



City of Leavenworth
100 N. 5th Street
Leavenworth, Kansas 66048

CITY COMMISSION REGULAR MEETING
COMMISSION CHAMBERS
TUESDAY, MAY 24, 2022 6:00 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 6 p.m. and midnight and available for viewing on YouTube

CALL TO ORDER – Pledge of Allegiance Followed by Silent Meditation

PROCLAMATIONS & AWARDS

1. MARC 50 - Forward Day, June 10, 2022 (pg. 02)
2. ACEC Engineering Excellence Award – Thornton Street Improvements (pg. 03)

OLD BUSINESS:

Consideration of Previous Meeting Minutes:

3. Minutes from May 10, 2022 Regular Meeting **Action:** Motion (pg. 04)

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. A signup sheet will be provided in the commission chambers for anyone wishing to speak.*

General Items:

4. Mayor’s Appointments **Action:** Motion (pg. 08)
5. 7 Brew Coffee Site Plan Appeal – 4900 S. 4th St. **Action:** Motion (pg. 09)

Bids, Contracts and Agreements:

6. River City Community Players Agreement **Action:** Motion (pg. 47)
7. Agreement with Home Depot for Right-of-Way and Easement Acquisition **Action:** Motion (pg. 55)
8. Consider Award of Bid for Mowing Services **Action:** Motion (pg. 71)

First Consideration Ordinance:

9. First Consideration Ordinance Rezoning 1830 S. Broadway from PUD to R-MX **Action:** Consensus (pg. 85)

Consent Agenda:

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 & Fire Pension in the amount of \$9,038.36)

Action: Motion

Other:

Executive Session:

10. Executive Session – Attorney Client Privilege **Action:** Motion (pg. 110)

Adjournment

Action: Motion

City of Leavenworth, Kansas



Proclamation

WHEREAS, *for half a century, local governments in the Kansas City region have come together through the Mid-America Regional Council (MARC) to partner on regional initiatives and develop innovative solutions; and*

WHEREAS, *the region consists of nine counties and 119 cities which benefit from working across boundaries on a wide variety of issues and coordinating with diverse disciplines and sectors, including cities, counties, nonprofit organizations, social services, educational systems and special districts; and*

WHEREAS, *the region's leaders engage in informed decision-making through insightful data analysis and participate in a problem-solving forum to positively impact progress; and*

WHEREAS, *each jurisdiction and individual has a role in creating a strong regional community and enabling everyone to come together to achieve positive change for the next 50 years; and*

WHEREAS, *MARC is an organization that promotes regional cooperation through leadership, planning and action, and is guided by the core values of integrity, innovation, collaboration, diversity and inclusion, excellence in performance, and service leadership; and*

WHEREAS, *the City of Leavenworth has participated or benefited from working across boundaries, allowing us to better serve residents because of our regional work regarding public safety, transportation, environment, early learning, aging and shared local government services; and*

NOW, THEREFORE BE IT RESOLVED, *members of the City of Leavenworth City Commission celebrate the collaborative work that's been accomplished over the past 50 years and dedicate June 10, 2022, the day of MARC's annual Regional Assembly, as "MARC 50 – Forward Day" in recognition of the enormous progress the region will continue to make over the next five decades; and*

BE IT FURTHER RESOLVED, *I, Camalla M. Leonhard, Mayor of the City of Leavenworth, Kansas, do hereby proclaim June 10, 2022 as:*

MARC 50 - Forward Day

In Leavenworth, and urge local leaders and community members to reflect on the great progress made in the past 50 years and join us in welcoming a future built upon strong regional collaboration, connections, relationships and accomplishments

IN WITNESS WHEREOF, *I set my hand and have affixed the Great Seal of the City of Leavenworth, Kansas this twenty-fourth day of May in the year of two-thousand and twenty-two.*

Camalla M. Leonhard, Mayor

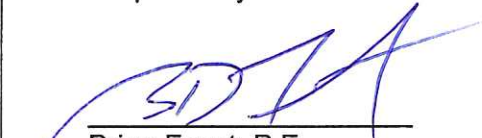
ATTEST:

Sarah Bodensteiner, CMC, City Clerk

POLICY REPORT PWD NO. 22-27
ACEC ENGINEERING EXCELLENCE AWARD
THORNTON STREET IMPROVEMENTS

May 24, 2022

Prepared By:



Brian Faust, P.E.,
Director of Public Works

Reviewed By:



Paul Kramer,
City Manager

The Thornton Street Project between 10th Street and 5th Avenue was submitted to the American Council of Engineering Companies (ACEC) to showcase the design and construction of the project. In the Transportation category, the project has been awarded the 2022 Engineering Excellence Award.

The project design and construction observation was performed by Affinis Corporation and Ms. Kristen Leathers-Gratton from Affinis is here this evening to present the award to the City of Leavenworth.



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 and Edd Hingula. Not present: Commissioner 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, Deputy Public Works Director Earl Wilkinson, Operations Superintendent Derek Burleson, Street Foreman Becky Beaver, 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:

Historic Preservation Month – Mayor Leonhard read the proclamation proclaiming May as Historic Preservation Month. The proclamation was accepted by Richard Gibson and Ed Otto.

Leavenworth Public Works Week – Mayor Leonhard read the proclamation proclaiming May 15-21, 2022 as Leavenworth Public Works Week. The proclamation was accepted by Public Works Director Brian Faust and Operations Superintendent Derek Burleson.

National Police Week – Mayor Leonhard read the proclamation proclaiming May 15-21, 2022 as National Police Week. The proclamation was accepted by Police Chief Patrick Kitchens.

OLD BUSINESS:

Consideration of Previous Meeting Minutes:

Commissioner Bauder moved to accept the minutes from the April 26, 2022 regular meeting. Commissioner Hingula seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 4-0.

Second Consideration Ordinance:

Second Consideration Ordinance No. 8186 Rezoning 604 Pottawatomie from Neighborhood Business District to Light Industrial District – City Manager Paul Kramer reviewed the Ordinance. There have been no changes since first introduced at the April 26, 2022 meeting.

Attorney Waters:

- Mentioned that at the first reading of the ordinance, the staff report and governing body discussion recalled the Golden Factors for making a determination for a rezoning. It was reiterated that the decision this evening on the rezone is based on those Golden Factors

Mayor Leonhard called the roll and Ordinance No. 8186 was unanimously approved.

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

None

General Items:

Mayor's Appointment

Mayor Leonhard moved to reappoint to the Board of Zoning Appeals Mike Bogner to a term ending May 1, 2025. Commissioner Hingula seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 4-0.

Establish the Leavenworth Transit Advisory Committee – City Manager Paul Kramer presented for consideration the term length and membership of the temporary Leavenworth Transit Advisory Committee. The LTAC will operate on an initial two-year term and the seven member voting body will be comprised of: 1 member associated with the Leavenworth Guidance Center, 1 member associated with the United Way of Leavenworth County, 1 member associated with Welcome Central or the Interfaith Community Shelter of Hope, 1 member associated with either Kansas City Kansas Community College or University of Saint Mary, and 3 members at-large.

Commissioner Wilson:

- Asked about the current status of the vehicles

Mr. Kramer:

- Advised that they are in process, but we'll communicate as soon as we know a delivery timeframe

Commissioner Bauder moved to approve creation of the Leavenworth Transit Advisory Committee. Commissioner Wilson seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 4-0.

Resolutions:

Resolution B-2313 Approving a Loan from Kansas Public Water Supply Loan Fund for Leavenworth Waterworks – City Manager Paul Kramer introduced the item for consideration. The process requires that the City as the "owner" of the system approve the action requested by the Waterworks Board. Joel Mahnken General Manager of Leavenworth Waterworks was invited to discuss the project with the Commission.

Mr. Mahken:

- Project is to install an additional water storage tank
- Risk and resiliency study identified this as an item to provide backup to current system
- Revenue from utility will go to repay the loan

Commissioner Hingula:

- Asked if rates will go up to help repay the loan and if they will reduce after repayment

Mr. Mahnken:

- Rates may marginally increase, but inflation is a bigger concern
- It's a 20 year loan, so rate reduction may be a possibility after 20 years

Commissioner Wilson moved to approve Resolution B-2313 approving a loan from the Kansas Public Water Supply Loan Fund for Leavenworth Waterworks. Commissioner Hingula seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 4-0.

Bids, Contracts and Agreements:

Consider Bids Received for the Trash Bag Contract – Public Works Director Brian Faust presented for consideration bids received for the purchase of plastic trash bags for Fall 2022/Spring 2023. The Solid Waste Division purchases 1,150,000 plastic refuse bags each year for distribution to refuse customers in the spring and fall. Bags are also provided for Spring Clean-Up, new customers, sold in the City Clerk's office and at the MSC and for other departmental use. An average number of rolls used per year is 22,500. The project was advertised on the city's website and 10 manufacturers were notified of the bid by email. Bids were received on April 22nd. One qualified bid was submitted by Central Poly Bag Company. The budgeted amount for 2022 is \$130,000. The cost for 2022 nearly doubled from last year's amount from the same supplier. The number of bags and number of rolls did not change. The city would need to pull \$157,000 from reserves to fund the full purchase of trash bags. In discussion with Central Poly, some of the reasons listed for the increase were related to staffing shortages and an increase in the petroleum-based resin prices. Reviewed options for the Commission to consider:

- Reject the bid, knowing the City does not have enough trash bags on hand to complete the fall delivery
- Accept the bid for the full amount of \$287,000
- Award the bid for ½ the rolls to ensure fall delivery could be completed.

Mr. Kramer:

- Commissioner Martin asked about purchasing an even smaller amount and make them available on a first come first serve basis

Mayor Leonhard and Commissioner Bauder raised concerns about residents who are unable to go out to get bags on a first come first serve basis

Commissioner Hingula:

- Asked how quickly do we need to made decision
- Should we wait until the solid waste task force makes a recommendation

Mr. Kramer:

- A decision is needed soon, as the company has already advised that their prices have risen by 5% but they would honor the pricing they gave the City
- The solid waste task force recommendation is related to future solid waste services and they don't plan to present their recommendation to the Commission until August

There was support to move forward with the option to purchase ½ the bags to ensure the fall delivery could be completed and to consider a rebid in January 2023

Commissioner Wilson moved to award a contract to Central Poly Bag Company in the amount of \$143,500. This would be for the purchase of ½ the rolls (11,500 rolls). Per Central Poly, they would hold the bid price for ½ the rolls and this would provide enough for fall delivery. Commissioner Bauder seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 4-0.

Consider Award for Rebid of the 741 Pottawatomie Drainage Project – Public Works Director Brian Faust presented for consideration possible contract award for the rebid of 741 Pottawatomie Drainage Project. The area around 741 Pottawatomie experiences significant flooding during moderate to heavy rain events and has been labeled as Orange Fence Project No. 4. The current system of enclosed piping, open ditches and area inlets has degraded to a point where the carrying capacity of the system is not sufficient for the volume of water. As a result, water ponds in the side yard and can get very deep. The City hired Wilson & Company to design improvements at this location.

Commissioner Wilson moved to accept the bid received from Kissick Construction in an amount not to exceed \$499,665.00 for the rebid of the 741 Pottawatomie Drainage Project. Commissioner Wilson seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 4-0.

Consent Agenda:

Commissioner Wilson moved to approve claims for April 23, 2022 through May 6, 2022, in the amount of \$1,212,972.72; Net amount for Payroll #09 effective May 6, 2022 in the amount of \$325,306.11 (No Police and Fire Pension). Commissioner Hingula seconded the motion and the motion was unanimously approved. Mayor Leonhard declared the motion carried 4-0.

Other:

City Manager Paul Kramer:

- Baseball and softball started this week; numbers are up from pre-COVID year, about 320 participants
- Provided a splash pad at Hawthorne park update: Sewer line is installed, grading and filling of uneven areas has been done, features should be installed shortly, hoping for early June opening
- Wollman pool update: fully staffed for life guards, vending machines will be present due to a shortage in seasonal positions

Commissioner Wilson:

- Recognized the two high school students in attendance this evening

Adjournment:

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

Time Meeting Adjourned 6:33 p.m.

Minutes taken by City Clerk Sarah Bodensteiner, CMC

MAYOR'S APPOINTMENTS

May 24, 2022

Mayor Leonhard

"Move to

*Appoint to the **Convention & Tourism Committee** Marianne Tennant to a term ending January 31, 2025*

*Appoint to the **Leavenworth Planning Commission** Brian Stephens to a term ending May 1, 2025*

*Appoint to the **Leavenworth Preservation Commission** Kenneth Bateman to a term ending April 15, 2025*

*Appoint to the **Parks & Community Activities Advisory Board** Jeffery Porter to a term ending January 15, 2025*

*Reappoint to **Grow Leavenworth County Development Corporation Board** Lisa Weakley, Wendy Scheidt, Ted Davis, and Thomas Meier to terms ending May 31, 2024*

Requires a second and vote by the Governing Body.

**POLICY REPORT
2022-08-APPEAL
7 BREW COFFEE SITE PLAN
4900 S 4TH STREET**

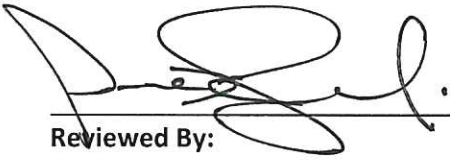
MAY 24, 2022

SUBJECT:

An appeal of the decision of the Development Review Committee to reject the submitted site plan for 7 Brew Coffee located at 4900 S. 4th Street.



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



Reviewed By:
Paul Kramer,
City Manager

BACKGROUND:

The applicant, John Kollhoff with 7 Brew Coffee, submitted a site plan for a proposed development at 4900 S. 4th Street. After review of the proposal and discussion with KDOT, staff requested several revisions to the submitted site plan to address City concerns and requirements, as well as a Traffic Impact Study (TIS). The revised site plan as submitted and the TIS do not address all City concerns and requirements. Staff notified the applicant on April 7th of the decision to withhold approval of the site plan

The Development Regulations places responsibility for review and approval or rejection of site plans for specified projects with the Development Review Committee (DRC), with the option to appeal the DRC's decision to the Planning Commission and City Commission. The DRC is a staff review committee composed of the following personnel: Director of Planning & Community Development, Chief Building Inspector, City Clerk, City Manager, Assistant City Manager, City Planner, Fire Chief, Parks & Recreation Director, Police Chief, and Public Works Director. Section 2.05 states:

1. *The City Planner shall determine if submitted site plans are in accordance with these regulations and then forward all site plan submissions to the Development Review Committee along with a written opinion on the plan's merits.*
2. *The Development Review Committee is responsible for final review and approval of site plans for multi-family residential, mixed-use, mobile home parks, planned unit developments, commercial or industrial developments which are in accordance with these regulations.*
3. *In its review, the Development Review Committee will consult and consider the recommendation of the various departments and agencies affected by the proposed site plan.*
4. *If the Development Review Committee rejects or withholds approval of the site plan the applicant may appeal the decision to the Planning Commission at its next regular meeting. The Planning Commission may recommend approval, disapproval or approval with conditions to the City Commission.*

ANALYSIS

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.

The DRC has identified the following primary concerns related to the submitted site plan and TIS:

1. 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" (illustrative diagram attached) between the proposed driveway entrance to the site and the existing commercial driveway to the north. This has not been provided. According to the TIS and site plans, the driveway spacing between the proposed 7 Brew development and UHaul to the north is 82' center to center.

The KDOT access Management Policy requires a minimum driveway spacing of 450' along a Class B highway on the National Highway System with 27,000 vehicles per day and a posted speed of 45 mph. Failure to meet this requirement necessitates approval of a variance from KDOT.

The site contains an existing 12' wide driveway, which is in place to maintain the billboard located on the property. The existing driveway is 72' south of the UHaul driveway, measured center to center. The existing driveway did not meet KDOT spacing requirements when installed, and a variance was approved by KDOT due to the fact that the driveway would only be utilized twice a month for maintenance of the billboard.

2. 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, an 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.
3. 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.
4. Based on the 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.
5. 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 the above noted safety concerns, the Development Review Committee reached the unanimous decision to withhold approval of the site plan.

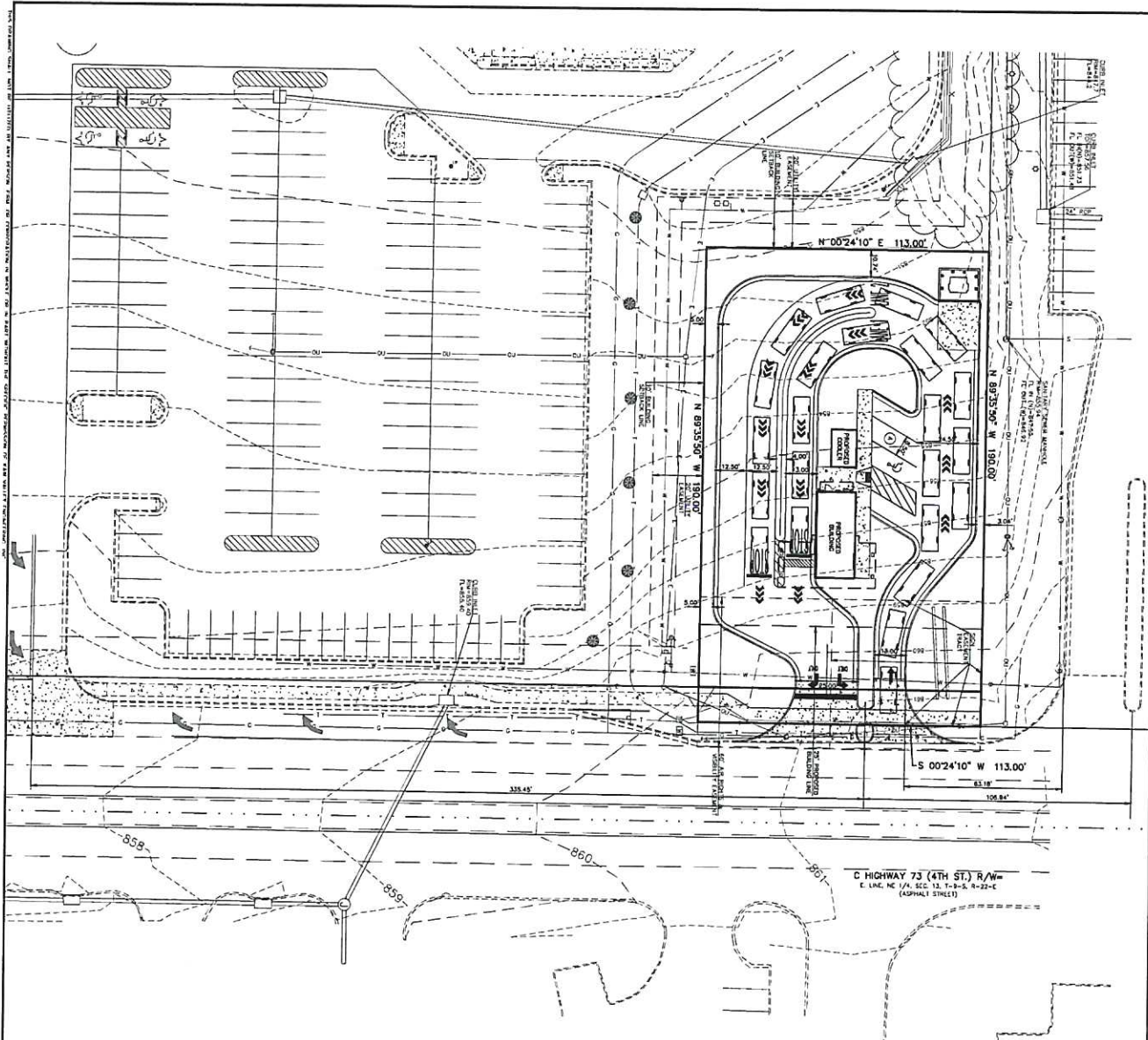
The Planning Commission considered the appeal of the DRC decision at their May 9, 2022, meeting and voted 4-1 to recommend approval of the site plan, contingent upon the applicant receiving the necessary approval and variances from KDOT.

ACTION/OPTIONS:

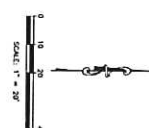
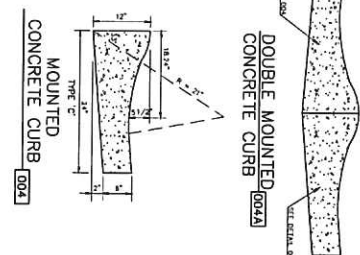
- Approve the site plan as submitted for 7 Brew Coffee located at 4900 S. 4th Street.
- Approve with conditions the site plan for 7 Brew Coffee located at 4900 S. 4th Street
- Disapprove the site plan for 7 Brew Coffee located at 4900 S. 4th Street

ATTACHMENTS:

- Site Plan
- Letter to applicant from City staff dated April 7, 2022
- Letter to applicant from KDOT dated April 6, 2022
- Traffic Impact Study – Exclusive of appendices, full TIS available in Planning and Community Development Department
- Diagram of “stand up curb”
- Minutes from May 9, 2022, Planning Commission meeting.



C HIGHWAY 73 (4TH ST.) R/W
 E. LINE, MC 1/4, SEC. 12, T-2-S, R-22-C
 (ASPHALT STREET)



7 BREW
 4900 S 4TH STREET
 LEAVENWORTH, KANSAS

SKETCH #16

KV KAW VALLEY ENGINEERING

2318 N. JACKSON | P.O. BOX 1204
 JUNCTION CITY, KANSAS 66441
 PH: (785) 762-5640 | FAX: (785) 762-7244
 KVEngineering.com | www.kve.com

REV	DATE	DESCRIPTION	DSN	DWN	CHK

1 OF 1



April 7, 2022

John Kollhoff
7 Brew Coffee
Mean Bean Development, LLC

RE: Proposed 7 Brew, 4900 S, 4th Street, Leavenworth

Mr. Kollhoff,

The City of Leavenworth Development Review Committee (DRC) has thoroughly reviewed the revised site plan, drainage study and Comprehensive Traffic Impact Study (TIS), submitted on March 3, 2022. Primary concerns are as follows:

- With the existing commercial driveway servicing U-Haul directly adjacent to the north, the turn lane for access to the Home Depot property beginning directly to the south, an existing commercial driveway directly to the east, and four lanes of high volume traffic on 4th Street combined with a two-way left turn lane, the proposed development introduces numerous additional potential points of conflict in an already congested area on a State highway, causing significant traffic safety concerns.
- The submitted site plan is in nonconformance with both KDOT and City access spacing requirements. Section 5.05.B 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 access to the subject site and the existing commercial driveway to the north. The provided site plan does not provide 50' of stand up curb.
- The TIS indicates that the site plan as submitted would require a right turn lane on 4th Street. The TIS further indicates that variances would be needed from KDOT for both access spacing and the right turn lane, as neither requirement can be met with the site.
- Based upon the predicted peak customer volume indicated in the TIS, it is anticipated that stacking will likely back up onto 4th Street off the property, posing additional points of conflict with southbound traffic on 4th and exiting traffic from the U-Haul site.
- The existing billboard base on the site poses significant sight distance issues for cars exiting the site, creating additional safety concerns.

Based upon the above noted concerns related to the submitted site plan and TIS, and consultation with KDOT staff, the DRC cannot support direct access onto 4th Street and cannot offer approval of the site plan as submitted. Staff encourages the applicant to further explore the potential for cross access agreements with either the U-Haul or Home Depot properties. Section 2.05.B of the Development Regulations provides the following procedure for appealing the decision of the DRC:

If the Development Review Committee rejects or withholds approval of the site plan the applicant may appeal the decision to the Planning Commission at its next regular meeting. The Planning Commission may recommend approval, disapproval or approval with conditions to the City Commission.



Should you have any further questions or wish to appeal the decision of the DRC, please contact me to be placed on the agenda for the next Planning Commission meeting. The next regularly scheduled Planning Commission meeting is Monday, May 9, 2022. Any request for appeal would need to be received by Friday, April 22, 2022.

Sincerely,

Julie Hurley, AICP
Director of Planning and Community Development
(913) 680-2616
jhurley@firstcity.org

cc: Paul Kramer, City Manager
Pat Kitchens, Chief of Police
Brian Faust, Director of Public Works
Ryan Barrett, KDOT
David Seitz, KDOT



121 S.W. 21st Street
Topeka, KS 66612

Julie L. Lorenz, Secretary
Leroy J. Koehn, P.E., District Engineer

Phone: 785-296-3881
Fax: 785-296-1162
kdot#publicinfo@ks.gov
<http://www.ksoot.org>
Laura Kelly, Governor

April 6, 2022

Mr. John Kollhoff
7 Brew Coffee
100 Xavier Drive
Abilene, KS 67410

Dear Mr.Kollhoff:

Thank you for contacting us about your interest in a new highway access 82 feet south of the existing U-Haul driveway onto K-7/US-73 in Leavenworth. Our engineers at the Area, District, and State levels have extensively reviewed your proposed commercial entrance and have determined that we are unable to provide concept approval for the proposal. Several things are worthy to be noted here:

- KDOT has not received a completed application for this project. In the absence of such, KDOT is not in a position to formally approve or deny an application.
- KDOT has met with Leavenworth to discuss the proposal. Leavenworth has clarified their position and they will be denying the development request at staff level. KDOT and staff at the City of Leavenworth share the same safety and operational concerns about raw traffic volumes, turning movements and conflicts the proposed development creates, the extremely short spacing between access points this would present, among other things.

While we are unable to provide concept approval of this proposed commercial entrance, we are committed to helping you find a solution or an alternative. KDOT recognizes the benefit that new business provides in helping to maintain and grow the local economy and remains committed to working with its city and local business partners to find viable access solutions that foster continued development.

Leroy Koehn, P.E.
KDOT District 1 Engineer

A handwritten signature in black ink, appearing to read "Ryan P. Barrett".

Ryan Barrett, P.E.
KC North Metro Engineer

Cc: City of Leavenworth
KDOT Access Management



KAW VALLEY ENGINEERING, INC.

COMPREHENSIVE TRAFFIC IMPACT STUDY FOR

7 BREW COFFEE

4900 South 4th Street (K-7/US-73)
Leavenworth, Kansas

Prepared for:
Kansas Department of Transportation
700 SW Harrison
Topeka, KS 66603

Prepared by:
Kaw Valley Engineering, Inc.
2319 N. Jackson
Junction City, Kansas 66441
(785) 762-5040

February 25, 2022

KVE Project No. **A21D0700**

Consulting Engineers

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APPENDICES

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- Appendix B – Turning Movement Traffic Count Sheets
- Appendix C – Turning Movement Traffic Count - Spreadsheet
- Appendix D – Automated Traffic Count Data
- Appendix E – ITE 10th Edition Supplement: Trip Generation
- Appendix F – Existing Traffic Assignment
- Appendix G – Proposed Traffic Assignment
- Appendix H – Synchro 10 (HCM 2010) Reports – Unsignalized
- Appendix I – Floor Plan
- Appendix J – Access Spacing (Existing and Proposed)
- Appendix K – Influence Area (Existing and Proposed)
- Appendix L – Site Plan
- Appendix M – K-7/US-73 Study Area Map (Previous Project)
- Appendix N – Pages from ITE Land Use 937, 10th Edition

1) INTRODUCTION AND SUMMARY

a) PURPOSE OF THE REPORT AND STUDY OBJECTIVES

Kaw Valley Engineering, Inc. (KVE) is pleased to present to the Kansas Department of Transportation (KDOT) a Comprehensive Traffic Impact Study for the 7 Brew Coffee development in Leavenworth, Kansas. The purpose of this study is to analyze existing and post-project conditions related to traffic operations surrounding the development of 7 Brew Coffee. From this data, the type and orientation of driveway access is recommended.

b) EXECUTIVE SUMMARY

Site Location and Study Area. The subject property to be developed is in Leavenworth, Kansas. Existing access to the development is provided by a 12 ft driveway along South 4th Street/K-7/US-73, approximately 0.25-miles south of Muncie Road/K-5. The influence area includes a 770 ft long segment near the proposed development, in which existing development driveway traffic movements are analyzed. The proposed development is situated on a 0.49-acre lot adjacent to K-7. To the south and west of the site is a home improvement store; to the north is an access drive; and to the east is K-7/US-73. The project location can be seen in **Figure 1** below.



Figure 1. Project Location, 39°16'14"N, 94°54'1"W.

Description of the proposed development. The proposed site includes a 531 ft² 7 Brew Coffee restaurant with no indoor seating, designed primarily to serve drive-through drink orders to vehicles. Two drive-through lanes and a bypass lane are proposed. A 50 ft² detached cooler is proposed as well. A new, wider access driveway is proposed at the same location along K-7/US-73.

Principal findings of the study. The development is expected to generate 88 new trips onto K-7/US-73 in the AM Peak Hour and 64 new trips in the Midday Peak Hour. Per the Highway Capacity Manual 2010 analysis, vehicles exiting the site in the AM Peak Hour are expected to experience Level of Service (LOS) D delays for left turns and LOS B delays for right turns. Exiting vehicles in the proposed Midday Peak Hour are expected to experience LOS E delays for left turns and LOS B delays for right turns. Based on the expected directional design hourly volume, a right turn lane is warranted for the proposed site.

Conclusions. The site is designed to circulate expected traffic volumes. Based on limits to spacing and cross access, the driveway as proposed will require variances from the KDOT Access Management Policy for access spacing and right turn lane requirements.

Recommendations. The following recommendations apply to the 7 Brew development in Leavenworth, Kansas:

- Installation of a two-way driveway with a median. Two exiting lanes and one entering lane is recommended for acceptable and safe internal traffic movement.
- As much as is practicable, the driveway is to be aligned with the opposing private drive on the east side of K-7/US-73 to reduce further conflict points. The site plan provided shows the recommended location; variances and further coordination with KDOT may be required.

2) PROPOSED DEVELOPMENT

a) OFFSITE DEVELOPMENT

Within the project vicinity, offsite development is mature. Adjacent developments include a home improvement store to the southwest, a storage & moving rental facility to the northwest, a coffee shop to the north, and a fast-food restaurant across the highway to the southeast. Vehicle access to the proposed site is only provided by way of South 4th Street (K-7/US-73).

b) ONSITE DEVELOPMENT

Land Use. The site's land use is Commercial, zoned as General Business District (GBD). The existing lot area is 21,470 ft². In the proposed condition, the west Right of Way (ROW) Line of K-7/US-73 is to be shifted to the west by 14 ft. As a result, the subject property's proposed area will 19,888 ft². Given a proposed on-site total building area of 581 ft², the proposed density, measured by the Floor Area Ratio (FAR), is 0.029. The proposed site plan is shown in **Figure 2** on the next page.

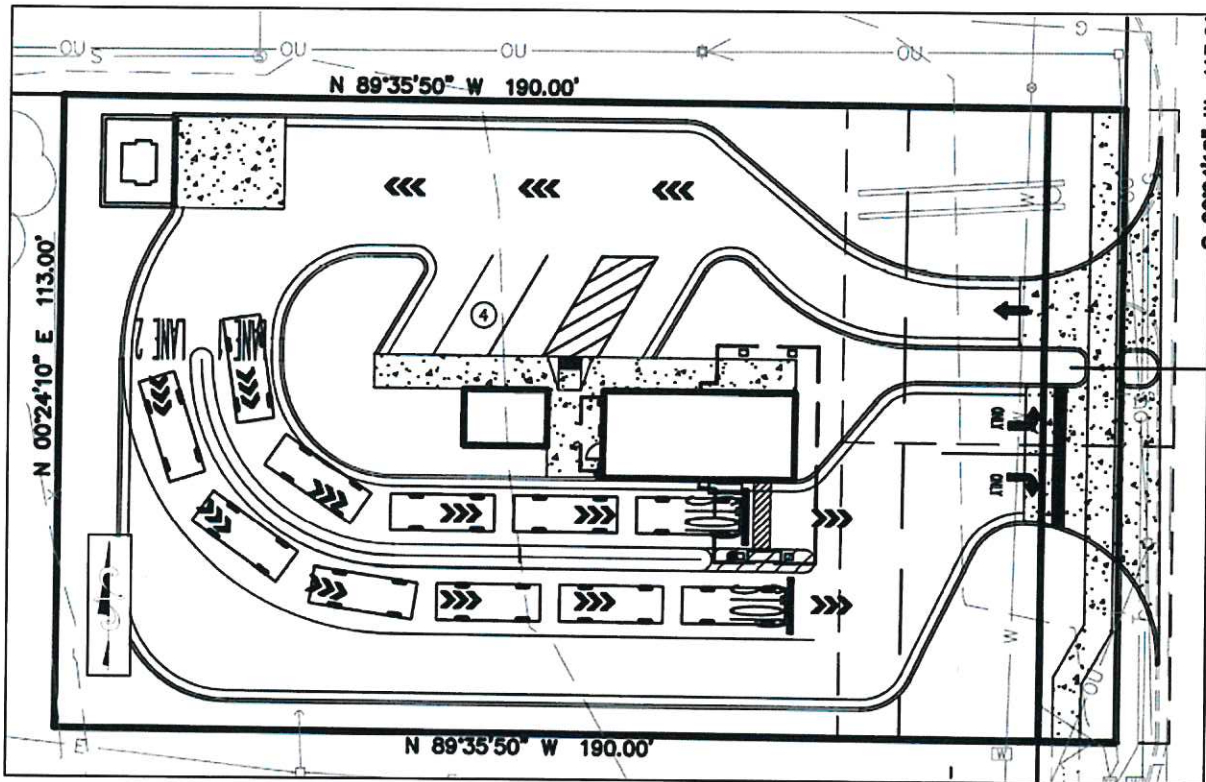


Figure 2. Project Site Plan.

Location. The building is set back from the proposed east property/ROW line approximately 45 ft. Available site distance is described as follows: the driver of an exiting vehicle experiences no sight obstructions looking to the south, with the exception of power poles. Looking to the north, the existing billboard (with a pole diameter of approximately 1-2 feet) is elevated so that it does not obstruct the view of a semi-trailer driver, assuming an average eye height of 94 inches. Thus, the billboard (obstruction) is elevated above the line of site. Except for poles, no obstructions are in view in either direction, the exit driveway meets the clear site triangle requirement, which is 530 ft for a left turn on for a 45 mph 4-lane road per the Policy, Table 4-14).

Site plan. The site is designed to accommodate a drive-through only coffee shop. Vehicles are retained on-site by way of two drive-through lanes separated by raised mountable curbs. Pedestrian traffic along K-7/US-73 is facilitated across the site driveway: an ADA-accessible path is provided through the driveway's median, and ADA ramps are proposed on each side of the driveway. Development of the site will include relocation of an existing power pole along the east property boundary. The site plan is available in **Appendix L**.

Anticipated phasing and timeline. The coffee shop will be constructed within six months of approval by the state and local applicable authorities.

3) EXISTING CONDITIONS

a) STUDY AREA

Influence Area. The influence area of the driveway is calculated per Section 4.3.1a of KDOT Policy, which is a sum of the following distances:

- d1 = distance traveled during perception-reaction time
- d2 = distance traveled during deceleration when coming to a stop
- d3 = the actual queue storage length
- d4 = downstream functional distance

For a developed, 45 mph road, d1 is 100 ft; d2 is 350 ft; and d4 is 295 ft. Due to the lack of traffic turning onto the existing site's driveway, d3 is 0 ft in the existing conditions. Thus, the existing influence area for the site's driveway is 745 ft in total, with 450 ft extending north of the driveway and 295 ft extending south of the driveway. The influence area, existing and proposed, is shown in **Appendix K**.

The site's proposed driveway is to be south of the existing driveway. The proposed queue length for the southbound right (SBR) turning movement is 1 vehicle or less during the peak hour (see section 5b of this study for additional details). Thus, distance d3 is taken as 25 ft, or 1 vehicle length. Therefore, the proposed influence area is 475 ft to the north of the proposed driveway and 295 ft to the south of the proposed driveway for a total of 770 total feet.

Area of significant traffic impact. The area of the most significant traffic impact applicable for this site is generally considered to be the segment of the K-7/US-73 corridor from the driveway north of the development (providing access to the moving and storage rental facility, and to the coffee shop) to the southerly driveway of the fast-food restaurant on the other side of K-7/US-73. Turning movement counts were taken at all driveways along this segment.

Environmental considerations. The environmental impact of this development is not significant due to the maturity of development within the vicinity. The quantity and quality of stormwater runoff is discussed in the drainage report by KVE, provided separately.

b) STUDY AREA LAND USES

Existing land uses. Developments in the influence area have Commercial or Industrial land use.

Existing zoning. All developments in the influence area are zoned General Business District (GBD) per the Leavenworth zoning map (provided in **Appendix A**).

Anticipated future development. Development within the study impact area is mature. One open lot, west of and adjacent to K-7/US-73, lies approximately 0.1 miles north of the subject property.

c) SITE ACCESSIBILITY

Area street and highway characteristics. The site is located on K-7/US-73, known as South 4th Street within the city limits of Leavenworth. The highway has the following existing characteristics:

- *KDOT Access route classification* – K-7/US-73 is classified as a Class C highway.
- *On the National Highway System?* – K-7/US-73 is on the National Highway System.
- *Posted speed limit* – This is a 45-mph facility.
- *Type of area* – This site is located within the city limits of Leavenworth in a developed area.
- *Roadway Characteristics* – K-7/US-73 is a four-lane, asphalt-paved, curb & gutter facility with 12' lanes and a Two-Way Left Turn Lane (TWLTL); traffic signals are spaced ½ mile apart within the site vicinity.
- *Existing transportation system plans* – This site does not appear to be located within a planned corridor. See **Appendix M** for a K-7/US-73 study area map from a separate study.
- *Alternate transportation mode choices* – Pedestrian transportation facilities are available for the corridor by way of an existing sidewalk on the west side of K-7/US-73. No bicycle lane is provided. Local transit services (busing) are available in the area.

4) EXISTING TRAFFIC CONDITIONS PLUS SITE GENERATED TRAFFIC

a) EXISTING TRAFFIC VOLUMES DAILY AND PEAK HOUR (DIRECTIONAL)

Existing traffic volumes in the area were recorded by KVE between Wednesday, February 9, and Saturday, February 12, 2022. Automated traffic counters were placed on Wednesday adjacent to the location of the proposed driveway, located directly north of the northerly driveway of the existing fast-food restaurant to the southeast. The counters recorded data through the end of Saturday. On Thursday and Saturday, hand tallies of turning movements within the site vicinity were tallied by KVE personnel at expected peak times, described in the “Trip Generation” section later in this study.

Weekday Counts. The existing AM Peak Hour Midday Peak Hour of the adjacent street was determined using data from counts on K-7/US-73 taken from Wednesday through Saturday. In selecting the peak hour for this study, the expected peak time of sales using data from 7 Brew was compared with the peak times of weekday traffic along K-7/US-73. Both data sources were considered because the ITE expected trip ends per hour is based on the peak volume of the adjacent street. The Weekday AM Peak Hour for the development is selected as 7:15-8:15 AM, and the Weekday Midday Peak Hour is selected as 12:00-1:00 PM.

Saturday Counts. Based on sales data from 7 Brew, Saturday peak arrivals occur between 8:30 and 10:30 AM, and midday arrivals are less than those in the morning. Saturday traffic data from the automated counters suggest a steady increase in street traffic volume throughout the morning. The Saturday AM Peak is selected as 9:30-10:30 AM, and no Midday or PM Peak Hour for Saturday is analyzed in this study.

Existing traffic volumes daily and peak hour (directional). Existing turning movement counts for each peak hour are available in **Appendix B** and summarized in **Appendix C**. Existing traffic volumes from the automated traffic counter data is summarized in **Appendix D**.

b) SITE-GENERATED TRAFFIC

Vehicle traffic will be generated due to this proposed development. Due to the maturity of development in the vicinity, 20-year future traffic conditions are considered similar to developed traffic conditions. Thus, the analysis that follows applies to the design year of 2022.

Trip Generation. The Institute of Transportation Engineers (ITE) Manual, 10th Edition was used to project vehicle trips due to the proposed development. This study analyzes traffic for weekday daily and hourly peak rates, as well as Saturday hourly peak rates.

Weekday Hourly Generated Rates. The ITE manual supplies weekday generated rates with ITE 937, “Coffee/Donut Shop with Drive-Through Window”. Weekday hourly ITE generation rates are based on the peak hour of the adjacent street.

The AM Peak Hour ITE trip generation rate is based on the adjacent street volume for the selected peak hour. The Midday Peak Hour ITE trip generation rate is taken as the average of the AM and PM rates, based on adjacent street volume for the selected peak hour. This is substantiated by 7 Brew order data, which indicate weekday midday peak rates are approximately 50-60% of the morning peak rates. The ITE Trip Generation rates based on the adjacent street’s peak volume are shown in **Table 1** below. Portions of the ITE reference is available in **Appendix N**.

Table 1. ITE Trip Generation: Rates based on Adjacent Street Peak Volume

Trip Generation (ITE 937: Coffee/Donut Shop with Drive-Through Window)	Weekday	
	AM	Midday*
K-7/US-73 Peak Hour Volume (PHV)	1,461	1,586
Trip End Rate - ITE (Trip Ends/PHV)	0.15	0.10
Peak Hour Generator (Trip Ends)	219	159
Enter	112	78
Exit	107	79

*Since no Midday Peak trip rate is provided by ITE 937, the rate shown is an average of the AM and PM peak trip rates.

Weekday Daily Generated Rates. In contrast to the hourly generated rates being based on the peak volume of the adjacent street, the weekday daily generated rates are based on the Gross Floor Area (GFA) of the proposed building. (No option within ITE 937 is available for daily rates based on the adjacent street volume.) The ITE 937 rate based on GFA appears to under-estimate daily arrivals when compared to 7 Brew data. Thus, for the purposes of this study, daily arrivals for the proposed development are based on a building size of three (3) times the actual proposed total on-site building area (3×581 ft²). The resulting rate accords with daily arrival data from 7 Brew. Daily ITE Trip Generation rates based on building GFA are shown in **Table 2** below.

Table 2. ITE Trip Generation: Rates based on Building Gross Floor Area

Trip Generation (ITE 937: Coffee/Donut Shop with Drive-Through Window)	Weekday	Saturday
	Daily	AM Peak
3 × GFA (ft²/1000)	1.743	1.743
Trip End Rate - ITE (Trip Ends per 1000 SF GFA)	820.38	87.70
Peak Hour Generator (Trip Ends)	1430	153
Enter	715	76
Exit	715	76

It is noted that Land Use 938, “Coffee/Donut Shop with Drive-Through Window and No Indoor Seating” is an applicable category for the proposed development because 7 Brew provides no indoor seating. However, this land use has a very small sample size in the ITE manual (10th Edition), and thus is not used in this study.

Reductions for pass-by trips. The ITE Manual 10th Edition guidance document on trip generation rates states, “All land uses in the 800 and 900 series are entitled to a “pass-by” trip reduction of 60% if less than 50,000 ft²” (**Appendix E**). A 60% reduction has been applied to the trip generation rate for vehicles in the Weekday AM and Midday Peak Hours to account for pass-by trips in accordance with ITE guidance. Below, **Table 3** shows ITE trip generation for each timeframe, accounting for pass-by trips.

Table 3. ITE Trip Generation: Pass-by Versus New Trips

		Weekday			Saturday
Trip	Rate	AM	Midday	Daily	AM Peak
Pass-by	60%	131	95	858	92
New	40%	88	64	572	61
Total	100%	219	159	1,430	153

Reductions for diverted-link trips. For purposes of assignment, no distinction is made between new trips and diverted-link trips. Thus, no reductions from this category are applied.

Reductions for internal capture. Because no cross-access is provided to other properties, internal capture rates do not apply to this development.

Trip distribution. Based on the ITE manual, vehicles of this Land Use enter and exit the development at nearly equal rates (a 51/49 entering/exiting split in the AM, 50/50 split in the PM, and 50/50 daily split.) Based on counts taken Wednesday-Thursday, the weekday hourly North/South distribution of K-7/US-73 is 64/36 in the AM and 48/52 at midday. The weekday daily North/South distribution is 48/52. On Saturdays, the North/South distribution is 41/59 in AM Peak Hour and 47/53 across the day.

Modal split. Nearly all trips in the project vicinity are made by automobiles. Alternate vehicle transportation modes, such as transit or rail, are not considered in this study.

Trip Assignment. Vehicle assignment nearby the proposed development is shown in tabular form in **Appendix F** (existing traffic) and **Appendix G** (proposed traffic) for each timeframe.

c) THROUGH TRAFFIC

Traffic that passes the site in the proposed condition, or through traffic, is considered within the study area. Values for through traffic are based on data both from automated traffic counters and from the hand tallies of turning movements.

Method of projection. To determine through-traffic volumes from available data, four categories of vehicles on South 4th Street (K-7/US-73) are considered: (1) vehicles that passed the counter, (2) those that did not, (3) vehicles counted by automated counters, and (4) vehicles counted by hand tallies. Given a timeframe of interest, through traffic within the study area is determined by subtracting all observed turning movements that passed the counter from the total number of northbound/southbound traffic that passed the automated counters. **Figure 4** on the following page shows how turning movements are organized and numbered.

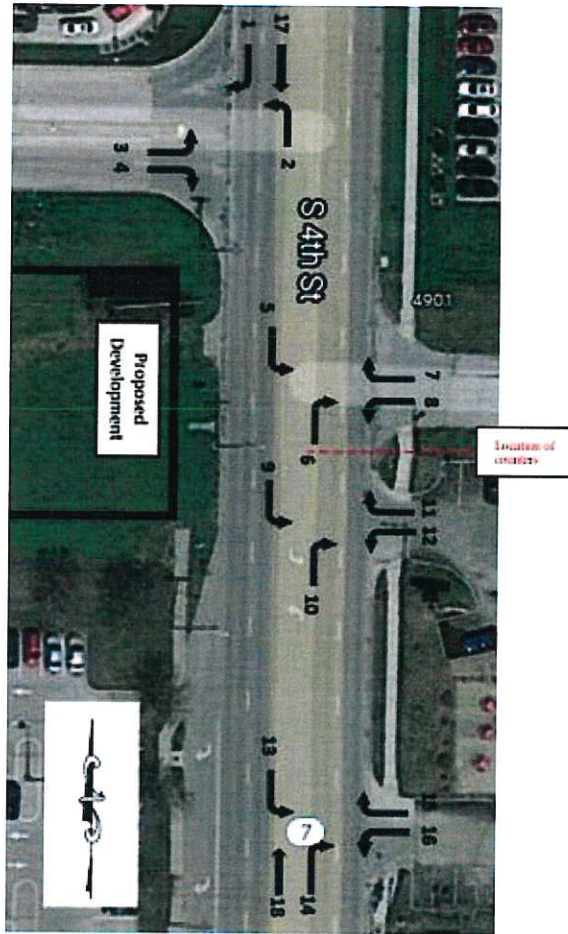


Figure 4. Existing Turning Movements

Of the turning movements 1-16 per **Figure 4**, movements 2, 4, 6, 8, 9, 11, 13, and 15 do not pass the automated counters. Turning movements 1, 3, 5, 7, 10, 12, 14, and 16 do pass the automated counters.

Trip generation. This development is not expected to increase through traffic in the area.

Trip distribution. Proposed north/south distribution of traffic is expected to match the existing distribution.

Modal split. Transportation modes alternative to automobile traffic is considered insignificant for this area, and thus is not addressed in this study.

Trip assignment. Proposed trip assignment for proposed through traffic is discussed in the previous section and shown in **Appendix G**.

d) TOTAL SITE AND THROUGH TRAFFIC

Combined through and site traffic in the proposed conditions is shown in **Appendix G** where assignment is displayed for each timeframe.

5) TRAFFIC ANALYSIS

a) PROPOSED SITE ACCESS

Site access is proposed by a median-separated two-way driveway. A valley gutter is proposed, and the driveway will be sloped to keep all runoff from the site to flow away from the KDOT Right of Way in the proposed conditions. The proposed width of access (measured face of curb to face of curb) is 12 ft for the entrance driveway and 24 ft for the exit driveway. A median (measured face of curb to face of curb) at 7 ft in width is proposed between the two driveways. The driveway's proposed outer radii are 25 ft, measured along the back of curb.

Property clearance from the entrance (northerly) driveway to the north property line is approximately 37 ft; clearance from the exit (southerly) driveway to the south property line is approximately 51 ft. The proposed access will be constructed of concrete at a thickness of 6 inches.

b) CAPACITY AND LEVEL OF SERVICE

Capacity is analyzed by Synchro 10, which references the 2010 Highway Capacity Manual (HCM). Intersections within the area of significant traffic impact are analyzed by Synchro. In the following timeframes: Daily, AM Peak, & Midday Peak weekday traffic, as well as Daily & AM Peak Saturday traffic.

Four driveways near the proposed development's driveway are analyzed, labeled as follows (per **Figure 5** on next page): "Driveway 1" is the driveway immediately north of the proposed driveway with turning movements 3 and 4; "Driveway 2" is the private east/west road connecting to an industrial development further east, with turning movements 7 and 8; "Driveway 3" is the northerly driveway to the existing restaurant SE of the proposed development on the east side of K-7, with turning movements 11 and 12; and "Driveway 4" is the southerly driveway to this restaurant, with turning movements 15 and 16.

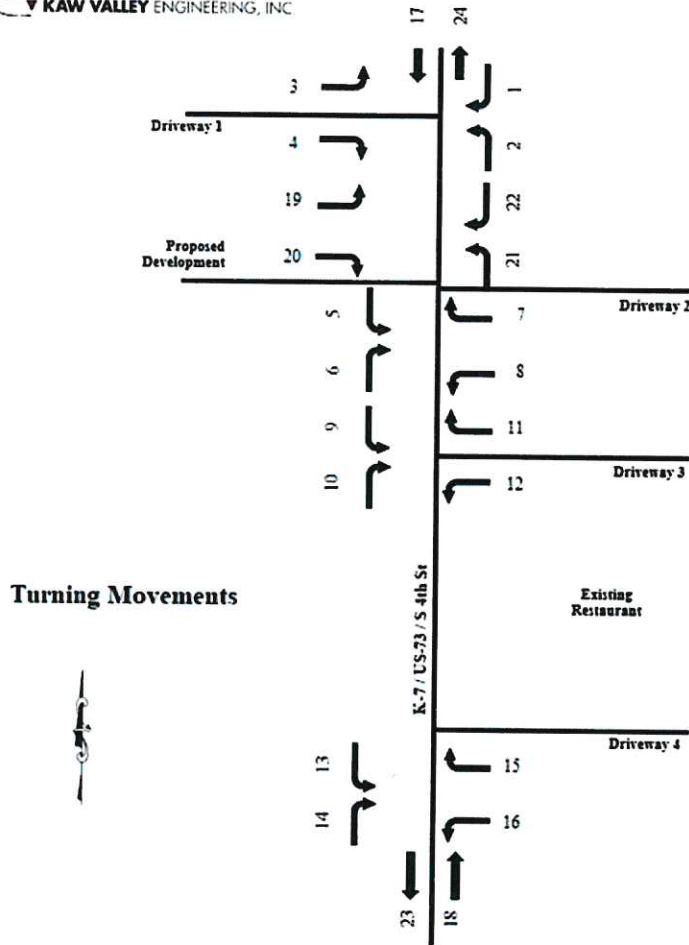


Figure 5. Driveways Analyzed

Traffic impact by a development on an intersection is determined through a volume-to-capacity ratio and control delay. For the 7 Brew development, analysis was conducted using Synchro 10, a traffic analysis software that adheres to the 2010 Highway Capacity Manual (HCM 2010). **Table 6** below indicates the Level of Service determination based on control delay for unsignalized intersections (two-way stop controlled [TWSC]).

Table 6. Level of Service Criteria for Unsignalized Intersections (HCM 2010)

Level of Service	Average Control Delay (seconds/vehicle)
A	0-10
B	>10-15
C	>15-25
D	>25-35
E	>35-50
F	>50

Source: *Highway Capacity Manual 2010*, Transportation Research Board, 2010

The exit driveway has a single left turn lane and a single right turn lane. Results of the HCM 2010 TWSC intersection capacity analysis are summarized in **Tables 7 and 8** below, and additional results are shown in **Appendix H**.

Table 7: Level of Service Results: AM Peak Hour at Proposed Development (HCM 2010)

	AM Weekday Peak Hour			
	Left Turn (Exit)	Right Turn (Exit)	Southbound Right (Enter)	Northbound Left (Enter)
Volume to Capacity Ratio	0.227	0.079	0	0.057
Control delay (seconds)	30.3	10	0	8.4
Level of Service	D	B	N/A	A
Queue Length, 95 th Percentile (veh)	1.1	0.3	0	0.2

Table 8: Level of Service Results: Midday Peak Hour at Proposed Development (HCM 2010)

	Midday Weekday Peak Hour			
	Left Turn (Exit)	Right Turn (Exit)	Southbound Right (Enter)	Northbound Left (Enter)
Volume to Capacity Ratio	0.309	0.088	0	0.058
Control delay (seconds)	49.4	11.8	0	9.9
Level of Service	E	B	N/A	A
Queue Length, 95 th Percentile (veh)	1.2	0.3	0	0

The Level of Service determination is based on the projected control delay in the controlling peak hour. The AM Peak Hour controls for site-generated traffic and on-site operations as shown in section 5(e) of this study; however, for traffic exiting the site, the Midday Peak Hour controls.

c) EXISTING CRASH PATTERNS

Existing cash data since 2017 along US-73 between Muncie and Eisenhower Roads were acquired through a KDOT Right of Way open records request submitted 1/20/2022 and provided 1/26/2022. Per the State Highway Safety Analyst who provided the information, data from 2021 and 2022 is considered incomplete and unofficial.

Within the influence area, occurrences include an angle crash as well as sideswipe crashes (same direction), occurring north of the subject property. Records do not indicate any recent crashes adjacent to subject property.

Outside the influence area along K-7/US-73, rear end and angle crashes have been noted, especially near Commercial Street. The most common crash along K-7/US-73 is the angle (side impact) crash.

No fatal crashes were recorded in the information received from the open records request.

d) TRAFFIC SIGNALS ANALYSIS

Analysis of traffic signals is provided in this study. This is because the nearest signalized intersections along K-7/US-73 (Muncie and Eisenhower Roads, each approximately ¼ mile from the proposed driveway) are not part of the influence area.

e) SITE CIRCULATION AND PARKING

Site Circulation. On-site traffic circulation and queueing is analyzed using the Stochastic Queuing Analysis method.¹ Traffic intensity and average vehicle queue length are computed as follows:

$$\rho = \frac{\lambda}{\mu} \text{ (Eq. 1)}$$

Where:

ρ is the traffic intensity
 λ is the mean arrival rate (per hour); and
 μ is the mean service rate (per hour)

The average vehicle queue is then calculated as follows:

$$E(n) = \frac{\rho}{1 - \rho} \text{ (Eq. 2)}$$

Where:

$E(n)$ is the average vehicle queue in the drive-through lane during the selected timeframe.

The mean arrival rate (λ) described in Equation 1 depends on the ITE projected trip generation. The weekday AM Peak Hour arrival rate exceeds that of the Weekday Midday Peak Hour rate and the Saturday AM Peak Hour rate, and thus the weekday AM rate governs. The weekday AM Peak Hour arrival rate is therefore taken as the mean arrival rate (λ) to the site. The mean arrival rate is analyzed on a per-lane basis, where increasing the number of lanes decreases the arrival rate. It is noted that the hourly arrival rate is independent of the pass-by trip reduction, and thus is a different value from the number of new trips generated in the AM Peak Hour.

The mean service rate (μ) described in Equation 1 is the average time taken per vehicle between an employee's reception of a drink order to the delivery of the order to the customer. (The 7 Brew establishment does not serve food; drinks are its primary menu item.) The mean service rate is independent of the time required for the customer to arrive onsite, stop the vehicle, and pay; this is because employees that receive orders do not make or deliver the orders.

In addition to arrival and service rates, the average time spent in the drive through is computed by the following equation:

$$E(v) = \frac{1}{\mu(1 - \rho)} \text{ (Eq. 3)}$$

Where:

$E(v)$ is the average time by one vehicle spent in the drive though (in hours).

¹ Green, Cory, and Vijay Kannan. *Trip Generation Study of Coffee/Donut Shops in Western NY*.

Drink orders are recorded with electronic tablets by employees who walk or jog to the location of a stopped vehicle. Payment is made at the time of the order. This dynamic method of taking orders reduces the average wait for placing an order compared to a static order window, since the employee who takes the order is free to move to the nearest vehicle. After making an order, the customer drives forward to the next open space in the queue to receive the order. Two outdoor, semipermanent tables will be used by employees to process orders, give straws, etc.

Drink orders are delivered by employees who exit the building by one of the three doors. (The Floor Plan in **Appendix I** shows that two sliding glass doors are provided on the north and south sides of the building, and a third door is provided on the west side.) Employees have the ability to deliver an order to the customer at the place the vehicle is stopped, rather than being limited to a single location. Orders are commonly delivered to customers in the front position of each drive-through lane.

The study on coffee shops in the northeast United States published by Green, et. al. is used in consideration of the mean service rate. Page 9 of that study states: “Based on our observations, the average service time during the AM Peak Hour was 30 seconds per vehicle. This corresponds to two vehicles every minute or 120 vehicles per hour. A default of 120 vehicles per hour can be based for the service rate unless more specific data is available.” Data available to KVE for coffee establishments during weekday morning hours are summarized in **Table 9** below.

Table 9. Characteristics of Coffee Establishments (AM Weekdays)

Source (Year)	Location	Average Order Time (sec)	Average Service Time (sec)	Food Service	Number of Lanes
Trip Generation Study of Coffee/Donut Shops in Western NY (After 2008)	Erie, Monroe, Livingston, Ontario Counties (NY)	Unknown	30	Unknown	Unknown
Data Collected by a Coffee Establishment (2020)	Oklahoma City, OK	Unknown	43	Yes	1
Data Collected by a Coffee Establishment (2020)	Ames, IA	Unknown	54	Yes	1
Data Collected by a Coffee Establishment (2020)	Council Bluffs, IA	Unknown	38	Yes	1
TIS: Proposed Starbucks with Drive-Through, Stonefield Engineering & Design (2020)	Township of Belleville, NJ	103	35	Yes	1
Order Data Collected by 7 Brew (2021)	Rogers, AR	104	Unknown	No	2
Video: 7 Brew (2021)	Rogers, AR	Unknown	28.7	No	2

A video provided by 7 Brew on November 9, 2021, shows actual drive through traffic operations for a 7 Brew store in Rogers, Arkansas. (This video may be provided upon request by KDOT.) The mean service rate as seen in the video is the average time a vehicle spends in one position in the queue, after its order has been received; each vehicle is assigned a characteristic service rate per arrival. Of 12 cars analyzed in the 4-minute timeframe, the average service time was 28.7 seconds. This value substantiates the average time mentioned in the Trip Generation Study of Coffee Shops by Green, et. al. Thus, 29 seconds per vehicle (124.14 vehicles per hour) is used in this study for queue length design. The resulting estimated demand queue length per lane is computed using Equations 1 and 2 on a per-lane basis. An example calculation for the average queue of vehicles waiting for an order in the weekday AM Peak Hour is shown as follows.

$$\rho = \frac{\lambda}{\mu}$$

$$\rho = \frac{55.9 \text{ veh/hr}}{124.14 \text{ veh/hr}} = 0.450 = \rho$$

$$E(n) = \frac{\rho}{1 - \rho}$$

$$E(n) = \frac{0.450}{1 - 0.450} = 0.818 \rightarrow E(n) = \mathbf{1 \text{ vehicle in queue (AM Peak)}}$$

The average wait time, based on the average vehicle queue, may be computed per Equation 3:

$$E(v) = \frac{1}{\mu(1 - \rho)}$$

$$E(v) = \frac{1}{124.14 \frac{\text{veh}}{\text{hr}} (1 - 0.450)}$$

$$E(v) = 0.0146 \frac{\text{hr}}{\text{veh}} = \mathbf{0.9 \text{ minutes per vehicle in queue (AM Peak)}}$$

The queue length and wait time as shown above are peak hour averages for the purposes of design, not instantaneous maxima. In **Table 10** on the next page, the sensitivity of the vehicle queue length is evaluated. The AM Peak arrival rate per lane (55.9 veh/hr) is kept constant, but the service rate is varied between 10 and 65 seconds.

Table 10: Vehicle Queue Sensitivity (AM Peak Hour)

Arrival Rate (λ)	Arrival Time	Mean Service Rate (μ)	Intensity (ρ)	Queue Length [E(n)]	Average total wait [E(v)]	Average service window wait [E(w)]
(veh/hr)	(sec/veh)	(veh/hr)	(veh/hr)	(vehicles)	(minutes)	(minutes)
55.9	10.0	360.00	0.155	1	0.2	0.03
55.9	15.0	240.00	0.233	1	0.3	0.08
55.9	20.0	180.00	0.310	1	0.5	0.15
55.9	25.0	144.00	0.388	1	0.7	0.26
55.9	29.0	124.14	0.450	1	0.9	0.40
55.9	30.0	120.00	0.466	1	0.9	0.44
55.9	35.0	102.86	0.543	1	1.3	0.69
55.9	40.0	90.00	0.621	2	1.8	1.09
55.9	45.0	80.00	0.699	2	2.5	1.74
55.9	50.0	72.00	0.776	3	3.7	2.89
55.9	55.0	65.45	0.854	6	6.3	5.35
55.9	60.0	60.00	0.931	14	14.6	13.57
55.9	65.0	55.38	1.009*	-112	-120.3	-121.41

*An intensity value > 1 indicates the arrival rate exceeds the service rate. If both rates remain constant in this condition, the queue experiences unbounded continuous increase.

Shaded row indicates the design queue length.

It should be noted that the second lane greatly increases capacity for queueing. Using averages of the available data, the expected average vehicle queues for the AM and PM peak hours are shown in Table 11 below.

Table 11: Vehicle Queue Characteristics by Peak Hour

Category (Peak Hour)	Trip Ends Entering per ITE	Number of Drive Through Lanes	Mean Arrival Rate (λ)	Mean Service Rate (μ)	Intensity (ρ)	Queue Length [E(n)]	Average Time in Drive Through [E(v)]
	(veh/hr)	(Lanes)	(veh/hr)	(veh/hr)	(veh/hr)	(vehicles)	(minutes)
AM	111.77	2	55.88	125.4	0.446	1	0.9
Midday	79.30	2	39.65	125.4	0.316	1	0.7
Saturday	76.43	2	38.22	125.4	0.305	1	0.7

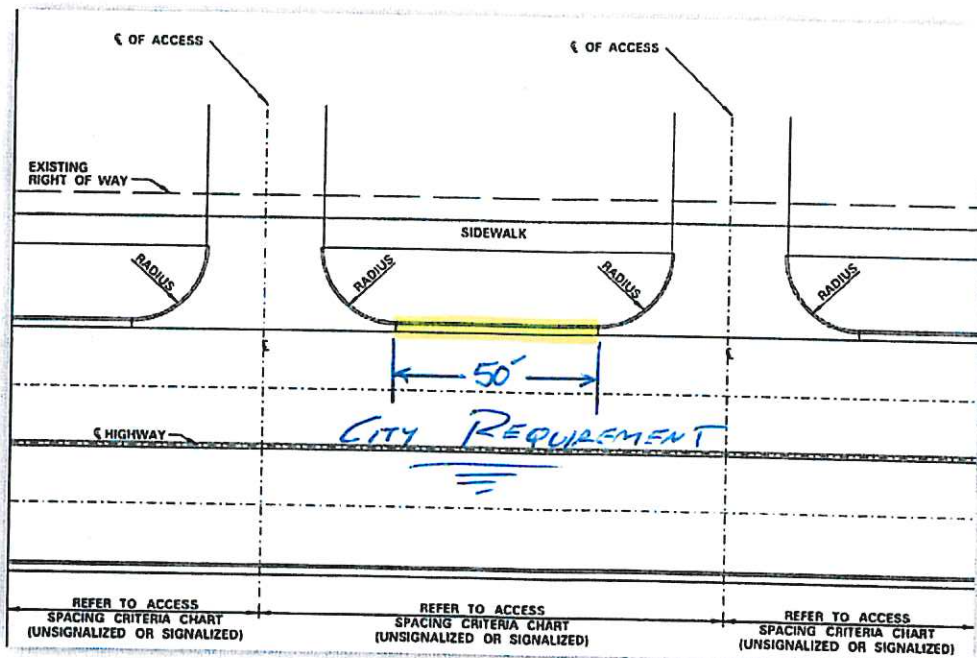
4.3.2 Access spacing—unsignalized and signalized

Access spacing is at the heart of access management. Well-planned access spacing considers factors such as roadway speed, vehicle volumes, and driver expectations to provide a reasonable amount of space for drivers to assess the situation, decide a course of action, and adjust the vehicle's path if necessary. KDOT uses access route classification, area type, access type, and posted speed limit to characterize spacing requirements because these categories consider roadway speed, vehicle volumes, and driver expectation.

This Policy focuses on spacing for unsignalized access points (which represent the majority of access points along state highways). Information for signalized intersection spacing also is provided in order to maximize efficient traffic flow along state highway corridors by planning for major intersections where traffic signals may be placed in the future. Access spacing is measured from centerline of access to centerline of access as depicted in Figure 4-19. KDOT follows the criteria for unsignalized and signalized access spacing as presented in Table 4-6 and Table 4-7.

Intersection influence areas must also be considered when locating an access point. Access may be located in areas outside the intersection influence area provided the location of the proposed access meets the specified criteria for unsignalized access spacing. Guidance on intersection influence areas is found in Section 4.3.1.

Figure 4-19. Access spacing measured centerline to centerline of access (unsignalized/signalized)



Baljit Baidwan, property owner, stated he has a contractor to mow the property and the contractor has been slow at getting out to the subject property. Mr. Baidwan stated he will look into this concern and will get it taken care of. Mr. Baidwan stated he will need to look into the water issue because he is not sure if that is something he needs to deal with or if it is the City's responsibility.

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

Commissioner Whitson stated she does have a concern about traffic, especially on Garland as that road condition is classified as poor.

Commissioner Burks stated if he knew of the correct rezoning at the March meeting, his vote would not have changed; it's simply a mistake from 2009 in the original zoning of the property, which is now being addressed. However, he does sympathize with the community and does expect the grounds maintenance issue to be addressed by the property owner.

Commissioner Homan asked about the maintenance of the pond on the subject property.

Chairman Wiedower stated maintenance, liability, etc. of the pond was discussed at the March meeting. It is the responsibility and liability of the property owner.

Commissioner Whitson stated the benefit of rezoning the property outweighs her traffic concern.

With no further questions/discussion, Chairman Wiedower called for a motion. Commissioner Whitson moved to recommend for approval to the City Commission the rezoning request from PUD, Planned Unit Development, to R-MX, Residential Mixed Use District for Case No. 2022-07 REZ – 1830 S. Broadway based upon all information presented, seconded by Commissioner Burks and passed by roll call 5-0.

2. 2022-08 APPEAL – 4900 S. 4TH STREET

Review site plan for a proposed development at 4900 S. 4th Street. The applicant, John Kollhoff, is appealing the Development Review Committee's unanimous decision to withhold approval of the site plan for 7 Brew Coffee located at 4900 S. 4th Street.

Chairman Wiedower called for the staff report.

Planning Director Julie Hurley stated the applicant, John Kollhoff with 7 Brew Coffee, submitted a site plan for a proposed development at 4900 S. 4th Street. After review of the proposal and discussion with KDOT, staff requested several revisions to the submitted site plan to address City requirements, as well as a Traffic Impact Study (TIS). The revised site plan as submitted and the TIS do not address all City requirements. Staff notified the applicant on April 7th of the decision to withhold approval of the site plan

The Development Regulations places responsibility for final review and approval or rejection of site plans for specified projects with the Development Review Committee (DRC). The DRC is a staff review committee composed of the following personnel: Director of Planning & Community Development, Chief Building Inspector, City Clerk, City Manager, Assistant City Manager, City Planner, Fire Chief, Parks & Recreation Director, Police Chief, and Public Works Director. Section 2.05 states:

1. *The City Planner shall determine if submitted site plans are in accordance with these regulations and then forward all site plan submissions to the Development Review Committee along with a written opinion on the plan's merits.*
2. *The Development Review Committee is responsible for final review and approval of site plans for multi-family residential, mixed-use, mobile home parks, planned unit developments, commercial or industrial developments which are in accordance with these regulations.*
3. *In its review, the Development Review Committee will consult and consider the recommendation of the various departments and agencies affected by the proposed site plan.*
4. *If the Development Review Committee rejects or withholds approval of the site plan the applicant may appeal the decision to the Planning Commission at its next regular meeting. The Planning Commission may recommend approval, disapproval or approval with conditions to the City Commission.*

ANALYSIS

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 U-Haul self-storage facility and Starbucks store. Access to the site is proposed to be directly from 4th Street, which is a State highway and falls under KDOT jurisdiction for approval for access. There is an existing curb cut 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.

Staff has identified the following primary concerns related to the submitted site plan and TIS:

1. 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" (illustrative diagram attached) between the proposed driveway entrance to the site and the existing commercial driveway to the north. This has not been provided. Should the site plan ultimately be approved, a variance request would need to be submitted to the Board of Zoning Appeals regarding this item.
2. 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, an 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 introduces numerous additional potential points of conflict in an already congested area of a State highway, causing significant traffic safety concerns.
3. The TIS indicates that the site plan as submitted would require a right turn lane on 4th Street for entrance to the site. The TIS further indicates that variances would be needed from KDOT for both access spacing and the right turn lane, as neither requirement can be accommodated with the site.
4. Based on the predicted peak customer volume 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.

5. 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 the above noted concerns, the Development Review Committee reached the unanimous decision to withhold approval of the site plan.

ACTION/OPTIONS:

- Recommend approval of the site plan for 7 Brew Coffee located at 4900 S. 4th Street.
- Recommend approval with conditions of the site plan for 7 Brew Coffee located at 4900 S. 4th Street
- Recommend disapproval of the site plan for 7 Brew Coffee located at 4900 S. 4th Street

ATTACHMENTS:

- Site Plan
- Letter to applicant from City staff dated April 7, 2022
- Letter to applicant from KDOT dated April 6, 2022
- Traffic Impact Study – Exclusive of appendices, full TIS available in Planning and Community Development Department
- Diagram of “stand up curb”

Chairman Wiedower stated it appears that withholding the approval from a letter dated April 6, 2022, from the Kansas Department of Transportation (KDOT) dealt with safety issues and turning movements if 7 Brew is permitted to develop at the subject location. Chairman Wiedower asked if the applicant has submitted a completed application to KDOT.

Ms. Hurley responded she is unaware if a completed application has been submitted to KDOT.

Chairman Wiedower asked if the reason KDOT withheld approval was because a completed application had not been submitted plus the safety concerns for development at this location such as traffic volume, turning movements, short spacing between access points, etc.

Ms. Hurley clarified the letter Chairman Wiedower is referring to is a letter from KDOT that was provided to the commissioners for informational purposes. KDOT has their own separate process for approval of access onto state highways, which 4th Street is designated as a state highway. KDOT's requirements have not been met, which are separate from the City's requirements. However, KDOT and the City of Leavenworth share a lot of the same concerns. The City's reasoning for withholding approval is based on the five issues outlined in the policy report based on city staff concern. KDOT shares a lot of the same concerns but their process for approval is completely independent of the City's process for approval.

Chairman Wiedower asked for clarification on the Planning Commission's options.

Ms. Hurley stated the Planning Commission can recommend approval of the site plan as it is, approval with certain conditions or recommend denial. The Planning Commission's recommendation will go to the City Commission on May 24, 2022 to determine final approval from the City's standpoint. The applicant will still need to work through KDOT's process and get approval from KDOT for that access onto 4th Street.

For clarity, Commissioner Whitson asked that the applicant has met all the City's requirements other than the five listed in the policy report.

Ms. Hurley responded the only City stated requirement from they are not meeting is the 50' access spacing. The remaining four issues are not specific requirements but rather serious concerns staff has given the layout of the site.

Commissioner Whitson asked if the 50' access spacing must be approved by KDOT.

Ms. Hurley stated the 50' access spacing is a City requirement. KDOT has their own requirement, which is 300' separation. Therefore, the applicant would not only need a variance for KDOT's requirement, which is independent of the City's, but would also need a variance through the Board of Zoning Appeals for the City's 50' separation requirement.

Chairman Wiedower asked if anyone in the audience would like to speak.

John Kollhoff, franchisee for 7 Brew Coffee, stated they began this process back in October by contacting KDOT. Due to inaction or active interference by the KDOT supervisor and engineer, the applicant reached out to their supervisor in Topeka, KS. During a conference call with the supervisor in Topeka, which many City staff members were a part of, where he indicated a willingness to provide access to this particular site for the purpose of developing 7 Brew Coffee.

Mr. Kollhoff further stated part of KDOT's procedure creates a catch-22. There is constant communication between KDOT and the city on this process; and one of KDOT's requirements is city approval. Therefore, KDOT is not going to approve the site plan if they have a reasonable belief the city is not going to approve it.

Mr. Kollhoff stated 7 Brew is a drive-thru only beverage business. They have a store located in Topeka on Wanamaker Road; and that location had many of the same concerns that are stated for this current site in Leavenworth. There are similar traffic patterns between the two sites, there are two lanes of traffic going in either direction as well as a central turn lane. The location in Topeka has been open since February 21, 2022 and has had no significant traffic issues. Mr. Kollhoff further stated the average wait time for a drink is under 3 minutes; 5 minutes during a rush. Looking to hire 50 people in the community, paying good wages.

Chairman Wiedower asked what it meant to Mr. Kollhoff, when KDOT stated the "willingness to allow access".

Mr. Kollhoff stated the way he understood that statement was that KDOT would be willing to work with them to make sure they could make the site work for their business.

Chairman Wiedower stated the reason he asked this question is because the issue is for us who live in this community, who know the other businesses around the area, who know the traffic in the morning, who know the traffic during peak times, etc. The community knows that access and knows how that area can get jammed up with traffic. If you put a counter there to count cars, you will see a ton of traffic in that area and it will be a traffic issue.

Chairman Wiedower asked what the hours of operation will be.

Mr. Kollhoff stated 7 Brew is open Sunday through Thursday from 5:30 a.m. to 10:00 p.m.; and Friday and Saturday from 5:30 a.m. to 11:00 p.m.

Commissioner Whitson stated it was mentioned that a study was done that drinks are made under 3 minutes. Was an actual study done or was it just someone timing it?

Mr. Kollhoff responded it is important to them to have fast service. At first they had issues in Topeka so they conducted their first traffic study, which showed a 4-1/2 minute service time. The home base for this franchise is in Arkansas. At this location, they put a drone in the air and timed it. The time was significantly less at around 3 minutes service time per vehicle.

Regarding hiring 50 people in the community, Commissioner Burks asked if they have driven down 4th Street to see the now hiring signs spread throughout the community.

Mr. Kollhoff responded he has heard similar concerns from other people but hiring people has not been an issue for 7 Brew Coffee.

Chairman Wiedower asked if it will be two or three shifts a day.

Mr. Kollhoff stated they typically have three shifts.

Commissioner Whitson asked what they plan to do if they do not receive the city's approval.

Mr. Kollhoff responded there is a possibility for a different location within the City of Leavenworth.

Chairman Wiedower asked they did a traffic study using the traffic counter strips to determine how much traffic/movement they expect to go by the proposed site area.

Mr. Kollhoff responded they did a Traffic Impact Study, which provides some of that information; but they are relying on KDOT's traffic counts, which are performed every year or two.

Commissioner Homan stated his concern about customers trying to get into the proposed site area, especially without a deceleration lane.

Mr. Kollhoff does not see this as a problem. If someone is heading south and trying to turn left into 7 Brew, people will just need to stop. Mr. Kollhoff further stated the plan is for one lane going into the site but then it rapidly opens up to two lanes for the drive-thru. There are also two lanes to exit the site allowing customers to turn right or left.

Commissioner Waugh asked if the layout for the Topeka store is similar to the proposed site.

Mr. Kollhoff responded it is very similar. Parking is at the back of the lot but otherwise the flow is very similar. The entry lane is one lane but it is almost two lanes wide.

Commissioner Whitson asked if the difference with dealing with KDOT for the Leavenworth site versus the Topeka site is that they did not have to deal with KDOT over their 300' separation requirement at their Topeka site.

Mr. Kollhoff responded they did not need to deal with that but still had to deal with the City of Topeka.

Randy Jackson, property owner, voiced his support for the project. Believes a coffee shop is an ideal development for this piece of property. If it does not get approved, it would be like the city saying that the highest and best use for this piece of property is a billboard.

Addison Bliss, Veritas Architecture & Design, stated his concern if this is going to be allowed anywhere along 4th Street because these situations are going to be present every time you try to develop along 4th Street.

Mr. Bliss spoke about the five primary concerns staff has identified related to the proposed site plan. Item one regarding the 50' separation, the zoning is not defining what that is, and in our mind it is still reasonable to say that a 50' distance from center line access to center line access is what could be applied for something like this. KDOT measures it from center line to center line 300 feet. KDOT's access separation requirement is not achievable with this site or with many sites along 4th Street. Mr. Bliss further stated by measuring center line to center line of access they are providing 63' of the 50' requirement. Believes the 50' of stand-up curb is a clarification outside of the actual zoning code.

Mr. Bliss stated item two states the proposed development introduces numerous additional potential points of conflict in an already congested area. This will be an issue every time they try to install a 7 Brew unit. The idea behind KDOT approving this wasn't necessarily just because they thought it could; it really was should. Mr. Bliss believes the response was it does have access today so they are not in a position to disallow access from a legal means. It is improving the access and making it larger but disallowing the access to this site where there is existing access is not possible on KDOT's agenda. Mr. Bliss would like this item to be struck from the list.

Mr. Bliss stated item three states the TIS indicates that it would require a right turn lane as well as the access spacing requirements. This should be approved with the condition that KDOT approves it. By item three stating the access spacing and right turn lane cannot be accommodated with this site is saying this parcel of land is undevelopable.

Mr. Bliss moved to item four, which states based on the predicted peak customer volume, it's anticipated that the stacking would back up onto 4th Street. The proposed development plan shows 23 cars on the site, which far exceeds every restaurant venue you're ever going to have offered on a project along 4th Street. Mr. Bliss further stated he received a study this morning showing drinks are being made in 15.4 seconds. Stacking could happen on opening day but will stabilize in a couple of months.

For item five, Mr. Bliss stated the billboard base has a three foot wide post. The existing telephone poles on this site are approximately 18 inches wide and are closer to the street than the billboard. The only reason U-Haul is not having a problem with this currently is that they are old enough that they haven't had to do the site improvements for a sidewalk. Mr. Bliss said they would not have any problems with that if it wasn't adding the sidewalk into the state highway, which is a little disjointed. If the stop bars did not have to be so far away from the street in the way they are drawn, then cars will pull up all the way to the street anyway. The stop bars are only drawn back that far because the sidewalk of the required city improvement is directly at odds with the idea of being far enough up towards the street you would actually be able to see around that. The U-Haul customers are roughly the same distance on their exit lane from it as 7 Brew would be, just on the opposite side of viewing traffic.

Chairman Wiedower stated Mr. Bliss brought up a valid point stating this is a prime location, and any business that develops there will have an impact. There are certain businesses that could develop at this site that would have less impact with traffic than other businesses. Chairman Wiedower further stated the commissioners could look at a SWOT analysis of the strengths, weakness, opportunities and threats of the proposed development at this site. Traffic and safety are big concerns and should be minimized.

Public Works Director Brian Faust stated the city's 50' spacing requirement is less than he would like to see on an arterial road. This was clarified very early in the process that it is 50' of stand-up curb. Typically, on a commercial entrance there is a 25' radius to enter. If this was the case for center line of driveway to center line of driveway, we would never reject any driveway entrance on an arterial roadway. The 50' stand-up curb is important to staff and is a lot less than KDOT requires. Trying to provide that access spacing to help improve the safety for people using the road just to get through as well as people trying to get to this business or other businesses.

Mr. Faust further stated the business to the north, Starbucks, does not have direct access onto 4th Street. Their access is from the U-Haul site. Staff suggested for 7 Brew to look into taking direct access off the U-Haul site as well. It is staff's understanding U-Haul did not give 7 Brew permission for direct access for their site.

Chairman Wiedower asked Mr. Faust if he has concerns with the proposed development plan with safety, traffic, impact to the city that may be negative, etc.

Mr. Faust responded in the affirmative. 7 Brew Coffee would be great to have it is just that the access to that site is tricky, which causes concern.

Commission Whitson asked if there are any other solutions since U-Haul denied direct access to their site.

Mr. Faust stated like the business to the north, the biggest thing is that direct access off the U-Haul site, which would take away staff concerns about that direct access to 4th Street, the proximity to the U-Haul entrance, the turn lane into Home Depot and the access points directly across the street. According to KDOT, this driveway created 19 additional conflict points.

Commission Whitson asked if staff knew the reasoning U-Haul denied access.

Mr. Kollhoff stated they reached out to both Home Depot and U-Haul. Home Depot never responded. Mr. Kollhoff does not know the relationship between U-Haul and Starbucks but U-Haul stated they were not amenable to giving 7 Brew Coffee access. The applicant's civil engineer said it could possibly be done but there is about an 8 foot elevation change from the U-Haul property to the back side of the subject property. So there are some issues that Mr. Kollhoff does not know if they are not insurmountable but right now the biggest issue is that U-Haul has not been willing to give access.

Chairman Wiedower asked Mr. Faust if the traffic flow in that area and vehicles trying to enter the subject property site is a concern.

Mr. Faust responded in the affirmative. It is not necessarily as much of a concern of people entering the site but rather people exiting the site turning right or turning left is a grave concern.

Commissioner Whitson stated what she heard Mr. Bliss saying was that it is a common and present problem. However, Commissioner Whitson said even if it is a common and present problem we are now piggybacking on top of that problem and making it even worse.

Commissioner Burks stated he keyed in on existing crash patterns. Does not believe there is enough evidence to cause a huge concern based on the 2021-22 crash pattern data. Commissioner Burks further stated he does not believe the traffic pattern on 4th Street will change just because of the proposed business.

Mr. Faust stated even if there is not increased traffic on 4th Street because of the proposed business, there would be a lot of additional traffic turning in and pulling out in an already congested area.

Commissioner Waugh stated he noticed in the traffic survey they had a level of service of delta in the morning trying to make a left-hand turn and an E in the afternoon, which is worse. Up to 50 seconds weighing every single car. The coffee shop may be able to get customer drinks quickly, but Commissioner Waugh shares the concern with stacking onto 4th Street at certain times of the day. It is not how quickly you get a drink, it is how quickly you can make a left-hand turn with a constant volume of traffic.

Commissioner Burks asked if there is a right-hand turn only option.

Mr. Faust stated in the traffic study the applicant looked into a three-quarters turn.

Mr. Bliss stated they had further conversations with their civil engineer. The three-quarters turn may not be an option because the requirement at the median is 22 or 25 feet for the blockade to happen to keep you from effectively turning left. It is not wide enough to actually affect that and without that being available the three-quarter turn is not a good idea because people will just try to turn left and block a right-hand turn lane.

Police Chief Pat Kitchens stated when the Police Department tries to improve traffic flow and reduce accidents, there are three things they try to do. One of which is education, i.e. do not drink and drive, wear your seatbelt, etc. Another is enforcement, i.e. you need to slow down. The other big area that is often forgot is engineering. When evaluating something, how does the engineering help us to control traffic or does it potentially hurt us. Chief Kitchens stated he feels that maybe it is creating problems that would cause concern.

Chief Kitchens stated he has always had an issue with stacking of traffic on major thoroughfares, such as Metropolitan, 4th Street, etc. When the accident occurs, it is the police officers who are left to deal with it. Very often people get frustrated because they want to know why the police cannot do something about the issue and there is nothing the police can do if we create this problem and there are accidents. So when reviewing a site plan or development, the police are looking at it from the standpoint are we creating a problem with engineering or is engineering helping us resolve an issue and maybe not make it worse.

Chief Kitchens further stated he believes this plan is going to create a self-circulating problem. Based on years of experience and a review of common sense, you will have people waiting to exit onto 4th Street but they cannot exit because people are waiting to enter and they will all be stuck there and it will get progressively worse. It will probably be worse in the morning and again late in the afternoon. In this situation, engineering is not helping us but rather engineering is potentially

hindering us and creating a problem the Police Department will have to deal with. The police will be dealing with accidents or directing traffic; but the officers cannot direct traffic because there is nowhere to direct them to, there is no signal, intersection, or anything that is going to dramatically alter driver behavior, which is oftentimes very frustrating for police officers and the public when drivers do not follow the plan.

Chairman Wiedower asked if the general area around the subject property is already an area of concern for the police with traffic flow and accidents.

Chief Kitchens responded the intersection of 4th Street and Limit, which is just to the south of the subject property, is oftentimes the busiest intersection in the entire county in terms of traffic counts. The intersection near the subject property, at 4th Street and Eisenhower, is in the top two or three in terms of accidents. Introducing another element relatively close to this intersection is likely to cause more accidents.

Mr. Bliss stated in a capitalist work we do not get to choose the most ideal site for this project. The zoning allows this development. It is an existing parcel with an existing access and should be approved because of that.

Chairman Wiedower stated the positive of this site plan is a financial gain for the city, employing people in the community, paying taxes, etc. However, after listening to the concerns from staff, is financial gain greater than safety.

Commissioner Whitson stated she agrees with it coming down to financial gain versus safety.

Commissioner Waugh agrees it comes down to financial versus safety. Also concerned with traffic backing-up on 4th Street and the ability to make a left-hand turn or even an exit.

Commissioner Burks believes we will have the same situation not matter what we do at this location whether it is today, tomorrow or next year. He further stated he has lived here for 13 plus years and has never been in an accident in this area nor has he ever seen an accident on 4th Street. This is an opportunity and betterment for the community.

Commissioner Homan stated without question, the highest and best use of the property is commercial. However, does not believe the highest and best use is for a fast food type business with high traffic flow going in and out of that area. Only one access point is a safety concern.

Chairman Wiedower stated sooner or later a business will develop on the subject property. We are dealing with greater impact and less impact, and to find an ideal business for this location that will be in harmony in that area.

Chairman Wiedower asked staff that if the Planning Commission recommends approval this item will then go to the City Commission for final approval.

Ms. Hurley responded in the affirmative stating the Planning Commission will make a recommendation of yay or nay, which will go to the City Commission at their May 24th meeting. The City Commission will consider all this information again as well as the Planning Commission's recommendation and make a final determination.

Commissioner Burks stated if he were to make a motion, it would be to recommend approval with conditions that it meets all KDOT requirements to include safety for the site plan.

Chairman Wiedower asked how this would alter the safety and traffic flow.

Commissioner Waugh stated it would not change the physical layout of the site plan but the applicant would need to get waivers/variances from KDOT.

Commissioner Burks stated after reading through the policy report, KDOT has a responsibility to make this safe for the community and for that highway.

Chairman Wiedower asked how KDOT could make it safe when the applicant does not have access through Home Depot or U-Haul.

Commissioner Whitson asked if KDOT could contact U-Haul about direct access for the subject property.

Chairman Wiedower stated KDOT would probably not be involved with the business transactions.

Ms. Hurley stated when KDOT give their approval they want to know the city has given approval first. With KDOT approvals there are different levels. There is district approval, which is located in Bonner Springs, Kansas; and there is state level approval. Ms. Hurley believes that if the city's determination is that the city approves this contingent upon KDOT approval that would likely be able to get to a level at KDOT where the applicant could get approval from KDOT.

Chairman Wiedower asked Chief Kitchens if this commission recommends approval contingent upon KDOT's approval, would that make the him feel better about the safety and traffic concerns for this site.

Chief Kitchens responded in the affirmative but further stated he believes it will still be a problem. Additionally, since the applicant is requesting something special based off the engineering design, there are a couple variances they will need to receive from KDOT before KDOT will approve the site plan. It is concerning how many special permissions and conditions the applicant will need to get through in order to have the site plan approved.

Chairman Wiedower asked the applicant if he foresees any issues with receiving the required variances from KDOT.

Mr. Kollhoff stated it is difficult to respond without knowing what those variances might be. Tonight's meeting is just the first hurdle of this process, and if approved by the City Commission, the applicant is expecting to go back to KDOT to go through their process.

Ms. Hurley stated as a reminder, the applicant will need the variance from the City's Board of Zoning Appeals for the reduced separation between the driveways. The City's variance is separate from KDOT's variances.

With no further questions/discussion, Chairman Wiedower called for a motion to recommend approval, recommend approval with conditions or recommend denial of the site plan for 7 Brew located at 4900 S. 4th Street to the City Commission. Commissioner Burks moved to recommend approval to the City Commission subject to receiving all required variances and approvals from KDOT of the site plan for 7 Brew Coffee located

at 4900 S. 4th Street, seconded by Commissioner Homan and passed by roll call 4-1. Commissioner Waugh voted nay.

Ms. Hurley stated this item will go to the City Commission on Tuesday, May 24, 2022 for final determination.

With no other business, Chairman Wiedower adjourned the meeting at 7:37 p.m.


Minutes taken by Administrative Assistant Michelle Baragary.

POLICY REPORT NO. P&R 07-22
Parks & Recreation Department
River City Community Players Agreement
May 24, 2022

PREPARED BY:


Steve Grant
Parks and Recreation Director

REVIEWED BY:


Paul Kramer
City Manager

ISSUE:

Review the 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.

BACKGROUND:

Initiated in 1977, the RCCP organizes and promotes the dramatic arts in Leavenworth, utilizing the city-owned Performing Arts Center to hold productions. The City of Leavenworth and the RCCP have a memorandum of agreement between the two parties for this purpose. City staff met with RCCP President Ron Mazzia to discuss updating the agreement with the following changes:

- 1) Season ticket levels corrected to match current season ticket offerings.
- 2) Point-of-contact limited to one contact at RCCP to eliminate duplicate or confusing requests.
- 3) Play licensing and materials process streamlined to make RCCP a direct contact with the theatre companies. All purchasing approvals and processing to remain with the Leavenworth Parks and Recreation Department.
- 4) Timelines added to keep financial records within the same fiscal year whenever possible.
- 5) Agreement review/renewal period changed to bi-annually.

Mr. Mazzia is in attendance to answer questions the Commission may have.

RECOMMENDATION:

Staff recommends approval of the memorandum of agreement with the River City Community Players as written.

ATTACHMENT:

*Updated Memorandum of Agreement with the River City Community Players.

**Memorandum of Agreement
between the
Leavenworth Parks & Recreation Department
and the
River City Community Players**

Purpose

The purpose of this memorandum and enclosures is to set forth and formalize an agreement between the City of Leavenworth as represented by the Leavenworth Parks and Recreation Department (LPRD) and the River City Community Players (RCCP) in providing performing arts in the city of Leavenworth, Kansas, and in operating the Performing Arts Center (PAC).

General Terms

The River City Community Players (a community theatre group), initiated in 1977 (as the Leavenworth Drama Council), is a vehicle to organize and promote the dramatic arts in Leavenworth. The RCCP and its activities within the PAC (the old Hollywood Theatre located on the corner of 5th & Delaware Streets) are organized with the cooperation of the LPRD. However, in all matters, the RCCP will be self-governing, with LPRD providing stewardship by oversight, consultation, administrative support, and representation.

Both parties are cognizant that the RCCP is a separate entity that operates under the auspices of the LPRD, that the term "River City Community Players" is not synonymous with the "Performing Arts Center"; and that the PAC is their venue (but not limited to that locality).

The LPRD is committed to the concept that the RCCP is the primary resident of the PAC. As the primary resident, the RCCP is committed to meeting as much of the direct, routine expenses of the RCCP and its use of the PAC as practical. As such, the RCCP will surrender to the LPRD all revenues generated through public patronage to help offset those expenses (including yearly Patron Memberships, Season Ticket and Box Office sales, grants, and any other revenue generated at the PAC). Capital improvements to the PAC (see Item 6 on LPRD Responsibilities for definition) shall be the responsibility of the LPRD and other authorities that govern the administration of upkeep of a building which is on the state and national historical registers.

The RCCP is a Board of Directors who are empowered to make policy and administrative decisions and represents the theatre group. Further, the Board is augmented by a Board of Governors which is responsible for the oversight of the organization.

Responsibilities of the Leavenworth Parks and Recreation Department (LPRD)

1. Provide a yearly budget to municipal authorities (with input from the RCCP governing board) to fund the projected expenses of RCCP activities within the Performing Arts Center (PAC). Specifically, monies budgeted will fund:
 - a. Production costs of each regularly scheduled Patron production presented within the PAC. [For the purposes of this agreement, the term "Patron" applies to all who contribute a predetermined amount for tickets on a yearly basis. There are six categories: Platinum, Gold, Silver, Bronze, Double Copper, or Single Copper.]
 - b. Cost of supplies and other items to meet the needs of RCCP productions that are not pertinent to any specific play (e.g., theatrical technical equipment, supplies, and maintenance, etc.).
 - c. Cost of day-to-day maintenance of the building (e.g., plumbing and electrical repairs, routine and pre-/post-production janitorial service, maintenance and upkeep of furnace/air conditioning systems, etc.).
 - d. All utility bills of the PAC.
2. Provide and pay for appropriate insurance (fire and liability) for the PAC as well as any other assessments required covering RCCP operations within the PAC. Provide personal property insurance to cover all RCCP property to include, but not limited to, storage, lighting and sound systems, pianos, clavinova system, sets, stage properties (props), costuming, etc. Insurance will not cover private property which is used during productions and is subject to all City insurance deductibles.
3. Invite the RCCP President, or his/her representative, into the formulation of the yearly LPRD budget as it pertains to the projected cost for PAC maintenance and upkeep for that year's regularly-scheduled Patron production schedule. Once the budget is approved, provide a copy to the RCCP President.
4. Provide administrative support (with sufficient notice) for the RCCP to include: maintaining RCCP expenditures and budget accounts separately from other departmental accounts; arranging royalty, deposit, and rental payments; providing printing/copying of unrestricted material; processing expense reimbursements, returning rental materials in properly prepared packages; etc.
5. Keep the RCCP formally abreast on city and state regulations and new and proposed policies as they relate to the PAC and other RCCP activities within the PAC.
6. Receive and review PAC capital improvement suggestions and requests made by the RCCP Board and submit to the City Commission as appropriate. [For the purposes of this agreement, "capital improvements" are those defined as projects to upgrade/improve the exterior, interior, and structure of the Performing Arts Center to meet (as a minimum) state, federal, and municipal safety and building codes and regulations. It is also defined as those projects that would enhance and preserve the structural and aesthetic integrity of a city-owned building (which is on the state and federal historical registers) and its intended use as a theatrical venue.]

Responsibilities of the River City Community Players Board (RCCP)

1. Provide the LPRD with a proposed schedule of productions using Play Request Forms and other activities within the PAC for the **next calendar** year no sooner than January and no later than March of each year.
2. Provide the LPRD with estimated budget requirements for regularly scheduled Patron productions and other activities within the PAC for the next calendar year by March of each year, for their approval and submission to municipal authorities.
3. Provide a suggested list, in priority order, of capital improvements for the PAC and forward to LPRD for submission to the City Commission by March of each year. [For purposes of this agreement, "capital improvements" are defined as stated in Item 6 of LPRD Responsibilities.]
4. Have responsibility for license application, script and material requests, musical items including rehearsal and performance tracks (where applicable), contracts for directors and other contracted professionals, publicity and marketing of RCCP productions and any other RCCP activities.
5. Provide trained personnel and training to take reservations, sell tickets, and account for monies taken in by the box office including credit card sales during each performance and make arrangements for ticket sales outlets.
6. Keep storage areas neat and clean at all times and in compliance with local fire regulations.
7. Break sets and clear stage, backstage, and props and makeup rooms no later than three days after the end of each production.
8. Obtain approval from LPRD for all regularly scheduled Patron production purchases prior to making purchases.
9. Have a subject-matter expert available to instruct and train non-RCCP users in the proper operation of sound and lighting equipment, for a fee to be determined.
10. New volunteers (specifically directors and producers) will be advised by RCCP on standard operating procedures regarding the use of the PAC and its facilities, RCCP's obligations and responsibilities to the City, and proper purchasing and administrative procedures.
11. Establish and maintain concessions during productions when possible. All generated profits will be placed in the Park Special Gift Fund or other designated fund.
12. The RCCP will attempt to support and participate in municipal activities through their realm of expertise whenever practical.
13. Enforce all City regulations pertinent to the use of the PAC, to include no smoking in the PAC and prohibiting the presence and consumption of alcoholic beverages within the building, etc.
14. Adhere to all financial policies and procedures to include cash handling and expense reimbursement as outlined in the attached addendum "Financial Guidelines".

15. Follow City policy for any fee increases desired for ticket prices or other fees associated with the PAC.
16. Provide Certificate of Insurance (COI) or hold harmless clause protecting the City for ALL participants associated with RCCP productions, special projects or events, and/or rentals of the PAC governed by the RCCP.

Other Policies Between the River City Community Players (RCCP) and the Leavenworth Parks and Recreation Department (LPRD)

1. There shall be a minimum of four regularly-scheduled Patron productions presented at the PAC by RCCP per calendar year. In addition, other ancillary live productions may be mounted.
2. RCCP will surrender all revenues generated from productions mounted within the PAC to the LPRD. It is the objective of both LPRD and RCCP that the operational expenses of the PAC and the RCCP activities be defrayed through monies generated by the RCCP and other activities conducted within the PAC (exceptions noted below).
3. RCCP shall assume all production costs for all non-PAC productions. All revenues obtained by the RCCP through their activities outside of the PAC and any monies specifically donated to the RCCP will be considered the group's revenues for placement in the RCCP's Park Special Gift Fund or other designated fund. For all other RCCP activities (e.g., fund-raisers, etc.) that involve other City properties, the City and RCCP will negotiate revenue sharing on a case-by-case basis (to include initial funding for the activity).
4. All monies currently in the Park Special Gift Fund shall continue to be expended under the auspices of the LPRD in accordance with the desires of the RCCP until they are expended. After this agreement becomes effective, all gifts and grants to the RCCP will continue to be placed in the Park Special Gift Fund or other designated fund.
5. The LPRD shall serve as the scheduling agent for the PAC. However, since it is recognized by both parties that RCCP is currently the best source of providing consistent and continual use and revenues to assist in recouping the City's expenses of the PAC, the use of the PAC by RCCP in meeting its production needs shall remain the primary consideration in any scheduling decisions made by the LPRD. As such, the LPRD shall coordinate with the RCCP Board President, or his/her designated representative, prior to finalizing any formal agreement for the use of the PAC by other activities. The RCCP will make a good-faith attempt to comply with desired scheduling and/or the resolution of conflicts as deemed practical by its own schedule. In addition, RCCP may schedule other events at PAC beyond their productions, but will be solely responsible for the coordination and building support for said event. **Prior approval of such events shall be obtained from the LPRD Director or his/her appointed representative, as well as all associated rental agreement paperwork (see PAC Lease Agreement) and corresponding payment.**
6. Requests for purchases and all other correspondence related to needs for an RCCP production should come from the RCCP President or his/her designated representative. Name(s) of the authorized requestor(s) will be provided to LPRD by the RCCP President.
7. Purchases may be made at any time when paid for by the individual making the purchase, subject to the approval of the director or producer. Receipts must be submitted to LPRD within three (3) business days of the last performance for the designated show. All reimbursements must be submitted in the year they are incurred. Any expenses submitted after the City's fiscal year has closed will not be reimbursed.

8. No permanent changes, improvements, or alterations to the PAC by the RCCP may be done without formal request and approval of the LPRD. Any changes, improvements, or alterations proposed by the LPRD to the PAC should be coordinated through the RCCP prior to such implementation.
7. All production properties, non-fixed theatrical equipment, musical equipment, set and construction supplies, costumes, makeup, etc., are the property of the RCCP. Should the RCCP dissolve or become non-functional, the aforementioned properties automatically become the property of the LPRD.
8. All light and sound equipment is considered the property of the LPRD and as such shall be listed in the City's fixed asset report.
9. Publicity should state that "River City Community Players" present all PAC productions "... under the auspices of the Leavenworth Parks and Recreation Department."

This Memorandum of Agreement shall be in effect for two years and may be renewed bi-annually upon agreement of both parties. However, either party may terminate this agreement by giving a written notice of intent 60 days prior to termination.

Mayor, City of Leavenworth



President, River City Community Players

Date _____

Date MAY 11, 2022

Revised 5/4/22

River City Community Players

Financial Guidelines

RCCP will adhere to all financial requirements imposed by the City of Leavenworth and by LPRD in regards to cash handling, expense reimbursement, and pre-authorized purchase authority.

- Cash Handling – Each year the City of Leavenworth is audited on all cash handling procedures. RCCP must supply requested information to LPRD in the given timeline, and LPRD will communicate their response to the City of Leavenworth Finance Department.

A prior year's audit response (2021) is attached as a reference. Any changes to this must be approved by the City of Leavenworth prior to implementation.

- Expense Reimbursement – Persons who use their own money to purchase items to be used for City business are entitled to receive full reimbursement, provided the purchase is appropriate and authorized by an officer of the RCCP. All receipts being submitted must have the printed name of the individual and the individual's signature on the receipt. The receipts should be taped to 8.5" x 11" paper and attached to a completed and signed expense reimbursement form (sample attached).

The form must contain a line item for each receipt, the name of the party to be reimbursed, the address where the reimbursement check should be mailed, and two signatures – one of the purchaser and one of the RCCP officer.

All reimbursements must be submitted in the year they are incurred. Any expenses submitted after the City's fiscal year has closed will not be reimbursed.

- RCCP has authority to request services from Advantage Printing for play programs and posters for each season. RCCP is responsible for ensuring a copy of the receipt for purchased goods is delivered to the LPRD within 3 business days of receiving the goods. This ensures the City of Leavenworth does not become past due on an account. If this is not adhered to, authority may be revoked from the RCCP.

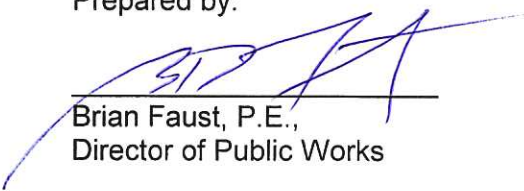
POLICY REPORT PWD NO. 22-28

AGREEMENT WITH HOME DEPOT
RIGHT-OF-WAY AND EASEMENT ACQUISITION
K-7/EISENHOWER INTERSECTION IMPROVEMENTS

KDOT Project Number 52 KA-5575-01
City Project 2019-922

May 24, 2022

Prepared by:



Brian Faust, P.E.,
Director of Public Works

Reviewed by:



Paul Kramer,
City Manager

ISSUE:

Consider authorizing the Mayor to sign an agreement with Home Depot associated with the acquisition of ROW and Easements needed to construct the intersection improvements at K-7/4th and Eisenhower.

BACKGROUND:

The City of Lansing and KDOT partnered in a Cost Share Program for improvements to the intersection of K-7 and Eisenhower Road. As these improvements benefit both residents of Lansing and Leavenworth, the two cities signed Agreement 2020-35 that defined the responsibilities and the costs to be funded by each community. The agreement states that each city is responsible for acquisition of easements and rights-of-way (ROW) for properties within their city limits.

The plans for the intersection improvements identified the need for a temporary construction easement, a permanent drainage easement and for additional right-of-way. Since last summer, the City has been working with SMH Consultants to help facilitate the easement acquisition with Home Depot. Despite addressing questions and providing requested feedback to their corporate office, acquisition had not moved forward.

On November 9th, 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 for eminent domain and appointed appraisers to appraise the value of the land and to determine damages resulting from the takings. Approval of the petition allowed the bidding process to move forward.

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.

BUDGET IMPACT:

The agreement between Lansing and Leavenworth requires each city to pay for property acquisition within their respective city limits. At this time, we do not have a total cost for acquisition of ROW and Easements associated with Home Depot, however the cost for appraisals is approximately \$1300 and the compensation to Home Depot is \$25,000. There will be additional fees including attorney costs.

POLICY:

The acquisition of ROW and Easements is required to construct this project. The City is following the required steps to obtain the property and the agreement between the City and Home Depot lays out the compensation and work items associated with this acquisition. Once finalized and the City Manager approves of the form and content, the signature of the Mayor will be required.

RECOMMENDATION:

Staff recommends that the City Commission 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/Eisenhower Intersection Improvement Project.

ATTACHMENTS:

Draft Agreement
Copy of Approved Petition for Eminent Domain

AGREEMENT IN SETTLEMENT OF A PENDING EMINENT DOMAIN ACTION
AND
FOR ACQUISITION OF INTERESTS IN REAL ESTATE

THIS AGREEMENT (the “Agreement”) is made and entered into this ____ day of _____ 2022, (the “Effective Date”) by and between the City of Leavenworth, Kansas, a Municipal Corporation, hereinafter referred to as the “City” and HD Development of Maryland, Inc., a Maryland corporation authorized to do business in Kansas, hereinafter referred to as “HD”.

WHEREAS, the City is the plaintiff in an Eminent Domain Action in the Leavenworth County District Court and captioned as The City of Leavenworth, Kansas v. HD Development of Maryland, Inc., et. al. Case No. 2021-CV-000268, hereinafter the “Pending Litigation”; and,

WHEREAS, HD is a defendant and property owner in the Pending Litigation; and,

WHEREAS, the parties hereto desire to enter into this Agreement in order to resolve and settle the Pending Litigation and to provide for the acquisition by the City of certain easements over property owned by HD; and,

WHEREAS, HD is the owner four parcels of real estate, described, as follows:

PARCEL 1:

Commencing at the Southeast Corner of the Northeast Quarter of Section 13, Township 9 South, Range 22 East of the Sixth P.M. in Leavenworth County, Kansas; Thence S 87° 15' 25" W along the South line of said Northeast Quarter of Section 13-

T9S-R22E, for a distance of 430.00 feet; thence N 2° 44' 02" W for a distance of 30.00 feet to a Southeast corner of Lot 1, Block 1, Home Depot Addition to Leavenworth, Kansas and the POINT OF BEGINNING; thence S 87°15'25" W along the South line of Lots 1 and 2, Block 1 Home Depot Addition to Leavenworth, Kansas for a distance of 299.26 feet to a Southwest corner of said Lot 2, Block 1, Home Depot Addition; thence N 01°30'55" W along a West line of said Lot 2, Block 1, Home Depot Addition a distance of 16.00 feet; thence N 87°15'25" E parallel with the South line of said Lots 2 and 1, Block 1, Home Depot Addition to Leavenworth, Kansas a distance of 299.13 feet to a point on an East line of said Lot 1, Block 1, Home Depot Addition; thence S 01 °58'52" E along an East line of said Lot 1, Block 1, a distance of 16.00 feet to THE POINT OF BEGINNING. Containing 4787 square feet, more or less.

PARCEL 2:

Commencing at the Southeast Corner of the Northeast Quarter of Section 13, Township 9 South, Range 22 East of the Sixth P.M. in Leavenworth County, Kansas; Thence S 87° 15' 25" W along the South line of said Northeast Quarter of Section 13-T9S-R22E, for a distance of 430.00 feet; thence N 2° 44' 02" W for a distance of 30.00 feet to a Southeast corner of Lot 1, Block 1, Home Depot Addition to Leavenworth, Kansas thence N 1 °58'52" W along an Easterly line of Lot 1, Block 1, Home Depot Addition to Leavenworth, Kansas for a distance of 16.00 feet to THE POINT OF BEGINNING: thence S 87°15'25" W a distance of 80.37 feet to a point on the West line of Lot 1, Block 1; thence N 01 °48'18" W along the West line of said Lot 1, Block 1, a distance of 40.32 feet; thence N 88°11'42" E a distance of 80.30 feet; to a point on an Easterly line of Lot 1, Block 1, Home Depot Addition; thence S 01°53'26" E a distance of 39.00 feet to THE POINT OF BEGINNING. Containing 3186 square feet, more or less.

PARCEL 3:

Commencing at the Southeast Corner of the Northeast Quarter of Section 13, Township 9 South, Range 22 East of the Sixth P.M. in Leavenworth County, Kansas; Thence S 87° 15' 25" W along the South line of said Northeast Quarter of Section 13-T9S-R22E, for a distance of 430.00 feet; thence N 2° 44' 02" W for a distance of 30.00 feet to a Southeast corner of Lot 1, Block 1, Home Depot Addition to Leavenworth, Kansas; thence S 87°15'25" W along the South line of said Lot 1, Block 1 a distance of 80.42 feet to a common corner between Lot 1 and Lot 2 as platted in Home Depot Addition to Leavenworth, Kansas; thence N 1°48'18" W along the East line of said Lot 2, Block 1 Home Depot Addition to Leavenworth, Kansas for a distance of 16.00 feet to THE POINT OF BEGINNING; thence S 87°15'25" W a distance of 90.01 feet; thence N 01°48'18" W a distance of 86.01 feet; thence N

87°15'25" E a distance of 90.01 feet to a point on the East line of said Lot 2, Block 1; thence S 01 °48'18" E along the East line of said Lot 2, Block 1 a distance of 86.01 feet to THE POINT OF BEGINNING. Containing 7741 square feet, more or less.

PARCEL 4:

A tract of land located in Lot 1, Block 1 of Home Depot Addition to the City of Leavenworth, Leavenworth County, Kansas, that is approximately 50' x 50', but of that size necessary for the City to accomplish the purposes of the easement, and located in the north east quadrant of the intersection of the access road that serves the Home Depot store from Eisenhower Road and the service road that exists between Aldis and Quick Trip from Highway 7.

WHEREAS, the City desires to acquire, and HD agrees to transfer to the City, a permanent easement for street right-of-way (the "Right of Way Easement") over, across, under and through Parcel 1 for the purpose of constructing, reconstructing, maintaining, repairing, inspecting, and using streets, sidewalks and utilities, including by way of example, but not limited to, sewer, water, gas, electricity and telephone. Said easement shall be for the benefit of the public and the right of vehicular and pedestrian travel shall be granted to the public over, upon, across, in and through Parcel 1, as a part of said easement; and,

WHEREAS, the City desires to acquire, and HD agrees to transfer to the City, a temporary easement (the "Temporary Construction Easement") over, across, under and through Parcel 2 for the purpose of constructing a street, sidewalk and utilities on the street adjacent thereto; and,

WHEREAS, the City desires to acquire, and HD agrees to transfer to the City, a permanent drainage easement (the "Drainage Easement") over, across, under and

through Parcel 3 for the purpose of constructing, reconstructing, maintaining and repairing such structures and improvements that are determined by the City to be necessary to facilitate the flow of surface water across and upon said easement. Said easement shall also be for the purpose of the flowage of surface water across and upon said easement; and,

WHEREAS, the parties agree that HD will transfer to the City, and the City will accept, a temporary easement (the "Curb Removal and Replacement Easement") over Parcel 4, for the purpose of the City, through its contractors, removing a curb located upon said parcel, installing a temporary gravel surface adequate for large vehicles, and replacing said curb upon termination of the Easement, all in order to facilitate an alternative truck route for deliveries to the Home Depot Store during any periods when the Temporary Construction Easement prohibits vehicular traffic across said Easement.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

1. HD hereby agrees to transfer, and the City hereby agrees to accept, the interests in real estate, as set forth above.

2. The total acquisition price for the interests being transferred by HD shall be the sum of \$25,000. The City shall at once deposit the acquisition price with the hereinafter named Escrow Agent, and the Escrow Agent shall pay the acquisition price to HD at closing. As additional consideration for the interests being acquired,

and for the settlement of the Pending Litigation, the City, before it closes vehicular access across the Temporary Construction Easement set forth below, shall, within the Easement Area identified as Parcel 4 below, remove the curb and install a temporary gravel surface adequate to allow large vehicles to use that surface to make the turn onto the service road to the Home Depot store; and, upon the permanent opening of the Temporary Construction Easement to vehicular traffic, the City shall replace the curb, repair any damage to the Easement Area that occurred during its use as an alternative access for Home Depot deliveries, and restore the Easement Area to its condition that existed before the curb removal. Also, at the same time as curb removal is taking place, the City shall fabricate and install a sign on the service road to the Home Depot store that says, "Private Drive, Authorized Vehicles Only".

3. This Agreement will be closed at the office of the hereinafter named escrow agent, or at such other place as shall be mutually agreed upon by the parties, on or before the 27th day of May, 2022, or as soon thereafter as possible, hereinafter sometimes referred to as the "Closing", or the "Closing Date".

4. a. HD shall at once execute the Right of Way Easement to the City over, across under and through Parcel 1, for the purpose of constructing, reconstructing, maintaining, repairing, inspecting, and using streets, sidewalks and utilities, including by way of example, but not limited to, sewer, water, gas, electricity and telephone. Said easement shall be for the benefit of the public and the right of vehicular and pedestrian travel shall be granted to the public over, upon, across, in and through

Parcel 1, as a part of said easement; and,

b. HD shall at once execute the Temporary Construction Easement to the City over, across, under and through Parcel 2. Said easement shall exist for a period of two (2) years from and after the Closing, and shall be for the purpose of use by the City, its representatives, agents, assigns and contractors as a work and safety area, including the right to move, store and remove equipment and supplies, and erect and remove temporary structures on the land and to perform any other work necessary and incidental to the construction of a sidewalk, street and utilities on the adjacent street right of way. Vehicular access across the Temporary Easement will be prohibited periodically, but for no more than a total of ninety (90) calendar days over the period of the easement. The City shall use its best efforts, in good faith to minimize the amount of time vehicular access is prohibited. Upon termination of the Easement, the City shall restore the Easement Area to its condition as of the date of the acquisition.

c. HD shall at once execute the Drainage Easement to the City over, across, under and through Parcel 3, for the purpose of constructing, reconstructing, maintaining and repairing such structures and improvements that are determined by the City to be necessary to facilitate the flow of surface water across and upon said easement. Said easement shall also be for the purpose of the flowage of surface water across and upon said easement.

d. HD shall at once execute the Curb Removal and Replacement Easement

to the City over, across, under and through Parcel 4. Said easement shall exist from and after its execution date until a date sixty (60) days following the permanent opening of the Temporary Construction Easement to vehicular traffic, and shall be for the purpose of use by the City, its representatives, agents, assigns and contractors in removing a portion of curb located upon said parcel, installing a temporary gravel surface adequate for large vehicles, and replacing said curb upon termination of the Easement, all in order to facilitate an alternative truck route for deliveries to the Home Depot Store during any periods when the Temporary Easement blocks vehicular traffic.

e. The Easements identified in subsections a, b and c, above, shall be executed by HD and shall convey said interests to the City free and clear of all encumbrances such that the City's interest shall be superior to all other ownership interests in the Parcels, and shall be deposited with the hereinafter named escrow agent and shall then be delivered to the City at Closing. The City shall be entitled to enjoy the use and benefit of said easements upon the Closing of this transaction. The Easement identified in subparagraph d, above, shall be delivered directly to the City upon the execution of this Agreement by both parties. This easement shall not be filed of record unless and until the City's rights to use the easement are challenged. Upon the delivery of all of these Easements, as set forth in this subparagraph, the City shall dismiss the Pending Litigation and HD shall consent to such dismissal. The City shall be responsible to pay all costs, imposed by the Court, of the Pending Litigation.

5. The parties appoint Kansas Secured Title of Leavenworth, Kansas, as the escrow agent, who shall have the authority to do whatever is necessary to aid in the handling of this escrow. In accepting any funds or documents delivered hereunder, it is agreed and understood that, in the event of disagreement between the parties to this Agreement, the escrow agent will and does reserve the right to hold all money and documents concerning this escrow until a mutual agreement has been reached between all of the parties hereto or until delivery is legally authorized by final judgment or decree from a court of competent jurisdiction. The escrow agent may bring an appropriate action or proceeding for leave to deposit the money and/or documents in court pending such determination and shall have the right to employ attorneys for the reasonable protection of the escrow property and of itself and shall have the right to reimburse itself out of any funds in its possession for costs, expenses, attorney fees and its compensation, and shall have a lien on all money and documents held in escrow to cover same. The City shall be responsible for any fees charged by such escrow agent, whether or not this Agreement is closed. The City shall be responsible for the costs of the preparation of this Agreement and the Easement documents and the recording of such documents.

6. The City's obligation to accept the interests set forth above is contingent upon the City satisfying itself, through an inspection of the title records regarding the real estate involved, or through the issuance of a title policy/commitment at the City's option and cost, that the City will enjoy the rights set forth herein, free and clear of all

encumbrances, and superior to any other ownership interest in said Parcels. If the City determines that there are defects in the title, the City shall notify HD of such defects and if HD is unsuccessful in removing such defects within a reasonable time, and unless the City waives such defects, this agreement shall be determined to be null and void and the parties shall be released from all further obligations hereunder. In the event any of the Parcels are encumbered by a mortgage, or lien, the Escrow Agent is hereby authorized to pay over to the holder of such encumbrance any of the funds due to HD hereunder, in exchange for a release of said encumbrance. The City shall pay all costs associated with their determination of such status of title.

7. The parties agree that the City is a Municipal Corporation with the power of Eminent Domain, and that the City's acquisition of these interests is under the threat of Eminent Domain. Further, the parties agree that the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) applies to the City's acquisition of the interests, and that the City complied with the provisions thereof as they relate to the City's acquisition.

8. The parties affirmatively state that neither of them has been represented by a realtor and that no real estate commissions are due to anyone as a result of this transaction.

9. The parties agree that time is of the essence of this agreement. This agreement shall be binding upon the parties, their successors and assigns. No amendment or modification of this agreement shall be binding unless it is in writing,

and executed with the same formality as this agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year above written.

HD DEVELOPMENT OF MARYLAND, INC.

BY: _____
_____, (printed name)
_____, (title)

CITY OF LEAVENWORTH:

_____,
Mayor

_____,
City Clerk

ELECTRONICALLY FILED
2022 Feb 01 PM 4:22
CLERK OF THE LEAVENWORTH COUNTY DISTRICT COURT
CASE NUMBER: 2021-CV-000268



Court: Leavenworth County District Court
Case Number: 2021-CV-000268
Case Title: City of Leavenworth, Kansas vs. HD Development of Maryland, Inc., et al.
Type: ORDER APPROVING PETITION AND APPOINTING APPRAISERS

SO ORDERED.

A handwritten signature in black ink, appearing to read "David J. King".

/s/ Honorable David J. King, District Court Judge

Electronically signed on 2022-02-01 16:22:48 page 1 of 4

IN THE DISTRICT COURT OF LEAVENWORTH COUNTY, KANSAS

In the Matter of the Condemnation of)
Land for Municipal Purposes)

The CITY OF LEAVENWORTH, KANSAS,)
a Municipal Corporation,)

Plaintiff,)

v.)

Case No. 2021-CV-000268

HD DEVELOPMENT OF MARYLAND, INC.,)
A MARYLAND CORPORATION; HOME DEPOT;)
ALDI, INC. (KANSAS), A KANSAS CORPORATION;)
THE UNKNOWN SUCCESSORS, ASSIGNS AND)
TENANTS OF THE FOREGOING.)

Defendants.)

ORDER
APPROVING PETITION
AND APPOINTING APPRAISERS

This Order is effective as of the date and time of the electronic file stamp. Now on this 26th day of January 2022 the above-entitled matter comes on upon the verified Petition of Plaintiff herein. The Plaintiff appears by and through its attorney, William L. Frost, of Morrison, Frost, Olsen, Irvine & Schartz, LLP. Defendant HD Development of Maryland, Inc. appears by and through its attorney, Bradley A. Stout of Adams Jones Law Firm, P.A. There are no other appearances.

WHEREUPON, the Court finds that a verified petition of the Plaintiff has been filed and notice of this proceeding has been given by publication and by mail to the interested party

MORRISON,
FROST, OLSEN,
IRVINE &
SCHARTZ, LLP
Attorneys at Law
323 Poyntz Suite 204
Manhattan, KS 66502
(785) 776-9208
Fax: (785) 776-9212

Defendants whose addresses are known to Plaintiff or could be ascertained after reasonable search as required by law.

WHEREUPON, the Court finds and determines from the Petition that Plaintiff has the power of eminent domain and that the takings as set out in the Petition are necessary for the lawful corporate purposes of the Plaintiff.

IT IS THEREFORE ORDERED BY THE COURT that Plaintiff has the power of eminent domain and that the takings as set out in the Petition are necessary for the lawful corporate purposes of the Plaintiff.

WHEREUPON, THE COURT FINDS that all interested parties have had the opportunity to provide suggestions to the court related to the appointment of appraisers.

WHEREUPON, THE COURT FURTHER FINDS that Brian Kern, Joseph Herring and David Chartier are all disinterested residents of Leavenworth County, Kansas and that all of said individuals have experience in the valuation of real estate.

IT IS THEREFORE ORDERED BY THE COURT that Brian Kern, Joseph Herring and David Chartier are hereby appointed to view and appraise the value of land, and or interest, and the rights therein, as described in the Petition, and to determine the damages to the interested parties resulting from the takings, as provided by law. Said appraisers are hereby required to file their report with the Clerk of this Court on or before the 11th day of March, 2022, at 5:00 p.m., which is not later than 45 days after the entry of this order.

IT IS SO ORDERED.

DAVID J. KING,
District Court Judge

Approved by:

/s/William L. Frost


WILLIAM L. FROST #8628
Attorney for Plaintiff

POLICY REPORT
Leavenworth City Commission
Bids for Mowing

MAY 24, 2022



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



Reviewed By:
Paul Kramer,
City Manager

DISCUSSION:

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 5 "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.

In 2019, the City accepted bids for mowing services and a contract was awarded for a two year term, with the option to renew for another 2 years. The 2022 mowing season constituted the second year of the contract which was renewed in 2021. On April 25, 2022, staff was notified by our mowing contractor that he would be unable to fulfil the contract for the remainder of the season, due to his company equipment being stolen and needing to terminate his staff.

A RFP for mowing contract services was issued to known contractors and published in the Leavenworth Times, with bid proposals due on May 12, 2022. One bid was received for the 5 clusters, from Affordable Lawn & Cemetery Care. No bids were received for the Code Enforcement mowing. Bid amounts for clusters are as follows:

Clusters

- Cluster 1:** \$1,920 per mowing, not to exceed \$21,120
- Cluster 2:** \$1,595 per mowing, not to exceed \$17,545
- Cluster 3:** \$410 per mowing, not to exceed \$4,510
- Cluster 4:** \$460 per mowing, not to exceed \$5,060
- Cluster 5:** \$540 per mowing, not to exceed \$5,940

This contract will be expire on December 31, 2022.

RECOMMENDATION:

Staff recommends acceptance of the proposal for mowing services from Affordable Lawn & Cemetery Care in an amount not to exceed \$54,175.

ATTACHMENTS:

Mowing Bid Specifications

**CITY OF LEAVENWORTH
SPECIFICATIONS AND BID SHEET
FOR COMMUNITY DEVELOPMENT & CODE ENFORCEMENT 2022
BID #**

Private/Public Property Mowing Maintenance Contract

I. Scope of Work

All work requested is primarily for the corrective maintenance of private properties within the corporate city limits of Leavenworth. Other property maintenance will include city owned properties.

II. Definitions

- a. **Mowing Schedules or Perpetual Care** shall mean the time periods established for the project year within which all prescribed maintenance activities for each area shall be completed.
- b. **Mowing Cycle** shall refer to each time period in the mowing schedule for the project year. Each time period is defined by a beginning and ending date, within which all prescribed maintenance activities for each area shall be completed.
- c. **Code Enforcement Officer** shall mean the duly authorized representative of the Code Enforcement Department who shall monitor the contractor's progress within his/her assigned area.
- d. **Director** shall mean the person responsible for the administration and execution of all activities within the department.
- e. **Contractor** shall mean the firm, agency or person providing mutually agreed upon services to the City.
- f. **Inclement Weather** shall mean rainy weather or when the condition of the soil is such that the rutting of property will not allow cutting of grass to be accomplished satisfactorily.
- g. **Weeds (Brush and woody vines shall be classified as weeds)**
 - i. Weeds and indigenous grasses which may attain such large growth as to become, when dry, a fire menace to adjacent improved property;
 - ii. Weeds which bear or may bear seeds of downy or wingy nature;
 - iii. Weeds which are located in an area which harbors rats, insects, animals, reptiles, or any other creature which either may or does constitute a menace to health, public safety or welfare;
 - iv. Weeds and indigenous grasses on or about residential property which, because of its height, has a blighting influence on the neighborhood. Any such weeds and indigenous grasses shall be presumed to be blighting if they exceed twelve (12) inches in height.
- h. **Nuisance** means any person doing an unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing either:
 - i. Injures or endangers the comfort, repose, health or safety of other;
 - ii. Offends decency;
 - iii. Is offensive to the senses;
 - iv. Unlawfully interferes with obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage;
 - v. In any way renders other persons insecure in life or the use of property; or
 - vi. Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.

- i. **Examples of nuisances**
 - i. Trash: Including but not limited to old, dilapidated, scrap or abandoned metal, paper, building material and equipment, bottles, glass, appliances, furniture, beds and bedding, rags, rubber, motor vehicles, and parts thereof.
 - ii. Brush: Including but not limited to dead tree limbs/trunks, decayed vegetation or organic materials.
 - iii. Miscellaneous Materials: Automobile/truck parts or components, old appliances, bulk construction materials or any items fifty (50) pounds or over.
- j. **Trimming** shall refer to the cutting or removal of all plant material immediately adjacent to or under public structures. Also includes removal of all plant material from expansion joints and any other cracks in curbs, sidewalks (both sides), steps, driveways, and pavements.
- k. **Edging** shall refer to the vertical removal of any and all plant material which encroaches over or onto sidewalks (both sides), curbs, steps, driveways, and pavements.
- l. **Sucker Growth** shall mean the incidental, vegetative growth arising from the bases and lower trunk areas of trees which are not essential to the overall well being of the plant.
- m. **Rights-of-way** shall mean a strip of land occupied or intended to be occupied by a street, crosswalk, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, shade trees, or other special use.
- n. **Public Road** shall mean all public property reserved or dedicated for street traffic.
- o. **Sidewalk** shall mean all property reserved or dedicated for pedestrian traffic.
- p. **Easements** shall mean the right of a person, government agency, or public utility company to use public or private land owned by another for a specific purpose.

III. Contract Duration

The agreement shall be for a period ending on December 31, 2022.

IV. Assignment and Inspection of Work

a. Code Enforcement Officer Duties:

A Code Enforcement Officer will be assigned to the area for which he/she will be responsible for making inspections, re-inspections, monitoring the Contractor's activities, and ensuring the work performed in the assigned area is done to the quality level prescribed in the bid/contract and in accordance with prescribed time schedules. Upon determination of a violation of the specifications and/or terms of the contract or bid, the Code Enforcement Officer shall record, process, and submit all pertinent information to the Director for processing.

b. Assignment of Contractor for Property Maintenance Violations:

All property maintenance violation job orders are required prior to any issuance of a work assignment to the contractor. The work orders will provide the name and address of contractor, location of job assignment, date/time, and monetary value of service and signature blocks for the contractor and Code Enforcement Officer. The contractor is responsible to pick up all work orders at the front reception desk.

c. Assignment of Contractor for City Owned Property Mowing contracts:

All properties are distributed and assigned by geographical location and size. Properties are clustered into five (5) work areas based upon their approximate proximity to each other.

- d. Time to Complete Work for Property Maintenance Violations:
Upon receipt of any work order, the contractor shall be responsible for executing and completing the assigned job within five (5) business days. Invoicing for completed work shall be submitted to the City within (5) days of completion of work. Payment shall be made to contractor for completed work within 30 days of receipt of invoice.
- e. Time to Complete Work for mowing of City Owned Properties:
Upon approval to proceed, Contractor shall begin work and shall proceed with all reasonable dispatch to completion. The Contractor will be required to maintain all project areas assigned to him/her in the time allotments—mowing cycles—set for each project area. Work within an area must be completed in consecutive days. Inclement weather may result in the cancellation of a mowing cycle only if the Code Enforcement Officer or designated City representative determines that there was an insufficient time period during the entire mowing cycle available for the services described to be performed. It shall be assumed that the contractor can perform said services at the rate of twenty-five (25) acres per day per project area. Due to growth factors of the turf during the hot summer months, it may be necessary for the frequency of mowing to be increased or decreased. In order to verify the need for mowing, the Contractor shall contact the Code Enforcement Officer bi-weekly. Failure to get approval from the Code Enforcement Officer may result in non-payment for completed mowing.
- f. Failure to Maintain Mowing Schedule:
Failure on the part of the Contractor to maintain the required production rate for an area shall be sufficient reason for the Director to have the work in question, or portions thereof, completed by others. If work is completed by others, any additional cost caused by a higher bid price will be deducted from the contractor's billing statement. Failure to maintain the mowing schedule shall be determined in the following manner:
- i. All areas shall be maintained according to the mowing schedule to each area. Final assessment of each area shall be made by the Code Enforcement Officer on the morning following the end of each mowing cycle. If the contractor fails to meet the mowing specifications within the time limits of the schedule, then that portion of the work will be removed from his responsibility and may be immediately assigned to another contractor.
 - ii. In the event the contractor develops difficulty in meeting the mowing schedule and contract specifications, the contractor may also be assessed two hundred-fifty (\$250.00) dollars per day as liquidated damages because of breach of contract as aforementioned. Should it become necessary to penalize a contractor on more than one occasion for failure to meet the grounds maintenance specifications within the prescribed mowing schedule, the contractor may be released from his contractual obligation to the City of Leavenworth. The project area will then be awarded to an existing alternate contractor on a per area basis, or awarded to the next lowest and best bidder on a previous bid.
- g. Mowing Schedule:
Maintenance of all assigned City property within Clusters 1 through 5 shall be completed on a (14) day bi-weekly schedule (except as noted in Section IV e) beginning May 30, 2022, if needed, through the contract period for a maximum total of eleven (11) mowings.

h. Documentation of Work for Property Maintenance Violations

Upon submission of bi-weekly invoices for property maintenance violation mowing, the Contractor shall submit “before” and “after” photographs of each property mowed. Each photograph shall identify the specific location represented. Identification of photographs may be in the form of individual file names, or with a dry erase board or similar included in the photograph identifying the property. Failure to include before and after photographs with proper identification of each property mowed may result in non-payment for completed mowing.

The mowing schedule for the 2022 maintenance year will be as follows: (Except as noted in Section IV e)

i. Mowing Cycle for Clusters 1-5:

Cycle #	Date Period
1	May 30 - June 12
2	June 13 - June 26
3	June 27 - July 10
4	July 11 - July 24
5	July 25 - Aug 7
6	Aug 8 - Aug 21
7	Aug 22 - Sept 4
8	Sept 5 - Sept 18
9	Sept 19 - Oct 2
10	Oct 3 – Oct 16
11	Oct 17 – Oct 30

NOTE: The designated Code Enforcement Officer has the authority to modify scheduled mowing cycles on a week to week basis. The cancellation will be based upon need, prevailing weather conditions, and available funding. The minimum number of mowing for Clusters 1-5 during the term of contract will be ten (10) assuming all work is completed satisfactorily.

NOTE: It shall be mandatory that a review of the contracted perpetual care area be conducted prior to beginning the first mowing cycle. Such a review shall be attended by the successful contractor and the assigned Code Enforcement Officer. The review shall include an explanation of the area to be maintained during subsequent mowings.

V. Grass and Weed Removal

Contractor is responsible throughout the contract period to remove all cut grass and debris which falls or is thrown by equipment upon the pavement of streets, sidewalks, driveways, or adjacent properties. Such removal shall take place prior to exiting the work site. Directional mowing will be utilized to minimize the amount of discharge onto such adjacent areas whenever possible. Safety discharge chutes shall remain in place and operational at all times.

VI. Supervision of Work Crew

Contractor shall provide supervision of all work crews at all times while performing work under this contract. Personal supervision is not required provided that equipment or other means are provided that enable the work crew to communicate with the Contractor at all times. Each work crew shall have a designated person on the work site that has the authority to respond to inquiries about work details or priorities.

VII. Contractors' Bidding Options and Response

Contractors will have the option of responding to all or portions of the services within this document. Under no circumstances shall any individual job assignments within each Cluster be divided or exchanged among other Clusters.

VIII. Selection Criterion

Selection of a Contractor will be base upon following factors:

- a. Ability to meet standards set forth within this document;
- b. Price;
- c. Ability to perform work stated within this document;
- d. Availability of contractor to perform work as assigned and;
- e. History of providing similar work.

IX. Insurance

The Contractor shall secure and maintain such insurance as will insure the performance by the Contractor of its obligations to protect, defend, indemnify and hold harmless Owner and officers and agents of the Owner and Contractor respectively, as provided herein, and will protect them from claims under Worker's Compensation Acts; automobile liability for bodily injury(including death) or property damage; and general liability for bodily injury(including death) or property damage which may arise from and during operations under this contract, whether such operations be by itself or anyone directly or indirectly employed by it.

The Contractor shall purchase and maintain in full force and effect during the term of this contract, insurance in a company or companies satisfactory to the Owner, but regardless of such approval, it shall be the responsibility of the Contractor to maintain such coverage and shall not relieve Contractor of any contractual responsibility or obligation. Insurance of the following types and with the following limits are required:

General Liability:

The minimum limits of liability for commercial general liability insurance shall be:

\$1,000,000 each occurrence for bodily injury or property damage;
\$2,000,000 general aggregate with a per-project endorsement; and
\$1,000,000 products/completed operations aggregate.

Each such policy shall include comprehensive fortes, contractual liability, independent Contractors, products/completed operations, inherently dangerous activities, premises-operations, broad form property damage, and personal injury coverage.

General Liability coverage shall name Owner as an Additional Insured on a primary basis, per the CG 2010 11/85 or it's equivalent, or a combination of CG 2010 10-01 and CG 2037 10-31 (including products and completed operations). These coverage's shall provide protection for the Contractor and the Owner against liability from

damages because of injuries, including death, suffered by any person and liability from damages to property, arising from or growing out of the Contractor's operations in connection with the performance of this contract. All insurance required by this contract shall remain in force until all work required to be performed under the terms of the contract is satisfactorily completed as evidenced by its formal acceptance. Each policy shall also contain a severability of interest conditions and the insurance afforded by the Contractor shall be primary insurance.

The Contractor shall provide the Owner with a Certificate of Insurance, specifying Contractor's insurance coverage and limits before any work is performed under this contract. A Certificate of Insurance shall also be provided upon each policy renewal. Certificates of Insurance shall be sent to Owner at the address stated herein. Such proof of insurance shall provide for ten (10) days prior written notice to the Owner before cancellation, termination or material change or modification of such insurance, unless longer advance notice is required by the Owner. Such notice shall be given to Owner at the address above noted. Consulting Engineer shall be listed as an additional insured on the liability insurance policies. Upon request Contractor shall furnish certified copies of any insurance policies listed in the Certificate of Insurance.

If Contractor shall subcontract any of this work to a third party, Contractor shall see to it that such third party maintains such insurance and shall furnish evidence thereof to Contractor and Owner. Subcontractor shall cause all such policies of insurance to name Contractor and Owner as additional insured's and provide indemnification for Contractor and Owner against liability upon the risks insured thereby to the amount of the coverage specified therein for Contractor.

If the Contractor has a policy or policies of insurance with aggregate limits of liability Owner must be notified in writing any time the aggregate limit is diminished materially below the coverage required by this contract.

Contractor shall notify Owner in writing 10 days after it receives notice or knowledge of any demand, claim, cause of action, lawsuit, or action arising out of the work performed under this contract. Contractor shall notify Owner as soon as possible after any bodily injury or property damage occurrence that could potentially lead to any lawsuit.

All liability insurance shall be occurrence policies in a form acceptable to Owner. Claims-made policies are not acceptable.

Automobile Liability:

Contractor shall obtain automobile liability insurance, which provides coverage for its owned, non-owned, and hired vehicles of every type and description, which are used in the contract work. The minimum limits of liability for such insurance shall be:

\$1,000,000 combined single limit for bodily injury and property damage

Workers Compensation:

Statutory

Employers' Liability:

\$100,000/\$500,000/\$100,000(each accident/disease-policy limit/disease-each employee)

Builders Risk/Installation (if required by Owner):

For direct physical loss or damage to covered property while under construction at the premises described in the declaration of the policy and per specifications. Limit of coverage is the contract bid to be in force for the duration of the project and until the project is accepted by the Owner. The Owner will be named additional insured.

Umbrella Coverage (if required by Owner):

An umbrella coverage will be required if the project costs are over \$2 million.

Professional Liability Coverage (if required by Owner or necessary for project):

\$1,000,000 each claim and \$1,000,000 aggregate.

Waiver of Subrogation:

Contractor waives any and all subrogation claims, including such claims arising out of injuries to Contractor's employees, against Owner, Engineer, and Consulting Engineer and their respective officers, directors, partners, employees and agents.

Sample Certificate:

ACORD™ CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 06/20/2008
PRODUCER Agent Name: Agent Street Address: City & State Phone # Fax #	FAX	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED Named Insured Address City and State Zip Code	INSURERS AFFORDING COVERAGE	NAIC #
	INSURER A: Company AM Best Rating "A" or better	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	POLICY NUMBER			EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 1,000,000
A		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	POLICY NUMBER			COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO	NOT APPLICABLE			AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
A		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10,000	POLICY NUMBER			EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$ \$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	POLICY NUMBER			<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER EL. EACH ACCIDENT \$ 100,000 EL. DISEASE - EA EMPLOYEE \$ 100,000 EL. DISEASE - POLICY LIMIT \$ 500,000
		OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

RE: Project name
 City of Leavenworth, Its Assigned, Officers & Affiliates are additional insured on a primary and non-contributory basis which included Products and Completed Operations on project shown.

CERTIFICATE HOLDER

City of Leavenworth
 City Hall
 100 No. 5th Street
 Leavenworth, KS 66048

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
 AUTHORIZED REPRESENTATIVE

Inventory of City Owned Properties by Cluster for Perpetual Care

Cluster 1

Location	Property Description	Sq. Ft.
Shawnee Street	Trim vegetation back away from sidewalk along the North side of Shawnee Street - to the west of 906 Shawnee and corner lot at 10th & Shawnee	33247
North 9th St	9th Street drainage ditch east of 905 Miami	7989
North 9th St	9th Street drainage ditch west of 842 Miami	5826
843 Miami	Vacant lot area to West of metal building, next to drainage ditch - East of 839 Miami	6466
200 N 10th Street	SE corner of 10th & Miami , next to creek area	20959
Ottawa Street	vacant lot behind 902 & 904 Miami	11229
vacant area	Vacant area behind 800 Shawnee , towards creek area	8482
North 9th St	9th Street drainage ditch west of 837 Osage	6039
North 9th St	9th Street drainage ditch west of 840 Osage	7189
North 9th St	9th Street drainage ditch west of 901 Pottawatomie St	6983
North 9th St	9th Street drainage ditch west of 900 Pottawatomie St	6957
North 9th St	9th Street drainage ditch west of 905 Ottawa St	7782
North 9th St	9th Street drainage ditch west of 904 Ottawa St	15115
Dakota Street	Vacant lot east of 915-917 Dakota	7907
vacant lot	vacant lot area east of 850 Cherokee St (80' width x approximately 175' deep)	14000
N 9th	Vacant lot area behind 902, 904 & 906 Ottawa	8983
Intersection off of Cherokee & Sherman Ave	Island off of Cherokee & Sherman Ave	827
vacant area	Area East of 1203 Cherokee - cut the City right-of-way back from the curb approx. 6-10 feet	700
206 S 11th Street	Vacant corner lot east of 1105 Delaware	12808
Delaware Street	Vacant lot area behind 1010-1014 Cherokee	39215
Osage Street	Northwest corner of 12th & Osage, from 12th St to 1224 Osage	42499
Cherokee Street	Vacant lot west of 1010 Cherokee, mow back to tree line	3432

Total Square Feet

271,202

Cluster 2

Location	Property Description	Sq. Ft.
Kickapoo	Vacant lot west of 733 Kickapoo (84' width)	10297
404 Kickapoo	Vacant lot east of 408 Kickapoo (NW corner 4th & Kickapoo)	5952
Ottawa Street	Vacant lot east of 741 Ottawa	14161
N 3rd Street	SW corner 3rd & Kiowa (96' width)	12076
Kiowa Street	Vacant lot area (SE corner of 4th & Kiowa)	2980
406 Pottawatomie	NW corner 4th & Pottawatomie (extends 60' West of Arbor way)	7791
501 N 5th	NW corner 5th & Pottawatomie (vacant lot east of 506 Pott)	6411
317 Osage	Vacant lot west of 315 Osage St	2969
Chestnut	Vacant lot north of 701 S 2nd St (off of 2nd & Chestnut)	30625
213 N 3rd St	Vacant lot south of 221 N 3rd	3383
501 Ottawa	Vacant corner lot east of 505 Ottawa	2240
505 Ottawa	Vacant lot east of 509 Ottawa	2986
225 Osage Street	Vacant lot west of 221 Osage	6027
316 Pottawatomie	Vacant lot west of 312 Pottawatomie (36' width)	4510
428 Pawnee Street	Vacant lot west of 426 Pawnee	6417
115 Ottawa Street	SE corner 2nd & Ottawa	5396
514 N 2nd St	38' from the SE corner 2nd & Ottawa	2115
vacant lot	vacant lot area to the west of 406 S 5th	16711
741 Kickapoo	Vacant lot east of 743 Kickapoo	3500
214 Kiowa	Vacant lot west of 210 Kiowa (24" width)	3000
Vacant lot	Vacant lot at southwest corner of 2 nd St & Kickapoo	3096
611 N 2nd St	Vacant lot at southwest corner of 2 nd St & Kickapoo	5904
613 N 2nd St	Vacant lot southwest corner of 2 nd St & Kickapoo	2304
417 N 5th St	Vacant lot at southwest corner of 5 th St & Pottawatomie	6235
305 Miami St	Vacant lot east of 307 Miami St	3000

Total Square Feet

170,086

Cluster 3

Location	Property Description	Sq. Ft.
Pawnee Street	vacant lot area west of 925 N. 14th St	13323
vacant area	Vacant lot at 14th & Dakota (Southeast Corner)	27545
vacant area	Metropolitan hill - 16th Street and west to bottom of hill	86401

Total Square Feet

127,269

Cluster 4

Location	Property Description	Sq. Ft.
vacant area	Approx. 140 ft from corner of 17th & Vilas then approx. 150 feet to the west.	3900
1401 W. Eisenhower Rd	Vacant corner lot, SW of Eisenhower & 10th Ave/Calvary Rd	41508
Shrine Park Rd	NE corner of bridge apron, South of 3037 Shrine Park Rd	7529
10th Ave	Bridge area south of 3523 10th Ave	5854
Wilson Ave	NW corner of St. Mary's and Wilson Ave	11216
802 10th Ave	Vacant corner lot east of 1004 Randolph	5878
vacant area	Wilson Ave right-of-way - East side of the street, South 2301 & 2309 Wilson Ave driveway	8333

Total Square Feet

84,218

Cluster 5

Location	Property Description	Sq. Ft.
vacant area	Off Ohio - cut/trim grass and weeds on the double alley area between Columbia & 9th Ave 1400 Block	4490
vacant area	1700 block of 4th St. (vacant lot south of Cellular One) 1612 4th St use to be lots 27, 28 & 29	15638
vacant area	North of 2500 S 4th St (Lot North of Pawn Shop/Bridge area) Lots 1 & 2	23949
vacant area	10th Ave & Randolph - trim grass & weeds around area of guardrail on East side of 10th Ave	1936
vacant area	10th Ave & Ironmoulders - trim grass & weeds around area of the guardrail on East side of 10th Ave	1049
Elm Street	Lot South of 1201 2nd Ave	3981
vacant area	Corner of Charles St. & Lawrence Ave. Guardrail	2350

Total Square Feet

115,786

**POLICY REPORT
FIRST CONSIDERATION ORDINANCE
2022-07-REZ
1830 S. BROADWAY STREET**

MAY 24, 2022

SUBJECT:

Place on first consideration an ordinance to approve 2022-07-REZ



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



Reviewed By:
Paul Kramer,
City Manager

ANALYSIS:

The applicant and owner, Baljit Baidwan, is requesting a rezoning of the property located at 1830 South Broadway Street from PUD, Planned Unit Development, to R-MX, Residential Mixed Use District. The subject property is 9.32 acres in size and is occupied by a single building, which is occupied by the Council on Aging. The Council on Aging is anticipated to vacate the building and relocate to the former Cushing Memorial Hospital by the end of 2022.

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, Planned Unit Development 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.

The rezoning of the property in 2009 to PUD restricted the uses to government storage, temperature controlled storage, governmental uses and office for private entities serving government needs. This rezoning is being requested to allow the property owner to renovate the building to allow for a mix of office and multifamily residential uses. The owner has indicated that he anticipates approximately 30 residential units to be constructed in the building. The owner has indicated that he has no plans at this time to expand the existing structure or construct additional buildings on the property.

During the first public hearing held by the Planning Commission on March 7, 2022 the board voted 4-0 to recommend approval of the Rezoning request. During the meeting a total of 6 neighbors spoke in opposition to or voicing concerns about the proposed Rezoning. During the public hearing held by the Planning Commission on May 9, 2022, one neighbor spoke in opposition to the proposed Rezoning.

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 Council on Aging facility. The surrounding and adjacent properties are single-family homes, and Saint Casimir church located at the southeast corner of Pennsylvania St and S Broadway Street. The subject property's access entrance is located along Garland Street, the parcel abuts Pennsylvania Street, South Broadway St, and Rees St. Garland Street is classified as a local street and designed to handle a low volume of traffic. Based on 2019 Pavement Condition Index (PCI) the current condition of Garland is classified as very poor.

- b) The zoning and use of properties nearby;

All adjacent properties are zoned R1-6 (High Density Single Family Residential District), and uses are single-family residential, with St. Casimir Catholic Church to the northeast.

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

The subject property was built in 1960 and was previously used as the county infirmary. The nature of the building limits its functionality to primarily office type uses as it exists today. The building is currently used as an office space and community center for senior citizens for the Council on Aging. A large portion of the property is open green space.

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

The proposed rezoning has potential to impact the surrounding properties by increasing the vehicular and foot traffic flow in the area. The subject building has been used for office space and community center for senior citizens prior to the current owner.

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

The existing building has not been vacated by Council on Aging. Council on Aging is still utilizing office space and holding programs and events at this location.

- 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 could have a potential positive effect on public health, safety and welfare by allowing for the reuse of an existing building that is about to become vacant, and by providing for a mix of residential, office and commercial uses.

- 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 Public/Semi-Public on the Future Land Use map. While the proposed rezoning to R-MX is not specifically a public or semi-public use, the designation of Public/Semi-Public does take into account the potential for a more intense use of the property than what currently exists. Therefore, staff finds the proposed use to be in conformance with the overall goals of the adopted Comprehensive Plan.

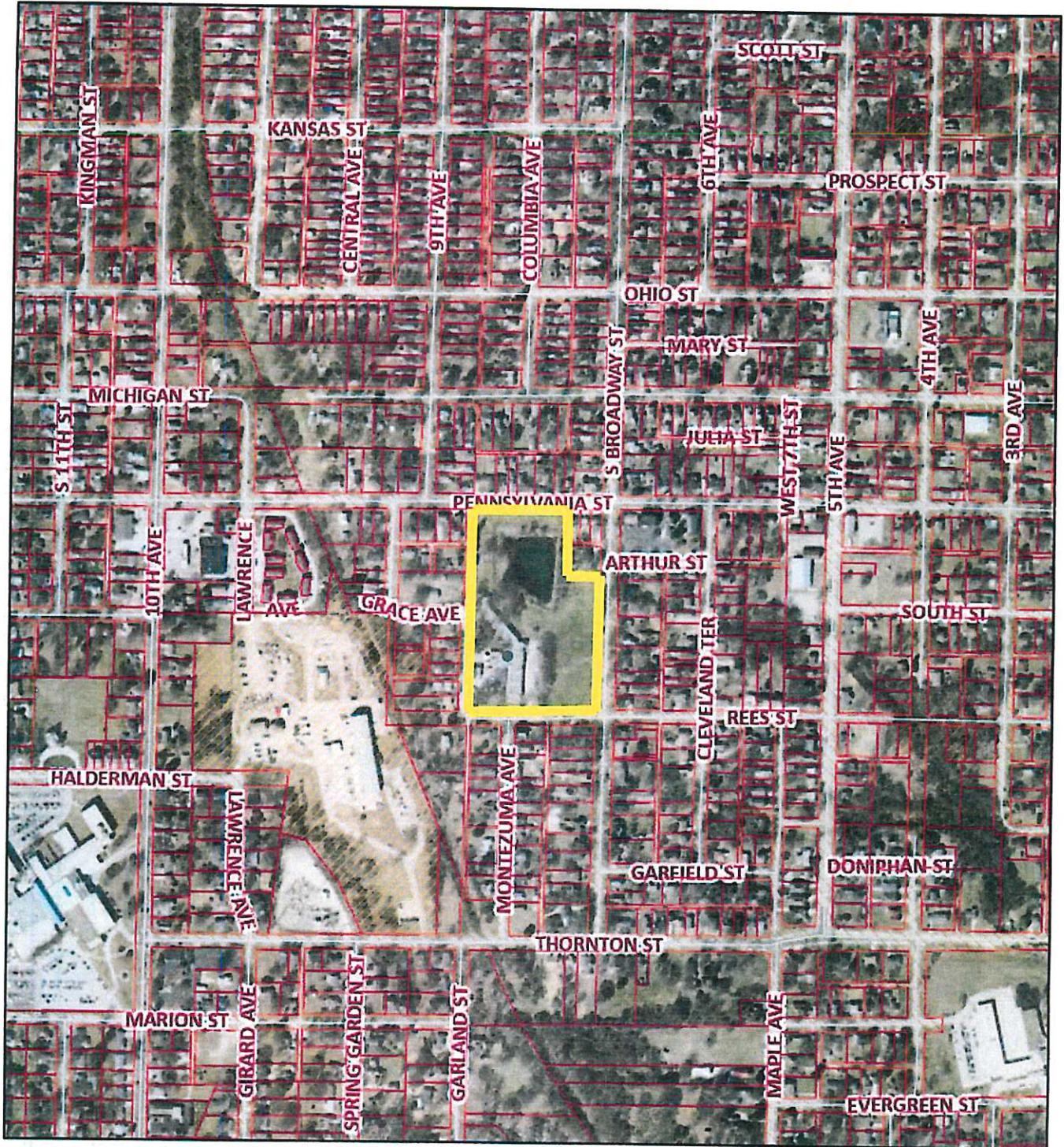
- i) Such other factors as may be relevant to a particular proposed amendment. The factors considered in taking action on any proposed amendment shall be included in the minutes or otherwise be made part of the written record.

No other factors

REZONING ACTION/OPTIONS:

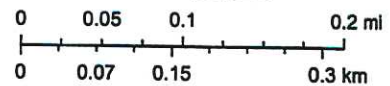
- Place an ordinance on first consideration to approve the rezoning request of 1830 S. Broadway from PUD to R-MX.
- Deny the rezoning request of 1830 S. Broadway from PUD to R-MX.
- Return the rezoning request to the Planning Commission for further consideration.

1830 S. Broadway



4/27/2022, 2:36:17 PM

1:9,028

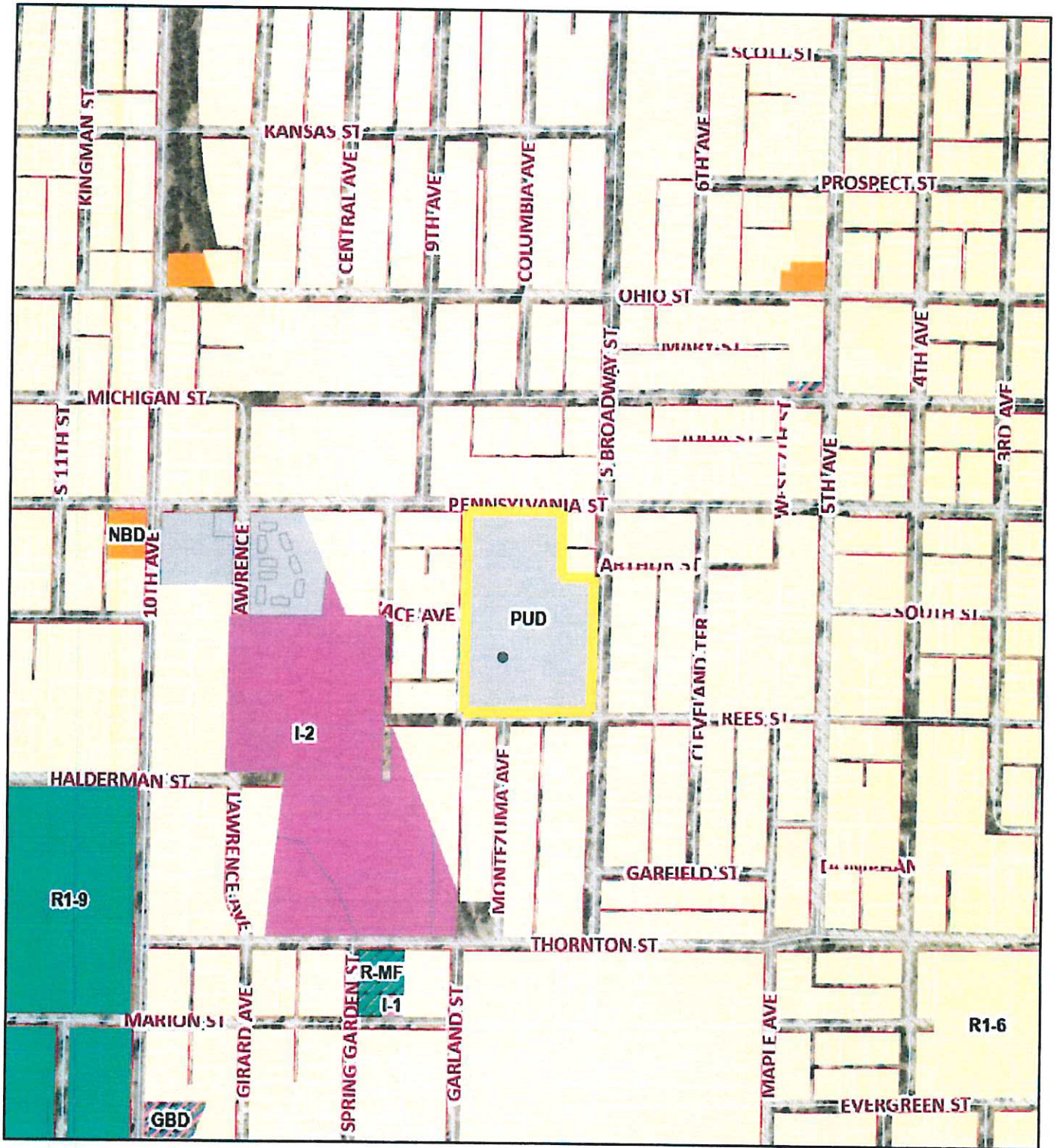


Platte County, Missouri Dept. of Conservation, Esri, HERE, Garmin, GeoTechnologies, Inc., Intermap, USGS, EPA

Web AppBuilder for ArcGIS
















Platte County, Missouri Dept. of Conservation, Esri, HERE, Garmin, GeoTechnologies, Inc., Intermap, USGS, EPA |

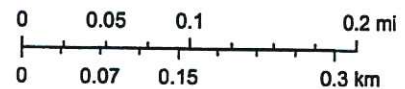
1830 S. Broadway - Zoning



4/27/2022, 4:13:26 PM

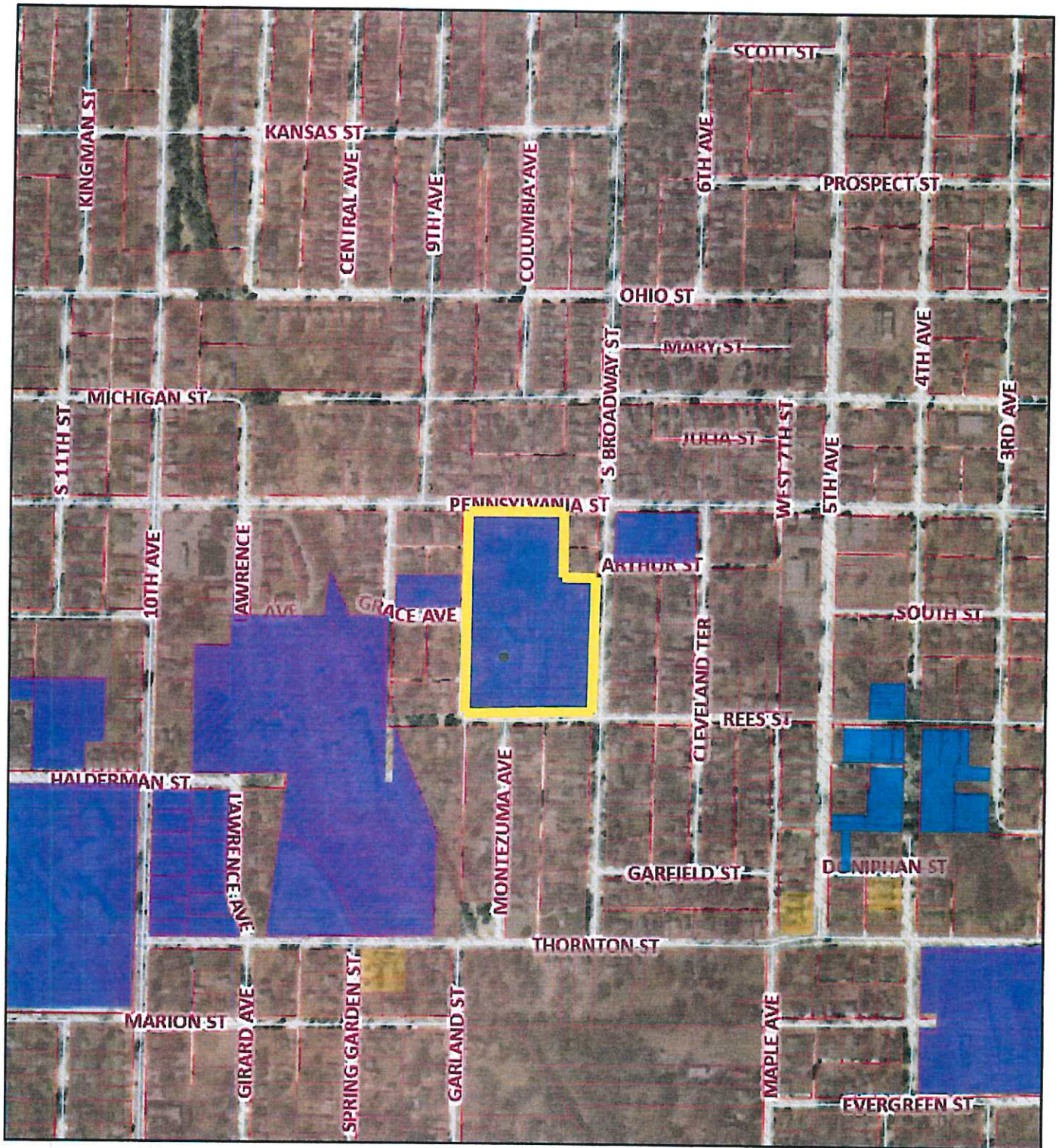
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- | | | |
|--|--|---|
|  Override 1 |  NBD |  Parcels (City Owned) |
|  Zoning_CURRENT |  PUD |  Parcels_Current |
|  GBD |  R-MF |  Leavenworth City Limits |
|  I-1 |  R1-6 |  City Right-of-Way |
|  I-2 |  R1-9 |  RoadCenterline |



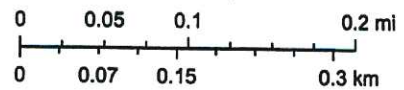
Platte County, Missouri Dept. of Conservation, Esri, HERE, Garmin, GeoTechnologies, Inc., Intermap, USGS, EPA

1830 S. Broadway - Future Land Use



4/27/2022, 2:38:42 PM

1:9,028



- Override 1
- Future Land Use (Comp Plan 2030)
- Conservation/Open Space
- Multi-Family
- Public/Semi-Public
- Single-Family
- Parcels (City Owned)
- Parcels_Current
- Leavenworth City Limits
- City Right-of-Way
- RoadCenterline

Platte County, Missouri Dept. of Conservation, Esri, HERE, Garmin, GeoTechnologies, Inc., Intermap, USGS, EPA



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

OFFICE USE ONLY

CASE NO. 2022-07 REZ

Application #	11092
Fee (non-refundable)	waived \$350.00
Filing Date	4-7-22
Received By	_____
Hearing Date	5-9-22
Publication Date	4-14-22

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:	1830 S Broadway St Leavenworth KS 66048		
Rezoning:	Present classification of:	PUD	district to: RMX
Legal Description:	(Attach full legal description provided by the REGISTER OF DEEDS OFFICE)		
Real Estate PID #	101-02-0-10-14-004-00-0	Historic District:	

I/We, Baljit Baidwan 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):	Baljit Baidwan		
Address:	14413 Reeds St Overland Park KS 66223		
Contact No.:	615-218-8423	Email:	Baidwan.Baljit@gmail.com
Signature of Owner(s):	<u>Baidwan</u>		

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

State of Kansas)
County of Leavenworth), ss

Signed or attested before me on April 7th, 2022 by Baljit Baidwan
(date) (name(s) of person(s))

Notary Public: Michelle Baragary My Appointment Expires: 8-16-24

(SEAL)



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:

This is a large lot commercial in nature surrounded by mostly single family homes.

Briefly describe the intended use and character of the property:

Convert the existing building into a mix of use to some office & multifamily.

Briefly describe why you believe the land use (zoning) being requested is the most appropriate for this property:

The proposed use is the best use of the building without major changes. The current use is an office and was an infirmary in the past housing a large number of people.

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:

Currently used as an office for council meetings since 2010. Large number of vehicles already at the building & traffic from visitors.

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:

SUP for COA.

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)

CITY OF LEAVENWORTH PLANNING COMMISSION
COMMISSION CHAMBERS, CITY HALL
100 N 5th Street, Leavenworth, Kansas 66048
REGULAR SESSION
Monday, May 9, 2022
6:00 PM

CALL TO ORDER:

Commissioners Present

Claude Wiedower
Joe Burks
Bill Waugh
Donald Homan
Sherry Hines Whitson

Commissioners Absent

James Diggs

City Staff Present

Julie Hurley
Michelle Baragary

Chairman Wiedower called the meeting to order at 6:00 p.m. and noted a quorum was present.

APPROVAL OF MINUTES: April 4, 2022

Chairman Wiedower asked for comments or a motion on the minutes presented for approval: April 4, 2022. Commissioner Burks moved to approve the minutes as presented, seconded by Commissioner Whitson and approved by a vote of 5-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. 2022-07 REZ – 1830 S. BROADWAY

Conduct a public hearing for Case No. 2022-07 REZ – 1830 S. Broadway. The applicant is requesting a rezoning of the property located at 1830 S. Broadway from PUD, Planned Unit Development, to R-MX, Residential Mixed Use District.

Chairman Wiedower called for the staff report.

Planning Director Julie Hurley stated the applicant and owner, Baljit Baidwan, is requesting a rezoning of the property located at 1830 S. Broadway Street from PUD, Planned Unit Development, to R-MX, Residential Mixed Use District. The subject property is 9.32 acres in size and is occupied by a single building, which is occupied by the Council on Aging. The Council on Aging is anticipated

to vacate the building and relocate to the former Cushing Memorial Hospital by the end of 2022.

A public hearing was previously 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, Planned Unit Development, 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.

The rezoning of the property in 2009 to PUD restricted the uses to government storage, temperature controlled storage, governmental uses and office for private entities servicing government needs. This rezoning is being requested to allow the property owner to renovate the building to allow for a mix of office and multifamily residential uses. The owner has indicated that he anticipates approximately 30 residential units to be constructed in the building. The owner has indicated that he has no plans at this time to expand the existing structure or construct additional buildings on the property.

During the previous public hearing held by the Planning Commission on March 7, 2022, the board voted 4-0 to recommend approval of the rezoning request. During the meeting a total of 6 neighbors spoke in opposition to or voicing concerns about the proposed rezoning.

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 Council on Aging facility. The surrounding and adjacent properties are single-family homes, and Saint Casimir church located at the southeast corner of Pennsylvania Street. and S. Broadway Street. The subject property's access entrance is located along Garland Street, the parcel abuts Pennsylvania Street, South Broadway Street, and Rees Street. Garland Street is classified as a local street and designed to handle a low volume of traffic. Based on 2019 Pavement Condition Index (PCI) the current condition of Garland Street is classified as very poor.

b) The zoning and use of properties nearby;

The adjacent properties are zoned R1-6 (High Density Single Family Residential District),, and uses are single-family residential, with St. Casimir Catholic Church to the northeast.

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

The subject property was built in 1960 and was previously used as the county infirmary. The nature of the building limits its functionality to primarily office type uses as it exists today. The building has been used as an office space and community center for senior citizens for the Council on Aging. A large portion of the property is open green space.

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

The proposed rezoning has potential to impact the surrounding properties by increasing the vehicular and foot traffic flow in the area. The subject building has been used for office space and community center for senior citizens prior to the current owner.

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

The existing building has not been vacated by Council on Aging. Council on Aging is still utilizing office space and holding programs and events at this location.

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 landowner;

The proposed rezoning could have a potential positive effect on the public health, safety and welfare by allowing for the reuse of an existing building that is about to become vacant, and by providing for a mix residential, office and commercial uses.

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 Public/Semi-Public on the Future Land Use map. While the proposed rezoning to R-MX is not specifically a public or semi-public use, the designation of the Public/Semi-Public does take into account the potential for a more intense use of the property than what currently exists. 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.

REZONING ACTION/OPTIONS:

- Recommend approval of the rezoning request of 1830 S. Broadway from PUD to R-MX to the City Commission
- Recommend denial of the rezoning request of 1830 S. Broadway from PUD to R-MX to the City Commission
- Table the issue for additional information/consideration.

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

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

Terry Hundley, 1816 Garland, stated at the March Planning Commission meeting, the property owner said he would maintain the property and keep the grass mowed. The grass and weeds are excessively tall. Mr. Hundley further stated there is a large hole at the entrance to the subject property directly across the street from his property. There is no curb so every time it rains the water runs into his front yard.

Chairman Wiedower stated he does remember the grounds maintenance being a concern during the last Planning Commission meeting. However, this is a rezoning request and maintenance is a separate issue from the rezoning request.

Baljit Baidwan, property owner, stated he has a contractor to mow the property and the contractor has been slow at getting out to the subject property. Mr. Baidwan stated he will look into this concern and will get it taken care of. Mr. Baidwan stated he will need to look into the water issue because he is not sure if that is something he needs to deal with or if it is the City's responsibility.

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

Commissioner Whitson stated she does have a concern about traffic, especially on Garland as that road condition is classified as poor.

Commissioner Burks stated if he knew of the correct rezoning at the March meeting, his vote would not have changed; it's simply a mistake from 2009 in the original zoning of the property, which is now being addressed. However, he does sympathize with the community and does expect the grounds maintenance issue to be addressed by the property owner.

Commissioner Homan asked about the maintenance of the pond on the subject property.

Chairman Wiedower stated maintenance, liability, etc. of the pond was discussed at the March meeting. It is the responsibility and liability of the property owner.

Commissioner Whitson stated the benefit of rezoning the property outweighs her traffic concern.

With no further questions/discussion, Chairman Wiedower called for a motion. Commissioner Whitson moved to recommend for approval to the City Commission the rezoning request from PUD, Planned Unit Development, to R-MX, Residential Mixed Use District for Case No. 2022-07 REZ – 1830 S. Broadway based upon all information presented, seconded by Commissioner Burks and passed by roll call 5-0.

2. 2022-08 APPEAL – 4900 S. 4TH STREET

Review site plan for a proposed development at 4900 S. 4th Street. The applicant, John Kollhoff, is appealing the Development Review Committee's unanimous decision to withhold approval of the site plan for 7 Brew Coffee located at 4900 S. 4th Street.

Chairman Wiedower called for the staff report.

Planning Director Julie Hurley stated the applicant, John Kollhoff with 7 Brew Coffee, submitted a site plan for a proposed development at 4900 S. 4th Street. After review of the proposal and discussion with KDOT, staff requested several revisions to the submitted site plan to address City requirements, as well as a Traffic Impact Study (TIS). The revised site plan as submitted and the TIS do not address all City requirements. Staff notified the applicant on April 7th of the decision to withhold approval of the site plan

The Development Regulations places responsibility for final review and approval or rejection of site plans for specified projects with the Development Review Committee (DRC). The DRC is a staff review committee composed of the following personnel: Director of Planning & Community Development, Chief Building Inspector, City Clerk, City Manager, Assistant City Manager, City Planner, Fire Chief, Parks & Recreation Director, Police Chief, and Public Works Director. Section 2.05 states:

CITY OF LEAVENWORTH PLANNING COMMISSION
COMMISSION CHAMBERS, CITY HALL
100 N 5th Street, Leavenworth, Kansas 66048
REGULAR SESSION
Monday, March 7, 2022
6:00 PM

CALL TO ORDER:

Commissioners Present

Claude Wiedower
Sherry Hines Whitson
Bill Waugh
Joe Burks

Commissioners Absent

James Diggs
Chris Murphy
Donald Homan

City Staff Present

Julie Hurley
Michelle Baragary
Jackie Porter

Chairman Wiedower called the meeting to order at 6:00 p.m. and noted a quorum was present.

APPROVAL OF MINUTES: February 7, 2022

Chairman Wiedower asked for comments or a motion on the minutes presented for approval: February 7, 2022. Commissioner Burks moved to approve the minutes as presented, seconded by Commissioner Whitson and approved by a vote of 4-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. 2022-04 REZ – 1830 S. BROADWAY

Conduct a public hearing for Case No. 2022-04 REZ – 1830 S. Broadway. The applicant/owner is requesting a rezoning of the property located at 1830 S. Broadway from R1-6, High Density Single Family Residential District, to RMX, Residential Mixed Use District.

Chairman Wiedower called for the staff report.

City Planner Jackie Porter stated the applicant and owner, Baljit Baidwan, is requesting a rezoning of the property located at 1830 S. Broadway Street from R1-6, High Density Single Family Residential District, to RMX, Residential Mixed Use District. The subject property is 9.32 acres in size and is occupied by a single building. The existing structure is occupied by the Council on Aging. A

Special Use Permit for a “convalescent nursing or rest home” was approved for the property in 1985. The Council on Aging operates as a legal non-conforming use of an office building and community center for senior citizens programs and events. The Council on Aging is anticipated to vacate the building and relocate to the former Cushing Memorial Hospital by the end of 2022.

The rezoning is being requested by the property owner to allow the zoning to accurately represent the intended use of property. The current owner intends to renovate the building to allow for office space and multifamily residential uses. The owner has not indicated any specific plans in terms of mix of uses, number of residential units, or square footage of office space. The owner has indicated that he has no plans at this time to expand the existing structure or construct additional buildings on the property.

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 Council on Aging facility. The surrounding and adjacent properties are single-family homes, and Saint Casimir Church located at the southeast corner of Pennsylvania Street and S. Broadway Street. The subject property’s access entrance is located along Garland Street, the parcel abuts Pennsylvania Street, South Broadway Street, and Rees Street. Garland Street is classified as a local street and designed to handle a low volume of traffic. Based on 2019 Pavement Condition Index (PCI), the current condition of Garland Street is classified as very poor.

- b) The zoning and use of properties nearby;

All adjacent properties are zoned R1-6 (High Density Single Family Residential District), and uses are single-family residential.

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

The subject property was built in 1960. There have been improvements on the property in 1960, 1970, 1975 and 1980. The building is currently used as an office space and community center for senior citizens for the Council on Aging.

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

The proposed rezoning has potential to impact the surrounding properties by increasing the vehicular and foot traffic flow in the area. The subject building has been used for office space and community center for senior citizens prior to the current owner.

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

The existing building has not been vacated by Council on Aging. Council on Aging is still holding programs and events at this location.

- 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 could have a potential positive effect on public health, safety and welfare by allowing for the reuse of an existing building that is about to become vacant, and by providing for a mix of residential, office and commercial uses.

- 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 Public/Semi-Public on the Future Land Use map. While the proposed rezoning to RMX is not specifically a public or semi-public use, the designation of Public/Semi-Public does take into account the potential for a more intense use of the property than what currently exists. 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.

REZONING ACTION/OPTIONS:

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

Chairman Burke called for questions for staff.

Regarding the intended use, Commissioner Burks asked if they are to go back to 1985 and try to understand what the intended use of this property was for.

Planning Director Julie Hurley responded that as long as the City has had zoning, this property has been zoned R1-6. A Special Use Permit (SUP) was issued in 1985 for a nursing home. Our records do not indicate when the nursing home stopped operating at this location and switched over to the Council on Aging just being the office use. Technically the property is a non-conforming use because the current use does not meet the SUP for a convalescent nursing home. The non-conforming use is allowed to continue unless the use changes. With the Council on Aging leaving, any use on this property would have to be in conformance with the zoning; and in order to do anything other than single-family residential on this particular property, there needs to be a different special use permit issued or a rezoning.

Chairman Wiedower stated to the audience, they will be provided an opportunity to speak on the issue at hand. When at the podium, must state your name and address for the record. Do not address questions to the property owner. All questions shall be directed to the commission.

Chairman Wiedower asked the property to speak about his plans for the subject property.

Baljit Baidwan, applicant and owner of the subject property, stated he purchased the property in July 2021. Wants the best use that will allow him to use the current structure on the property without tearing the building down. The building is over 20,000 sqft. Would use some space for office space and convert the rest of the building into multi-family units.

Chairman Wiedower asked Mr. Baidwan where he lives and if he has other properties that he has converted to apartments.

Mr. Baidwan responded he lives in Overland Park, Kansas. He owns two properties in Leavenworth, one is multi-family located on Ottawa and the other building is downtown. He also owns properties outside of Leavenworth.

Chairman Wiedower asked in addition to the proposed office space, how many apartments does the applicant intend to have.

Mr. Baidwan stated the number is not definite but if he goes with a 600-700 sqft one-bedroom apartment it would be about 30 units.

Chairman Wiedower asked if there will be any changes to the available parking at the subject property.

Mr. Baidwan responded City staff will dictate how many parking stalls will be required when he submits his final plan to the City. Believes there is enough parking for the south side of the building but will require parking for the north side of the building. The property is large enough to create another parking lot. People will not be parking on the street.

Other than renovations to the building, Chairman Wiedower asked the property owner what his plans are to keep the property looking professional, i.e. landscaping.

Mr. Baidwan stated his immediate plan for this summer is to renovate the north side of the building into 10 apartments and add a parking lot. The south portion of the building will be renovated after the Council on Aging vacates the property.

With no further questions from the commissioners, Chairman Wiedower opened the public hearing. Those wishing to speak need to state their name and address for the record.

Betty Smith, 1708 Garland, stated her concerns are with the overgrown bushes and algae in the pond.

Terry Hundley, 1816 Garland, is concerned because there is no drainage or curb on Garland. Additional concern is that Garland is not wide enough for the increased traffic apartments would bring to the area. Concerned with construction equipment driving down Garland.

Chairman Wiedower asked if the applicant would be required to do something about the drainage or curbs.

Ms. Hurley responded with the information we have now, that's correct; and there are no plans to make any improvements to Garland at this time.

Chairman Wiedower asked the applicant if he has considered the traffic impact.

Mr. Baidwan stated it is unlikely traffic will increase from the amount of traffic the Council on Aging currently has.

Commissioner Whitson asked the property owner if he has any concern with additional traffic since, according to the PCI, the conditions on Garland and Rees Streets are poor.

Mr. Baidwan responded he does not know how the City maintains their streets but hopes it is part of the City's ongoing street maintenance/repair. Mr. Baidwan further stated the Council on Aging has enough traffic that he does not expect traffic to increase from what it currently is. Furthermore, not every vehicle will only use the Garland entrance; there is also an entrance on Rees Street.

Commissioner Whitson and Burks asked what the property owner would do with the property and building if the rezoning did not pass.

Mr. Baidwan responded he does not know what he would do if the rezoning did not pass. He is trying to keep the building from being torn down by renovating the structure and at the same time putting the building to the best possible use.

Chairman Wiedower stated his opinion as a commissioner is there is nothing worse than a vacant building; and we all know too well what happens to vacant buildings in the City.

Suzanne Morris, 1708 S. Broadway, stated her first concern is with the quality of applicants who will live in the building because she heard it will be lower income housing apartments. Her second concern is if the pond is drained, it would be drained next to her house.

Ms. Hurley stated income level of multi-family housing is not applicable to a specific use and is not something that can be considered when looking at a rezoning request.

Chairman Wiedower asked the property owner what his price range is to rent an apartment in this building and what are his plans for the pond.

Mr. Baidwan responded rent will be based on a rental market study. He has no history on the pond and does not know if the pond is there for drainage purposes. He would like to keep the pond and is willing to clean it up.

Ron Norman, 1829 S. Broadway, stated he was in the subject building a couple years ago and the north end is in horrendous shape. He has concerns with asbestos, pipes that are missing, ceilings falling in, etc. Also has concerns with increased traffic on Garland and Rees Streets.

Chairman Wiedower asked staff if permits are required for renovations to the building, which would include building inspections to make sure it meets building codes.

Ms. Hurley responded in the affirmative. The City operates under the 2018 IBC. Any work would have to obtain permits and meet the 2018 IBC.

Chairman Wiedower asked the property owner if there will be some sort of recreation area for people living in the apartment complex.

Mr. Baidwan responded he plans to keep the pond and clean it up for people to hang out around.

Judy Johnson, 1816 Garland, stated her concerns are with traffic and parking. Ms. Johnson further asked if the building will be expanded in size.

Mr. Baidwan responded that he is not expanding the building. He further stated, as depicted in the current GIS pictures, there are 20-30 vehicles parked in the west parking lot in front of the building. The traffic for the apartment complex is not going to be concentrated in that one area but rather be spread out using the existing east parking lot and the new parking lot, which will be located to the north.

Ms. Hurley stated even if Mr. Baidwan has no intent of expanding the building or constructing additional buildings, if this property is rezoned to RMX that would allow for the potential for that to happen. RMX allows for a mix of uses from residential, office and commercial that are intended to be appropriate for neighborhood settings. Therefore, if this property is rezoned to RMX there is potential to allow Mr. Baidwan, or a different property owner if Mr. Baidwan sells the property, to expand the current building, construct additional buildings or to replat the property and subdivide it into additional lots.

Chairman Wiedower asked staff if Mr. Baidwan decides to expand the building in the future, would that require him to come back before this board.

Ms. Hurley responded in the negative. Once the property is rezoned to RMX, the property owner would need to meet the requirements of that zoning district, which is a staff level approval, and would need to get building permits. However, if the property were to be subdivided at some point in the future, that would require a plat, which would come before this board.

Ms. Porter further stated when the owner starts renovations on the building and construction of the parking lot, this also will go through staff review, which will include engineering for drainage and for traffic impact on the streets.

Kathy Price, 1825 S. Broadway, asked how a determination is made on approving a zoning request when the plans are so vague. Concern with upkeep of the property, such as overgrown grass. When the building was a nursing home, there were always issues with the sewer. Would sewer problems be an issue for the City to handle or the property owner. Ms. Price also asked if the property owner has an interest in the community and what size are the other apartment complexes he owns.

Chairman Wiedower stated the role of this board is to either recommend approval or denial to the City Commission or table the issue for additional information/consideration. Final approval lies with the City Commission. There is also a protest period for anyone who wishes to protest the Planning Commission's recommendation. Chairman Wiedower further stated, this board cannot make a determination based on where the property owner lives or how many other properties the owner owns. However, the Mr. Baidwan did state he lives in Overland Park and owns several other

properties in this area. Should an issue arise, the owner could be in Leavenworth within an hour, if need be.

Chairman Wiedower asked Mr. Baidwan to address Ms. Price's other concerns about property maintenance and sewer issues.

Mr. Baidwan stated his intent is to keep the property well maintained and looking nice. He does have a contractor who maintains the property. Mr. Baidwan further states he does not know of any sewer problems. However, if there is a problem on the property, he will deal with it. If there is a sewer problem on the City's side, then the City will deal with it.

Chairman Wiedower asked if there will be a property manager onsite.

Mr. Baidwan responded in the affirmative.

Mr. Hundley stated when the Davis's owned this property, they had the pond locked up for liability purposes so no one would drown in the pond. Mr. Hundley asked if the current property owner knows what the insurance is going to cost to have the pond on this property.

Mr. Baidwan stated he has insurance and the insurance company has not said anything about the pond being a problem. He intends to keep it locked until the apartment complex is ready, at which time he will reconnect with his insurance company.

Ms. Price stated her concern with the pond is people going to the pond at night to party. Asked if the onsite manager will be a resident at the apartment complex.

Mr. Baidwan responded in the affirmative. He further stated he has a resident manager at his apartment complex in St. Joe and it works out well as the manager is there to deal with any issues.

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

Commissioner Whitson stated she does have some concern in regards to what may happen in the future if the zoning request is approved. However, we cannot control the future nor do we know what type of changes may occur in that community. Other concerns are the traffic and sewer issue.

Ms. Hurley stated the current zoning for the subject property is R1-6, High Density Single Family Residential District. The only thing the property could be used for once it is vacated by the Council of Aging would be single-family residential. Therefore, as it stands, this property could be replatted into a single-family subdivision with lots the same size as what is surrounding it; and you're potentially looking at more than the 25 or 30 lots that could fit on this roughly 10 acre parcel. Additionally, a replat would not require a public hearing.

Commissioner Burks stated they cannot work off assumptions or what-ifs. Never met an investor who did not want a profit and does not believe Mr. Baidwan would step into this with any thought of anything less than profit. Commissioner Burks further stated he appreciates everyone's concerns but this is a rezone request and this board only has a responsibility to talk about rezoning and provide our recommendation to the City Commission.

Commissioner Waugh stated he appreciates everyone's concerns but he is in agreement with Commissioner Burks; we cannot make decisions based on assumptions. He believes the development of this particular property will be a challenge going forward regardless of how it is zoned and will be dealt with through the mechanisms the City already has in place.

Commissioner Burks further stated if nothing happens to the building and it becomes vacant, he fears a negative impact on the community. A vacant building of this nature will attract criminal activity, drugs, etc.

Chairman Wiedower also stated he does not want to see this building vacant as it will attract homeless people, drugs and partying into this neighborhood. He reiterated this board's role is to recommend approval or denial to the City Commission for the rezoning request only.

With no further questions/discussion, Chairman Wiedower called for a motion. Commissioner Whitson moved to recommend for approval to the City Commission the rezoning request from R1-6 to RMX for Case No. 2022-04 REZ – 1830 S. Broadway based upon all information presented, seconded by Commissioner Waugh and passed by a roll call vote 4-0.

Ms. Hurley stated this rezoning request goes to the City Commission on March 22, 2022. Tomorrow does being the 14-day protest period.

With no other business, Chairman Wiedower adjourned the meeting at 7:09 p.m.

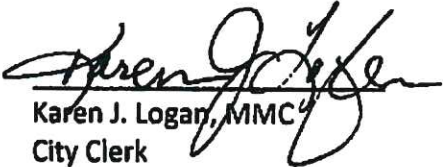
Minutes taken by Administrative Assistant Michelle Baragary.

Policy Report
Zoning Ordinance Second Consideration
1830 S. Broadway – Old County Infirmary

approved

May 12, 2009

Prepared by:


Karen J. Logan, MMC
City Clerk

Reviewed by:


J. Scott Miller
City Manager

Issue:

The City Commission on April 28, 2009 discussed and placed on first consideration an Ordinance to rezone a tract of land from R1-6 Higher Density Residential District to PUD Planned Unit Development District. Owners want to use the property for government storage, temperature controlled storage, governmental uses and office for private entities serving government needs. Government activities are permitted uses in residential districts. The property is currently located within a single family residential zone and the building does not easily adapt to a single family use.

Action:

Ordinance No. 7797 is now presented for second consideration and requires a roll call vote.

ORDINANCE NO. 7797

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF LEAVENWORTH, KANSAS BY REZONING CERTAIN PROPERTY

WHEREAS, under the Zoning Ordinance 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 Ordinances of the City of Leavenworth, Kansas, held a public hearing on the 6th day of April, 2009 in the Commission Auditorium, 1st Floor of City Hall, 100 N. 5th Street, Leavenworth, Kansas, the official date and time set out as was published in the Leavenworth Times newspaper; and

WHEREAS, upon a motion made, duly seconded and passed, the Governing Body adopted the findings of fact and conclusions to rezone the property described herein. Now, Therefore,

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

Section 1: That the following described property, to-wit:

A tract of land in the Northeast Quarter of Section 2, 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 Northeast corner of said Northeast Quarter; thence South 89 degrees 40'31" West, all bearings are from GPS observation, a distance of 927.33 feet; thence South 01 degrees 02'02" West a distance of 885.60 feet to the TRUE POINT OF BEGINNING, said point being on the South right of way of Pennsylvania Avenue and also being the Northwest corner of a tract of land recorded in Deed Book 982 Page 704; thence S 01°02'02" W for a distance of 270.07 feet along the West line of said Tract, Deed Book 982 Page 704, and along the West line of a tract of land recorded in Deed Book 716 Page 706 to the Southwest corner of said Tract, Book 716 Page 706; thence N 89°42'58" E for a distance of 139.88 feet along the South line of said Tract, Deed Book 716 Page 706, to the Westerly right of way of South Broadway; thence S 01°02'02" W for a distance of 548.00 feet along said Westerly right of way to the North right of way line of Rees Street; thence S 89°33'52" W for a distance of 544.01 feet along said North right of way line to the East right of way of Garland Street, also being the East line of S.H.Holmes Pleasant View Subdivision; thence N 01°32'06" E for a distance of 819.71 feet along said right of way to the South right of way line of Pennsylvania Avenue; thence N 89°42'58" E for a distance of 396.92 feet along said South right of way line to the point of beginning. Together with and subject to covenants, easements, and restrictions of record. Said property containing 9.3 acres, more or less, including road right of way.

Be and the same is hereby rezoned from (R1-6) Higher Density Residential District to (PUD) Planned Unit Development District.

Section 2: That this Planned Unit Development District is subject to the following:

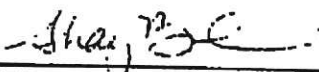
1. The use of the property will be limited to government activities as normally permitted in residential districts, government storage, temperature controlled storage, and offices for private and governmental entities.
2. There shall be no additional building expansion.
3. There shall be no outdoor use other than residential.

4. The lake area will be available to the public.
5. Parking shall be expanded for the requested uses as required by the Zoning Ordinance and will be provide in accordance with an approved Final Development Plan.

Section 3: That the "Zoning District Map" adopted under Section 21.106 of the Zoning Ordinance of the City of Leavenworth, Kansas shall be and the same is hereby corrected to conform to the rezoning as set forth in Section 1 above.

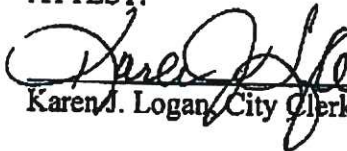
Section 4: That this Ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper of the City of Leavenworth, Kansas, as provided by law.

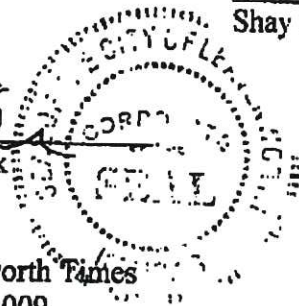
Passed by the Leavenworth City Commission on this 12th day of May, 2009.



Shay Baker, Mayor

ATTEST:


Karen J. Logan, City Clerk



Published in The Leavenworth Times
Date of Publication: 5-15-2009

(Summary Published in the Leavenworth Times on June _____, 2022)

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE DEVELOPMENT REGULATIONS, APPENDIX A OF THE CODE OF ORDINANCES OF THE CITY OF LEAVENWORTH, KANSAS BY REZONING 1830 S. BROADWAY STREET FROM PLANNED UNIT DEVELOPMENT (PUD) TO RESIDENTIAL MIXED USE DISTRICT (R-MX).

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 9th day of May 2022 in the Commission Room, 1st Floor of City Hall, 100 N. 5th Street, Leavenworth, Kansas. The official date and time set as was published in the Leavenworth Times newspaper on the 16th day of April 2022 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 1830 S. Broadway Street, Leavenworth Kansas from Planned Unit Development (PUD) to Residential Mixed Use District (R-MX); 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 property, to-wit, is hereby rezoned from Planned Unit Development (PUD) to Residential Mixed Use District (R-MX).

A TRACT OF LAND IN THE NORTHEAST QUARTER OF SECTION 2, TOWNSHIP 9 SOUTH, RANGE 22 EAST OF THE 6TH PM, CITY OF LEAVENWORTH, LEAVENWORTH COUNTY, KANSAS, MORE FULLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHEAST QUARTER; THENCE SOUTH 89° 40' 31" WEST, ALL BEARINGS ARE FROM GPS OBSERVATION A DISTANCE OF 927.33 FEET, THENCE SOUTH 01° 02' 02" WEST A DISTANCE OF 885.60 FEET TO THE TRUE POINT OF BEGINNING, SAID POINT BEING ON THE SOUTH RIGHT OF WAY OF PENNSYLVANIA AVENUE AND ALSO BEGINNING THE NORTHWEST CORNER OF A TRACT OF LAND RECORDED IN DEED BOOK 982, PAGE 704; THENCE SOUTH 01° 02' 02" WEST FOR A DISTANCE OF

270.70 FEET ALONG THE WEST LINE OF SAID TRACT, DEED BOOK 982, PAGE 704, AND ALONG THE WEST LINE OF A TRACT OF LAND RECORDED IN DEED BOOK 716, PAGE 706 TO THE SOUTHWEST CORNER OF SAID TRACT BOOK 716, PAGE 706; THENCE NORTH 89° 42' 58" EAST FOR A DISTANCE OF 139.88 FEET ALONG THE SOUTH LINE OF SAID TRACT, DEED BOOK 716, PAGE 706 TO THE WESTERLY RIGHT OF WAY OF SOUTH BROADWAY, THENCE SOUTH 01° 02' 02" WEST FOR A DISTANCE OF 548.00 FEET ALONG SAID WESTERLY RIGHT OF WAY TO THE NORTH RIGHT OF WAY LINE OF REES STREET; THENCE SOUTH 89° 33' 52" WEST FOR A DISTANCE OF 544.01 FEET ALONG SAID NORTH RIGHT OF WAY LINE TO THE EAST RIGHT OF WAY OF GARLAND STREET, ALSO BEING THE EAST LINE OF S.H. HOLMES PLEASANT VIEW SUBDIVISION; THENCE NORTH 01° 32' 06" EAST FOR A DISTANCE OF 819.71 FEET ALONG SAID RIGHT OF WAY TO THE SOUTH RIGHT OF WAY LINE OF PENNSYLVANIA AVENUE, THENCE NORTH 89° 42' 58" EAST FOR A DISTANCE OF 396.92 FEET ALONG SAID SOUTH RIGHT OF WAY LINE, TO THE POINT OF BEGINNING. TOGETHER WITH AND SUBJECT TO COVENANTS, EASEMENTS, AND RESTRICTIONS OF RECORD.

And **more commonly referred to as 1830 S. Broadway 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 June 2022.

Camalla M. Leonhard, Mayor

{Seal}

ATTEST:

Sarah Bodensteiner, CMC, City Clerk

EXECUTIVE SESSION
ATTORNEY-CLIENT PRIVILEGE

MAY 24, 2022

CITY COMMISSION ACTION:

Motion:

Move 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 _____. City Manager Paul Kramer and City Attorney David E. Waters are requested to be present during the Executive Session.