at the use of the building, it's a great use. It's a restricted usage, people will not be coming and going all hours of the day and there will be no traffic issues. Freedom Behavioral Health plans to put approximately \$1 million to \$2 million into the building. Speaking as someone who owns building, finding a good use for a building is important so a building is properly maintained and occupied; not left vacant which increases vandalism, etc. Mr. Peterson stated he strongly believes geriatric health is a good use for the subject property and that Freedom Behavioral Health is a reputable company that has had multiple facilities in this industry.

Chairman Byrne asked the City Planner since the subject building is currently legal-nonconforming, with its current status what type of businesses could be in the building if there were no changes to the zoning of the property. Ms. Hurley stated it could continue as a medical office; a use that is in place may continue but once there is a change it would need to come into conformance with the current development regulations.

Ms. Hanson asked if the subject building will be staffed with a doctor.

Greg Ousley, Business Development Director of Freedom Behavioral Health: There will be psychiatrists on staff but they will not be at the building full-time; however, nursing staff will be there 24/7.

Ms. Hanson: Will they be dispensing medication.

Mr. Ousley: Yes, but medication is locked up and not freely accessible.

Ms. Hanson: Has the Topeka facility been in operation for about a year.

Mr. Ousley: The facility was purchased in May 2016. Freedom Behavioral Health spent six months remodeling, investing about \$1 million and opened the facility in December 2016 so it has been operating for six months. Lt. Governor, who is a doctor, wrote a letter of support to Freedom Behavioral Health.

Ms. Hanson: Is the Topeka facility is in a residential area.

Mr. Ousley: The facility is in a residential area located directly across from an elementary school.

Ms. Hanson: Asked for the definition of short-term stay.

Mr. Ousley: The average stay is 10-11 days.

Ms. Hanson: Asked if the rezoning is approved, when Freedom Behavioral Health expects to open the facility. Mr. Ousley: The anticipated closing on the property is mid-July, will have 4-6 months of remodeling and must pass all regulatory requirements; therefore, they expect the facility to be open January or February 2018.

Mr. Wiedower: Is the facility in Topeka similar in nature to the proposed facility.

Mr. Ousley: It is exactly the same.

Mr. Wiedower: Has the facility in Topeka been in business long enough to be inspected by or received any type of report from KDHE about how well the facility is operating.

Mr. Ousley: KDHE inspections are typically done annually; however, if there is a complaint, it would be addressed immediately by the appropriate agency.

Mr. Wiedower: When renovations are being done to this 1956 building, can you address the security that is being done to keep people inside as needed.

Mr. Ousley: The facility is locked down with keypad and magnetically locked doors. Entry to the reception area is accessible but no one can go beyond the reception area without an access key or keypad code. There are not open visiting hours; visitation is by appointment and on weekends only. There is a high level of security for the type of treatment provided in the facility.

With no further questions from the commissioners, Chairman Byrne opened the public hearing.

Zen Daniels, 720 Spruce: He and his wife visited the Freedom Behavioral Health facility in Topeka. He stated there was no security and they both walked in without being questioned by anyone.

Mr. Ousley: Asked if they walked into the reception area or into the hospital.

Mr. Daniels: Initially they were headed to the back of the building but two individuals redirected them to the front of the facility and entered through the front door.

Mr. Ousley: Asked for clarification if they walked into the reception area or the hospital.

Mr. Daniels: Was not sure how far into the facility they got as there were no locks on the door he entered.

Mr. Ousley: To get to the hospital area of the facility, you would need to have access as the doors are locked.

Mr. Peterson: Asked if they entered a patient's room.

Mr. Daniels: No, they did not.

Lori Daniels, 720 Spruce (wife of Zen Daniels): Walked into the waiting area at the Topeka facility and picked up a pamphlet. Saw staff behind a glass window and it appeared as though the staff did not realize she even came into the building. There was no security guard and no one to check her at the door. Stated there is merely a glass pane at the window and if her intention was to get farther, she could have easily done so.

Mr. Ousley: Clarified that Ms. Daniels walked into the reception area but could not get into the hospital where the patients are located.

Ms. Daniels: No one addressed Ms. Daniels when she walked into the building, there was no bell and staff was not paying attention to who came in or went out of the facility. Doesn't feel security is on the level it should be.

Mr. Zen: Asked Mr. Peterson if he visited Freedom Behavioral Health's website to see the kind of people Freedom Behavioral Health was going to put into this facility.

Mr. Peterson: Yes. Stated he is very familiar with mental health as his oldest brother is schizophrenic. Stated he understands the community's concerns and perception about mental illness. The fact is mentally ill people are no more violent than non-mentally ill people. Stated his grandmother had Alzheimer's. When she became unruly, she was put on medication. You cannot simply say I'm giving you medication because I feel you are unruly. Rather you must go to a facility, such as Freedom Behavioral Health, and have a diagnosis made. When you have Alzheimer's or dementia, you may have a person who gets into the bed with another patient thinking that patient is his/her spouse, when in fact it is not. These are medical conditions that happen to people who age. This is what Freedom Behavioral Health does; they see the patient and give a diagnosis so the individual can go back to the nursing home (or their own home) and perhaps have a different level of care. These are not people who are dangerous as in a criminal way and then brought to some facility. This is your mother and father. This allows kids to take their mother or father to get a diagnosis at a facility here in Leavenworth instead of sending them to a place in Kansas City.

Mr. Wiedower: The issue keeps coming back to security and the community wants to be assured that what is being put in will have the appropriate security in place to minimize the possibility of anyone on psychotropic medication getting out.

Mr. Peterson: For clarification, this is a Planning meeting for a rezoning request and the American Disabilities Act is very specific about this. Believes we are straying in a very dangerous area when we start evaluating. Stated he understands mental illness can cause people all kinds of things but we are talking about people who have Alzheimer's and dementia. This is not 22-year old people with a criminal past. Believes that leaving the idea of what's the facility, what's the use, is it changing the nature in terms of traffic patterns is appropriate for this committee.

Mr. Wiedower: Asked if Freedom Behavioral Health meets all ADA requirements in terms of security procedures.

Mr. Ousley: Yes, it is required.

Camilla Jackson, 713 Spruce Street: Ms. Jackson refers to Freedom Behavioral Health's website that states *someone who poses an actual or imminent danger to self or others due to behavioral manifestations of a mental disorder*. She further states the website lists services to be provided in the future and the services are not inclusively restrictive housing of Alzheimer's and dementia patients. Ms. Jackson isn't saying the community doesn't need this type of service but she doesn't believe it should be in their neighborhood. Stated this facility does not need to be in their neighborhood to revitalize their neighborhood. The revitalization is coming from the residents who live in the neighborhood. Stated her realtor said there will be detriment to the property values depending on the use of the building. When the realtor was told what the use of the building will be, the realtor stated if Freedom Behavioral Health moves forward with their future plans, which is stated on their website, it will drastically affect the property values for the surrounding properties.

Mr. Daniels: According to the information made public by Freedom Behavioral Health, they accept people 50-years old and above. This is not a geriatric facility. These are middle aged people who display aggressive behavior towards others, excessive cursing, increased depression, inappropriate sexual behavior, significant level of psychotropic medications, extreme irritability, extreme agitation, seeing or talking to things that are not there, false beliefs, bizarre behaviors, increased fearfulness, withdrawal from alcohol or other abused substances, non-compliance with medications, and increased paranoia. This is the type of people who will be at the facility.

Chairman Byrne: Asked what Mr. Daniels concern is.

Mr. Daniels: His concern is that if they bring those types of people into their residential area and put them into the least restrictive confinement available that they will be exactly that...not confined.

Chairman Byrne: So your concern is that someone could get out and injure themselves or someone else.

Mr. Daniels: Not could get out but will get out. And Freedom Behavioral Health is not talking about geriatric people they are talking about the items just listed, which came off their website. They brag about bringing those kinds of people into their facilities. They say to bring us everybody you have who is sexually aggressive and on some type of weird psychotropic medication and we'll house them in the least restrictive environment available. And they want to put that right in the middle of our neighborhood across from two churches and two playgrounds. Doesn't believe it's an appropriate use. Believes it is an inappropriate zoning. Tear it down and zone it as a park; something that will benefit the community. Don't allow this rezoning to take place and allow these kinds of people in our residential area.

Elizabeth Brown (Lansing resident): Licensed master's level social worker in medicine with primary interest in geriatrics. Has worked in a unit similar to what is being described. To her knowledge, St. John's still has a senior behavioral health unit at the hospital, which is an inpatient geriatric psychiatry unit doing very similar work as Freedom Behavioral Health. All of the agitated or aggressive behaviors that have been talked about,

including sometimes sexually inappropriate behaviors are absolutely a part of an Alzheimer's or dementia diagnosis. Typically people think of Alzheimer's and dementia as just a memory loss but the heartbreaking part of that diagnosis for most families is dealing with extremely troubling and sometimes upsetting behaviors that are associated with those diagnoses. Places like Freedom Behavioral Health are not just bringing people in for a diagnosis but the critical part is to start treatment because there are medications that can significantly improve behaviors that are associated with Alzheimer's and dementia. The other issue is helping families with disposition or discharge planning. To get somebody into a nursing home or assisted living that specializes in memory care frequently does first require a diagnosis and it does take appropriate treatment and medication. The one thing Ms. Brown disagrees with is that this type of service does not exist in the community. To her knowledge it does exist in the community. St. John's Hospital has a thriving senior behavioral health service. And you don't hear about people escaping from St. John's and running the streets and being violent because this type of service is highly regulated. Although you can enter into St. John's Hospital, you cannot enter the senior behavioral health unit and the patients at that unit cannot leave because of the strict security. With that said, our population is aging and the need for this type of service is increasing. Ms. Brown also stated she does not like how we talk about mental illness as "these people", especially when talking about Alzheimer's and dementia. She further stated there appears to be a lot of misconceptions and it may be a good idea to get a professional clinician who works at Freed Behavioral Health to come answer some of these questions as no one at the meeting is a qualified mental health professional other than her.

Stephen Jaremko (722 Spruce Street): As a father with two small children, he is concerned about a mental health facility being in his neighborhood. He feels like it is improper zoning. Wants to know if patients will be committed.

Mr. Ousley: Stated that patients are committed on a short-term basis and will be committed by either their family or the courts.

Mr. Jaremko: Can a patient ever be released from the facility of their own accord.

Mr. Ousley: Responded no patient can be released of their own accord.

Mr. Peterson: Asked if there is ever trouble with Cushing's mental health facility.

Mr. Jaremko: Stated he has not. And he did not realize Cushing even had a mental health facility.

Mr. Peterson: Stated the mental health facility at Cushing Hospital closed about a year ago because it wasn't profitable. Mr. Peterson further stated there has been a mental health facility in this neighborhood for over 20 years until the unit in Cushing closed.

Mr. Daniels approached the podium; however, numerous conversations were occurring between residents. Chairman Byrne stated a lot of information is being passed but is not being considered by the commissioners because they are not hearing it. He instructed those people who wish to speak are to approach the podium. Chairman Byrne addressed Mr. Daniels stating he has approached the board two or three times now. Chairman Byrne told Mr. Daniels he understands his concerns but asked if he had anything new to tell the board. Mr. Daniels responded by saying he did not realize there was a limit on turns. Chairman Byrne stated there is not a limit on turns if there are no other people who want to speak.

Wes Ludwig (1044 5th Avenue): Stated he has lived at this property for 23 years. Security guards at Cushing are not something new; that the security guards have been there for quite some time. There are at least one to two patrol cars at Cushing every night. He believes the main concern is if Freedom Behavioral Health Hospital will have a security force and/or cameras.

Lois Mein (911 S Broadway): Stated this is a neighborhood community; not a behavioral health place. If you're going to have a mental health facility, you do it in conjunction with a hospital. Has read a lot of reviews on mental health facilities in the state of Kansas and very few have had positive remarks from the

people who have brought their family members there. Ms. Mein further stated she has a big patio driveway in the back of her yard where kids play every day so security is a big issue for her. Ms. Mein was a realtor in Leavenworth for forty-one years and she stated it will most definitely affect the property values in the neighborhood.

Ken Bower (1029 3rd Avenue): Asked why this agenda item was originally scheduled for to be heard by the Planning Commission on May 1 but was withdrawn and now it comes before the Planning Commission.

Ms. Hurley: Staff originally thought the subject property was classified as a nursing home facility, which can be operated in this zoning district with the issuance of a special use permit. Therefore, owners within the notification area were sent notice of the special use permit application. Once the applicant meet with the review committee and more information was provided, it was realized it would need to be classified as a hospital use, which is not allowed with a special use permit but requires a rezoning application. Letters were sent out to property owners who were previously notified stating the special use permit application was rescinded and new notification was provided regarding the rezoning application.

Mr. Daniels: Asked Mr. Peterson about him previously being a member of the Planning Commission and asked if he knew or are familiar with any of the current commissioners.

Mr. Peterson: Stated Mr. Byrne was on the Planning Commission.

Mr. Daniels: Asked if Mr. Peterson and Mr. Byrne, the current Chairman, have prior business dealings.

Mr. Peterson: Stated he has not talked to anyone on the Planning Commission about the issue at hand nor does he have any financials ties with any of the members of the Planning Commission.

Mr. Daniels: Stated that Mr. Peterson has had some dealings with the Chairman.

Mr. Peterson: Only dealing with him in the Planning Commission.

Linda Bohnsack: Clarified that as members of the Planning Commission we are ethically obligated to recues ourselves if we are familiar or benefit in any way economically from any of the applications that come before us.

Mr. Daniels: Asked that Chairman Byrne recues himself because he served with Mr. Peterson on the Planning Commission.

Chairman Byrne: Stated he has no financial interest in the application and since there is no economic benefit for him, he does not need to recues himself.

Mr. Wiedower: Requested Mr. Peterson approach the podium. Mr. Wiedower stated the issues of concern from the people here today are that a 24 bed facility will hold patients of various stages of needs. Furthermore, there is a staffing pattern proposed of 20-25 people with fully staffed depending on the full count of the 24 people. Asked for clarity that the facility will never have more than 24 patients at given time.

Mr. Peterson: His understanding is that there will only be 24 beds so it would not be expanded. Additionally, there is no request here today to increase the size of the footprint of the building.

Mr. Wiedower: Asked if the proposed staff of 20-25 staff members is adequate for the capacity of beds available for mental health needs and for the overall operation of the facility.

Mr. Ousley: Stated Freedom Behavioral Health is licensed up to 24 beds.

Mr. Wiedower: If you're spending \$1 million on remodeling, what can you do to enhance security to make people here feel better about the security within the facility.

Mr. Peterson: Mr. Peterson stated these are not psychotic people, they are not people coming from a prison; rather they are people with early onset of Alzheimer's or dementia or who are in an institution, such as a nursing home, who are or have displayed signs of Alzheimer's or dementia. They are then transferred to Freedom Behavioral Health Hospital to be evaluated.

Mr. Wiedower: Stated if you're spending all this money on remodeling the interior of a 1956 facility, what are is being done to improve security.

Mr. Peterson: The building has very small windows, except for the front, which is the reception area. The building has an exit on the north side, no exit on the south side, two exits on the west side and is on the second floor.

Ms. Mein: Stated there is a south exit.

Mr. Peterson: Stated there is a south exit but it's from the basement, which will be used for office and/or storage. The hospital will be on the first floor, which does not have a south exit above ground level. There will be no garden area, smoking area, park benches, etc. It's a locked and secured facility. Is it possible someone could escape...yes, but that does not mean someone is going to go on a mental rampage. That is a mischaracterization of the mental illness.

Ms. Hanson: Asked if this is the first steps for the beginning stages of Alzheimer's or dementia, don't patients still have their rights. And if they still have their rights then they could sign themselves out of the facility.

Ms. Jackson: Ms. Jackson asked to quickly speak as she had to leave. She asked Ms. Hurley if a rezoning was applied for in 1972 when the addition was added on to the building. And why the building was not brought up to code in 1972 when the addition was added.

Ms. Hurley: She stated she was not aware a rezoning was applied for in 1972. She further stated regulations change over the years and the addition done during that time was per the regulations that were in place at that time.

Ms. Jackson: Stated she called the facility in Topeka to get more information. They referred her to their website. Ms. Jackson contacted a Freedom Behavioral Health facility in Magnolia, MS. She stated the representative she spoke with stated if the patient did not want to go back to where they came from, be it a nursing home or somewhere else, Freedom Behavioral Health let them out into the community. If they go back to a nursing home, the nursing home is responsible for them. And if they don't want to go back to where they came from then Freedom Behavioral Health will try to set up outpatient appointments. Ms. Jackson further stated she doesn't believe a facility like this should be in a residential area. She mentioned IMAC as a potential building for this service because it's vacant and it's not surrounded by a residential district.

Mr. Peterson: Stated IMAC is also surrounded by residential property.

Ms. Jackson: Ms. Jackson further stated this is a for-profit company and therefore will not just be serving the people of Leavenworth. And if people come from outside of Leavenworth for this service and then do not want to go back to where they came from, then they are released in Leavenworth, which is going to burden the City further.

Ms. Hanson: Asked how long Freedom Behavioral Hospital has been in business.

Mr. Ousley: Stated Jason Reed is the CEO of Freedom Behavioral and there are 23 locations in the southern states. Magnolia, MS was a hospital that was getting ready to close when the hospital approached Mr. Reed for help. Mr. Reed thought putting 12 beds for geriatric behavioral health services in the hospital could turn the hospital around. The hospital stayed open, a wing of the hospital was converted to geriatric behavioral health, and was awarded citizen of the year in 2015 or 2016. This particular hospital is in the middle of a residential district.

Ms. Brown: Stated she worked at St. John's Hospital in the behavioral unit quite some time ago. The medicine service floor was practically empty; however, upstairs there was an 18 bed unit for behavioral health that was full at all times. And the people staying at the behavioral health unit did come from the KC metro region because it's such a specialized service and not every community offers this type of specialty service. Ms. Brown further stated that with regards to issues of capacity and competency, those words get interchanged a lot for people that are in a mental health facility; however, those words do not mean the

same thing. With regards to involuntary court commitments, Ms. Brown can only speak of the units she worked on here locally and they did not allow involuntary court commitments to those units. Most psychiatrists do not want to deal with involuntary court commitments because it's a huge legal issue and they have to be in court within so many hours of admission. Ms. Brown stated that in order to have a lot of these questions answered; a clinical representative from Freedom Behavioral Health should be here to answer these questions because we don't know what kind of demographics they will take, don't know the type of treatment, don't know the average length of stay, and don't know their discharge planning model.

Mr. Ousley: Stated they would be more than happy to provide any documents or answer any questions that people may have. Mr. Ousley also stated they would welcome anyone to visit their Topeka location.

Ms. Brown: Would like the people of the community to ask themselves how many times they have heard of an individual escaping from St. John's senior behavioral health unit and being out on the street causing any problems.

Mr. Byrne: Asked how people are admitted into this type of facility and how do they leave this type of facility if it is not through an involuntary court commitment.

Ms. Brown: Stated typically people are referred by a facility they are already living at, such as an assisted living center or nursing home, or sometimes they come from their own residence because they are referred by their primary care provider. In order to come in for treatment, the patient has to sign consents or their durable power of attorney, who had already been enacted, would sign the consent forms on their behalf.

Mr. Byrne: Asked if the patient signed consent forms to be admitted, then they can leave whenever they wanted.

Ms. Brown: Stated that is correct. However, if the patient wants to leave prior to the mental health provider believing it was appropriate, the patient would need to be discharged AMA, Against Medical Advice. If the mental health provider felt this patient was a potential danger then it would become a hotline situation. In these situations there is a process for a referral through the mental health consortium to a State Hospital for an individual believed to be unsafe.

Ms. Hanson: Stated but you cannot stop them if they choose to leave.

Ms. Brown: Stated that is correct. If they have not been deemed to lack capacity then you cannot hold someone against their will.

Bobbi Bower (1029 3rd Avenue): Stated she feels everything comes down to safety. Asked if there will be any outpatient services.

Mr. Byrne: Stated it will be inpatient only.

Ms. Bower: Requested the issue be tabled until a representative from Freedom Behavioral Health can come in to clarify and answer questions.

Ms. Daniels: Stated that just as Leavenworth has always been known to have many prisons, those prisoners are taken out of those facilities in shackles for doctors' appointments. Freedom Behavioral Health's brochure states that in the future we are going to try to integrate more activities for these people outside this facility. Ms. Daniels further stated there is a plethora of facilities for these people, such as, Twin Oaks, Medical Lodge, and Homestead. Stated her mom has Alzheimer's. Her mom went to the doctor and got diagnosed like a normal person would do. There was no in-between facility to take her mom to do that because it wasn't necessary. Her mom is now a resident at Twin Oaks. Twin Oaks puts restrictions on the patients by putting bracelets on their arms if they are a flight risk, which will set off alarms. They also have key pads, people on duty 24/7, there is a doctor available 24/7. These are the differences we are talking about for security. Ms. Daniels mentioned 11 days to make someone okay who has psychotropic issues, when they are homicidal and/or suicidal doesn't make sense. She stated we are not talking about Alzheimer's, dementia or depression. Freedom Behavioral Health's brochure said homicidal, suicidal and psychotropic addictions. Stated Spruce Street is so busy with people who don't have a place to live. If we introduce more people into our community that don't have a place to live and think they are okay because they spent 11 days in the facility then suddenly they become violent. St. John's is located out on 4th Street in

the middle of nothing. If there is a problem, there are not homes there, there are not kids close by or elderly people close by to be subject to problems.

Ms. Hanson: Asked if it is only 11 days because insurance will only pay for that length of stay.

Mr. Ousley: Stated the 11 days is only an average. Someone could be there 2 days or maybe 24 days. Medical staff will not know the treatment plan or length of stay until the patient is properly diagnosed. Freedom Behavioral Health is governed by the joint commissions, the KDADS (Kansas Department for Aging and Disability Services), the Fire Marshall and all licensing that is required. All the security must be approved by the State. Just like any other business, you can walk into our lobby and get a brochure but that is as far as you will go without staff escorting you further, which requires key pads, magnetic locks, etc. The primary people we treat are about 84% Medicare patients. We are not talking about prisoners in shackles coming to our facility. The patients are coming from skilled nursing or assisted living facilities or a hospital may call about a transfer. We are a private hospital and we do not take prisoners as patients in our facilities. And we do have cameras and 24-hour monitoring as part of the security. Our security is inspected by the State and we are heavily fined if we do not meet their requirements.

Ms. Hanson: Asked if any of their facilities have ever been fined.

Mr. Ousley: Freedom Behavioral Health has never been fined.

Chairman Byrne called for anyone else wishing to speak about a new issue that the board has not yet heard. With no one else wishing to speak, Chairman Byrne closed the public hearing and called for further discussion among the commissioners.

With no further discussion among the commissioners, Chairman Byrne read the 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 Byrne reminded the commissioners their roll in what they are doing and what they are looking at. The commissioners are looking at a rezoning request and the impact the rezoning will have on the City of Leavenworth as a whole and specifically on the neighborhood in the notification area. Some issues that have been brought up do have an impact on the rezoning because they impact the character of the neighborhood itself. If there is a safety issue that is not there now then that would change the character of the neighborhood. Other issues brought up that deal with the internal operations of the company itself are not our issue or our concern.

Ms. Bohnsack stated we have a building that has outlived its usefulness. We will end up with a large building decaying and have a detrimental effect to the surrounding neighborhood in a much worse way than something that is actually being used and occupied. The quality of use is not necessarily better than what something else could be in there but at this point in time you could put a commercial use of office use in the building and it isn't going to work in a residential neighborhood and it has not worked in a residential neighborhood. A medical use close to other medical use facilities, where the building can be revitalized and brought back onto the tax rolls to be a benefit to the City is a good thing. It will not be an albatross onto the neighborhood. It will help revitalize the neighborhood. A building that is not being used is not an asset to the neighborhood; but a building that is being used is an asset. It seems like the facility will fill a niche in what we need in Leavenworth. Being able to find a facility for someone you care about and get the care they need here versus Kansas City is important. Ms. Bohnsack stated she has had experience with Alzheimer's patients and recognized how devastating the illness is because it changes the personality of the patient. And security is not just for the people visiting but it's also for the patient's security. We are not saying the community's concerns are not valid when the concern is about people you may not want in your

neighborhood but there are a lot of homeless that frequent the library, there are probably people coming to the hospital that you may not want in your neighborhood or people that go to the doctor's offices that are located there. You are dealing with a situation that is already in that neighborhood

With no further discussion, Chairman Byrne called for a motion. Ms. Bohnsack moved to recommend approval to the City Commission the rezoning request 2017-07 REZ located at 920 6th Avenue from R1-6 to GBD based upon the findings of fact and information presented as stated. The motion was seconded by Mr. Burke and passed by a vote 4-2. Ms. Hanson and Mr. Wiedower voted against the recommendation to the City Commission.

Ms. Hurley stated this will be the start to a 14 day protest petition period. Neighbors have 14 days starting tomorrow, June 6, 2017, to gather a valid protest petition to present to the City Clerk prior to this agenda item going to the City Commission meeting.

3. 2017-09 REZ – WOLF FARMS – 4811 NEW LAWRENCE ROAD

Conduct a public hearing for Case No. 2017-09 REZ, Wolf Farms – 4811 New Lawrence Road. The applicant, JMK Partners LLC, is requesting a rezoning of their property from R1-25 (Low Density Single Family Residential District) to R1-6 (High Density Single Family Residential District). The site lies along New Lawrence Road directly to the east of 20th Street. A preliminary plat for the subject property is also on this agenda. The rezoning is being requested to allow for development of a new single family residential development.

Chairman Byrne called for the staff report.

City Planner Julie Hurley stated the applicant has submitted this rezoning request along with an associated preliminary plat. Ms. Hurley will discuss both agendas alongside each other and then the commissioners can discuss the applications and consider each application request separately.

The applicant, JMK Partners LLC, is requesting a rezoning of their property located at 4811 New Lawrence Road from R1-25, Low Density Single Family Residential District, to R1-6, High Density Single Family Residential District. The property is 40.12 acres in size and is currently developed with a vacant single family home and barn. The site lies along New Lawrence Road directly to the east of 20th Street.

The rezoning is being requested to allow for development of a new single family residential development. The development will consist of 101 single family lots and will be built in multiple phases. Of the 101 proposed lots, 45 will be maintenance-provided homes and 56 will be traditional single-family homes. Included in the development will be various amenities, such as, open green space and a community gathering space for use by the residents. A Home Owner's Association will be established for maintenance of the common areas and of the maintenance-provided homes.

The site is currently agricultural in nature with a vacant single-family home. The property to the east is zoned I-1 (Light Industrial) and is the site of the future Leavenworth Business and Technology Park. The properties to the north and west are zoned R1-25 (Low Density Single Family Residential District) and are developed with a single family home and associated agricultural use. The property to the south is zoned R1-6 and is part of the proposed preliminary plat associated with this rezoning request.

CONDITIONS OF DETERMINATION

City Planner Julie Hurley reviewed the Conditions of Determination and read through each condition/comment. She noted that 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 currently agricultural in nature with a single-family home. The property to the east is vacant and the site of a proposed business and technology park. The properties to the north and west are developed with large lot single family homes and associated agricultural use. The property lies north and west of 20th Street and New Lawrence Road. 20th Street is a primary arterial corridor, while New Lawrence Road currently carries a low volume of traffic and primarily serves homes located along the road. New Lawrence Road will be widened and improved to the northern extend of the subject property as part of the proposed development to accommodate an increase in traffic volume.

- b) The rezoning and use of properties nearby;

The property to the east is zoned I-1 (Light Industrial) and is the site of the future Leavenworth Business & Technology Park. The properties to the north and west are zoned R1-25 (Low Density Single Family Residential District) and are developed with a single family homes and associated agricultural use. The property to the south is zoned R1-6 (High Density Single Family Residential District) and is part of the proposed preliminary plat associated with this rezoning request.

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

The subject property was previously utilized for agricultural purposes and is developed with one single family home and barn which are currently vacant. As development continues to occur around the property, the location has become increasingly unsuitable for agricultural 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. 20th Street is an existing major thoroughfare designed to handle traffic levels generated by the proposed use, and New Lawrence Road will be improved and widened in order to accommodate the increase in traffic generated due to the residential development. Single-family residential is a low intensity use, with minimal impact on surrounding properties. Properties directly adjacent to the proposed development will be better served by an improved New Lawrence Road.

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

The existing single-family home and associated barn have been vacant for approximately one year.

- 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 impact on economic development within the Leavenworth community by way of increased property tax base generated through the construction of new homes. The development will provide for an increase in housing stock, allowing for more people to live within the City of Leavenworth thereby adding to the local economy.

- 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 Low Density Residential (7,500-14,000 sqft/lot) on the Future Land Use Plan. The average lot size of the proposed residential development is 9,278 sqft, with many lots substantially larger. 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;

A preliminary plat for the subject property is presented for consideration in conjunction with the proposed rezoning.

4. 2017-11 SUB WOLF FARMS

Consider a request for a preliminary plat for Case No. 2017-11 SUB, Wolf Farms. The subject property is owned by JMK Partners LLC, plat prepared by Napier Engineering. The applicant is requesting approval of a 101 lot preliminary plat for the Wolf Farms residential development.

City Planner Julie Hurley stated the property is currently vacant and zoned R1-25, Low Density Single Family Residential District. A request to rezone the property to R1-6, High Density Single Family Residential District, is on this agenda for consideration.

The subject property is 40.12 acres, and is currently undeveloped. The site lies along New Lawrence Road, directly east of 20th Street. The plat consists of 101 residential lots with an average size of 9,278 sqft. The maximum lot size is 20,561 sqft and the minimum lot size is 6,325 sqft. Also included are associated utility easements and 11 tracts for various community amenities including landscaping, open space, signage, and a community gathering center.

The Development Review Committee reviewed the plat at their May 11, 2017 meeting. Items discussed at that time included improvements to New Lawrence Road and the need for a Home Owner's Association, as well as technical details that will be addressed with final plat submittals.

Improvements to New Lawrence Road will be required as part of the development of this property. The Developer is currently working with City Staff to coordinate the timing and scope of those improvements. In general, New Lawrence Road will be widened and improved from 20th Street to the northern boundary of the plat.

The staff report was read alongside agenda item #3.

Chairman Byrne called for questions and comments from board members about the staff report.

With no further questions, Chairman Byrne opened the public hearing.

Mike Reilly, applicant, believes the rezoning fits the neighborhood for future development. As we look at residential development today, people want smaller lots as opposed to the larger lots offered with an R1-9 (Medium Density Single Family Residential District) rezoning. The average lot size is over 9,000 sqft. The average sale price will be approximately \$275,000 to \$350,000. The areas shaded yellow on the plat will be maintenance provided homes. Maintenance will include exterior of the homes and lawn, snow, and landscape maintenance will be provided by the Homeowner's Association. The remaining 56 homes will be traditional housing and will be responsible for their own maintenance. Tract A & B coming off of New Lawrence Road will be park areas, green space areas, monument areas for the community. Tracts C, D and E are a pipeline that goes diagonally through the property, which is designated green space. This will tie into the trail that is proposed for the Leavenworth Business and Technology Park which will connect that park to 20th Street. Tracts F, G and H are all landscape tracts. The tract on the east of the property will join the business park. This tract will be landscaped and irrigated to provide a buffer for the housing from the business park.

David Sparks, 4790 New Lawrence Road, asked if the improvement to New Lawrence Road will be a city wide expense. Ms. Hurley stated the intent is for it to be funded through taxes generated from the lots that are part of this development; therefore, the burden will be on the developer.

Martin Schmidt, 4600 New Lawrence Road, asked how far New Lawrence Road will be improved to the north. Ms. Hurley stated New Lawrence Road will be improved to the northern end of the plat. There has been talk about extending it up further north to where a future Muncie Road might come through sometime in the future.

Ms. Bohnsack asked about a designation for right-of-way or easement along the north side of the Carlson Industrial Park which would extend out to 10th Street. Ms. Hurley stated this is a right-of-way that was previously put into place for a future Muncie Road.

With no further questions or comments, Chairman Byrne closed the public hearing and called for any additional questions from the commissioners.

Mr. Burke asked if work has begun on the southern part closer to Eisenhower. Ms. Hurley stated the southern part is already zoned commercial so they have started grading with potential plans for commercial development.

With no further discussion, Chairman Byrne read the rezoning action/options:

- Recommend approval of the rezoning request from R1-25 to R1-6 to the City Commission
- Recommend denial of the rezoning request from R1-25 to R1-6 to the City Commission
- Table the issue for additional information/consideration

Chairman Byrne called for a motion for the rezoning request for Case No. 2017-09 REZ. Mr. Wiedower moved to recommend approval to the City Commission the request to rezone the property located at 4811 New Lawrence Road from R1-25 to R1-6 based upon the considerations of determination and information presented as stated. The motion was seconded by Ms. Leonhard and passed by a unanimous vote 6-0.

Chairman Byrne asked Ms. Hurley to explain the roll of the preliminary plat.

Ms. Hurley stated the preliminary plat is basically laying out the entire development so we can expect to see a final plat for each phase as it comes in. The preliminary plat is valid for one year from the date of approval so it gives the applicant one year to submit the final plat. The preliminary plat is not recorded with the Register of Deeds. The final plat will be more in-depth with technical details.

Chairman Byrne read the preliminary plat action/options:

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

With no further questions or discussion, Chairman Byrne called for motion for the preliminary plat for Wolf Farms. Mr. Burke moved to approve the preliminary plat based on the staff report and commissioner's discussion. The motion was seconded by Ms. Hanson and passed by a unanimous vote 6-0.

With no further business the meeting was adjourned at 8:56 pm.

JH/mb