

**CITY OF LEAVENWORTH PLANNING COMMISSION**  
**COMMISSION CHAMBERS, CITY HALL**  
100 N 5<sup>th</sup> Street, Leavenworth, Kansas 66048  
**REGULAR SESSION**  
**Monday, July 13, 2020**  
6:00 PM

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**CALL TO ORDER:**

**Commissioners Present**

Mike Burke  
Sherry Hines Whitson  
Linda Bohnsack  
Claude Wiedower  
Chris Murphy

**Commissioners Absent**

**City Staff Present**

Julie Hurley  
Michelle Baragary

Mike Burke, Claude Wiedower, Julie Hurley, Jackie Porter and Michelle Baragary were present in the commission chambers. Sherry Hines Whitson, Linda Bohnsack and Chris Murphy participated via GoToMeeting.

Chairman Burke called the meeting to order at 6:05 p.m. and noted a quorum was present.

**APPROVAL OF MINUTES:** June 1, 2020

Chairman Burke asked for comments or a motion on the minutes presented for approval: June 1, 2020. Mr. Wiedower moved to accept the minutes as presented, seconded by Ms. Whitson. The minutes were approved by a vote of 5-0.

**OLD BUSINESS:**

**1. 2020-09 SUP – 1019 OTTAWA**

Conduct a public hearing for Case No. 2020-09 SUP – 1019 Ottawa. The applicant, David F. Anaya, is requesting a Special Use Permit to allow a two-family dwelling in the R1-6 zoning district. Two-family dwellings are allowed in the R1-6 zoning district with the approval of a Special Use Permit.

Chairman Burke called for the staff report.

City Planner Jackie Porter stated this item was tabled at the June 1, 2020 Planning Commission meeting for additional information/consideration. The applicant, David Anaya, is requesting a Special Use Permit to allow a two-family dwelling in the R1-6, High Density Single-Family Residential, zoning district. Two-family dwellings are allowed in the R1-6 zoning district with the approval of a Special Use Permit.

The current location is an empty lot. The property owner recently purchased the lot, and is requesting a Special Use Permit to allow the development of a two-family (duplex) structure.

At the June 1, 2020 Planning Commission meeting, the commissioners requested for the applicant to provide a conceptual site plan. Mr. Anaya has submitted some documentation for the commission to review along with a few plans and list of possible conceptual ideas.

### **COMMISSION FINDINGS**

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

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

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

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

*The property fills a need in the community by providing a two-family housing option.*

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

*Staff does not feel that the proposed use will cause any substantial injury to the value of other property in the neighborhood.*

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

*The property currently does not have any structures on it. Any future structure will be required to meet the development regulations of the zoning district.*

Notification was sent to property owners within 200' of the subject property, as required by Kansas statute. Since notifications were mailed, staff has received no comments or inquiries.

### **STAFF RECOMMENDATION:**

Staff recommends approval of the Special Use Permit request based on the analysis and findings included herein.

### **ACTION/OPTIONS:**

- Motion, based upon findings as stated and conditions as presented, to recommend approval to the City Commission with included conditions
- Motion, to recommend denial to the City Commission
- Table the issue for additional information/consideration

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

Mr. Murphy asked if the applicant plans to choose one of the three concept designs.

The applicant, David Anaya, reviewed the three various concepts and stated Concept #3 is his preferred choice.

Concept #1: Basic Design, no fireplaces, main part of the duplex will be widened by 3' on each side, timberline shingles or something alike.

Concept #2: Concept #1 plus install a double gable roof on the front (gables will be symmetrical with each other), construct two 2-car carports on the south side of the duplex close to the alley.

Concept #3: Concept #2 plus brick veneer on the front of the house, plant 4-5 trees on each side of the duplex, install a fence on the side and rear, and install a utility shed with a divider so each tenant would have their own personal space.

With no questions from the commissioners, Chairman Burke opened the public hearing. With no one wishing to speak, Chairman Burke closed the public hearing and called for a motion. Mr. Wiedower moved to recommend approval to the City Commission a Special Use Permit to allow a two-family dwelling in the R1-6 (High Density Single-Family Residential District) zoning district based on the analysis and findings presented, seconded by Mr. Murphy and approved by a vote of 5-0.

## **NEW BUSINESS:**

### **1. 2020-16 SUP – 4320 HUGHES RD**

Conduct a public hearing for Case No. 2020-16 SUP – 4320 Hughes Rd. The applicant, Network Real Estate LLC, is requesting a Special Use Permit to allow a 196' tall communication tower and related ground equipment in the R1-9, Medium Density Single-Family Residential, zoning district.

Chairman Burke called for the staff report.

City Planner Jackie Porter stated Glen Klocke on behalf of Network Real Estate LLC and the subject property owner, are requesting a Special Use Permit to allow a 196' tall monopole type communication tower and related ground equipment. The subject property is zoned R1-9, Medium Density Single-Family Residential District, and is occupied by the residential dwelling with accessory structures.

The proposed 196' tower is commissioned by AT&T to serve customers in the Leavenworth area, with space available for 2 additional carriers to co-locate. The maximum height of a tower and antenna when two or more antennas are co-located by two or more companies on a single tower is 170'. The Planning Commission has the authority to make an exception to the height requirement as a condition to the approval of the Special Use Permit. The proposal includes a 70' x 70' fenced area to enclose the tower and related ground equipment. Access will be provided by a paved 12' wide access drive coming off Hughes Road.

There is no signage proposed except for safety and identification as required by the Federal Communications Commission. The 70' x 70' fenced enclosure will be screened with green privacy slates. Sufficient existing foliage exists around the site of the tower from adjoining properties.

The Development Regulations require that for each foot of tower height there shall be a minimum of 1.05 foot of setback from any property line. This would require a minimum 205.8' setback from all property lines for the proposed tower, which is provided.

### **COMMISSION FINDINGS**

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

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

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

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

*A communication tower will provide numerous benefits to the economic development, welfare and convenience of the public through improved cellular communication capabilities.*

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

*Staff does not feel that the proposed communication tower will cause any substantial injury to the value of other property in the neighborhood.*

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

*The location and size of the proposed communication tower are such that it will not dominate the neighborhood and prevent development and use of neighboring properties. The proposed tower will be situated to maximize distance from and impact on any adjoining single-family residences. The subject property is bordered by a creek to the west, with dense tree growth to the north and west of the subject communication tower, minimizing visibility from surrounding properties.*

Notification was sent to property owners within 200' of the subject property, as required by Kansas statute.

### **STAFF RECOMMENDATION:**

Staff recommends approval of the Special Use Permit request with an exception to the height regulations to allow 196' based on the analysis and findings included herein.

### **ACTION/OPTIONS:**

- Motion, based upon findings as stated and conditions as presented, to recommend approval to the City Commission with included conditions
- Motion, to recommend denial to the City Commission
- Table the issue for additional information/consideration

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

Mr. Wiedower asked if staff has received any protests for the special use permit.

Ms. Porter stated two citizens in opposition called staff.

Mr. Murphy expressed concern for the need of the additional 26' for the tower.

Glen Klocke (Network Real Estate representing AT&T) stated the additional height is to reach the VA Hospital and University of Saint Mary from this location. The ground level at this location is low but the location is buffered by trees so the visual will almost be just the top of the tower.

Mr. Burke asked how many other locations were looked at before deciding on this one.

Mr. Klocke stated four to five locations where researched.

Mr. Wiedower asked other than the hospital and college, who else will benefit from this tower.

Mr. Klocke responded the radius for this tower is approximately 5 to 5.5 miles; therefore, it will benefit any AT&T user 2.5 miles in each direction of the tower.

Ms. Bohnsack asked if there will be any additional lighting on the tower (other than what is required by the FCC) and if the lighting will be switched to a red light at night.

Mr. Klocke responded in the negative. He further stated the fenced in area will not have lighting.

Mr. Wiedower asked if AT&T already has other providers to also use that tower.

Mr. Klocke stated they currently do not have another provider. Per city code the tower must be built for co-locations. Once the tower is constructed, the co-locate will be marketed.

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

Gordon Cunning, 540 Muncie Road, asked how many cell towers are within the city limit of Leavenworth.

Ms. Porter stated staff does not have that information readily available but could get that for him.

Mr. Cunning asked if the alternative locations are still being reconsidered in case this location does not pass.

Mr. Klocke stated the alternative locations get ruled out one at a time based on the coverage objectives and how the signals carry; therefore the alternative locations are no longer being considered.

Mr. Cunning asked if other service providers can also use the tower.

Ms. Porter responded the tower will be equipped to sublet to two other providers.

Mr. Cunning stated his last concern is health related and if any consideration has been given to how electromagnetic radiation from cell towers in residential areas can impact one's health. Referring to a study done in 1998 and 2007 where 75% of those who participating in the study and lived within 900' of a cell

tower experienced over a dozen health issues. For residents who lived further from the tower, the health issues decreased.

Mr. Klocke stated the FCC controls the amount of signal coming from a cell tower. The tower will be below the allowed frequency/signal requirements mandated by the FCC. Mr. Klocke is not aware of the study Mr. Cunning is referring to; however, Mr. Klocke stated the American Cancer Society published an extensive study several years ago stating there are no health impacts.

Mr. Burke asked how often the FCC checks on the output generated from the towers.

Mr. Klocke responded he does not know; however, each company monitors their towers daily.

Mr. Cunning asked what the diameter of the tower is and if there are support cables.

Mr. Klocke stated there are no cables. The tower is a monopole, which looks like a large light structure. Mr. Klocke estimates the diameter at the top is about 3-1/2' and about 6' at the base.

Janelle Defrees, 4237 Lakeview Drive, stated not only would the tower be an eyesore and decrease the value of her property but she is also concerned with the health implications. Ms. Defrees stated she read an American Cancer Society study today stating there are findings of health implications; but they are not listed as strong implications.

Mr. Anaya asked what the size of the lot is at 550 Muncie Road.

Ms. Porter responded the lot size is 7.25 acres.

Mr. Anaya stated he is an engineer. When dealing with high voltage you must stay at least 200' away from the structure.

Mr. Klocke stated the power coming from a cell tower is very low; each antenna is less than 100 watts and is serviced by a 200 amp breaker.

David Graham, 500 Muncie Road, asked about the access road that will be install behind his property and how often that road will be used.

Mr. Klocke stated the access road will be gravel during construction of the tower with an increase in activity. Once the tower is installed, the road will be paved and will only be used approximately once every two months.

Mr. Graham asked why the applicant cannot use the tower located near Xavier Elementary School.

Mr. Klocke explained AT&T provides Network Real Estate with the search area, which was only a quarter mile. Network Real Estate gathers information, such as locations of nearby towers, and sends this to the engineers who are designing the networks to figure out what will work. Using the existing tower did not fit into AT&T's network they are trying to build and the coverage they want to improve.

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

With no further discussion, Chairman Burke called for a motion. Mr. Wiedower stated the commission is sensitive to the concerns communicated by citizens on safety and land value. However, enhancing communication strength four to five miles to include the University of Saint Mary and VA Hospital is in the interest of the greater good. Mr. Wiedower moved to recommend approval to the City Commission for a Special Use Permit to allow a 196' monopole type communication tower and related ground equipment based on the analysis and findings presented, seconded by Mr. Murphy and passed by a vote of 4-1. Ms. Whitson voted nay.

Staff stated there is a 14-day protest period before this item goes before the City Commission.

## **2. 2020-22 SUP – 1906 CLEVELAND TER**

Conduct a public hearing for Case No. 2020-22 SUP – 1906 Cleveland Ter. The applicants, Candido and Kathleen Vazquez, are requesting a Special Use Permit to allow a two-family dwelling in the R1-6 zoning district, located at 1906 Cleveland Ter. Two-family dwellings are allowed in the R1-6 zoning district with the approval of a Special Use Permit.

Chairman Burke called for the staff report.

City Planner Jackie Porter stated the applicants, Candido and Kathleen Vazquez, are requesting a Special Use Permit to allow a two-family dwelling in the R1-6 zoning district, located at 1906 Cleveland Ter. Two-family dwellings are allowed in the R1-6 zoning district with the approval of a Special Use Permit.

The structure on the property has been functioning as a two-family dwelling. The property owner is requesting a Special Use Permit to adequately represent the current use of the structure on the property.

### **COMMISSION FINDINGS**

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

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

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

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

*The property fills a need in the community by providing a two-family housing option.*

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

*Staff does not feel that the proposed use will cause any substantial injury to the value of other property in the neighborhood.*

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

*No new structures or building modification are proposed as part of this special use permit. The property will continue to function as it has in previous years.*

Notification was sent to property owners within 200' of the subject property, as required by Kansas statute. Since notifications were mailed, staff has received no comments or inquiries.

**STAFF RECOMMENDATION:**

Staff recommends approval of the Special Use Permit request based on the analysis and findings included herein.

**ACTION/OPTIONS:**

- Motion, based upon findings as stated and conditions as presented, to recommend approval to the City Commission with included conditions
- Motion, to recommend denial to the City Commission
- Table the issue for additional information/consideration

Chairman Burke called for questions from the commissioners about the staff report and stated this is much like the special use permit application the commission reviewed at last month's meeting.

With no questions, Chairman Burke opened the public hearing. With no one wishing to speak, Chairman Burke closed the public hearing and called for a motion. Mr. Wiedower moved to recommend approval to the City Commission a Special Use Permit to allow a two-family dwelling in the R1-6 (High Density Single-Family Residential District) zoning district based on the analysis and findings presented, seconded by Ms. Whitson and passed by a vote of 5-0.

Ms. Porter stated the next Planning Commission meeting will be September 14, 2020. There is also a joint meeting with the City Commission and Planning Commission Tuesday, July 21, 2020 to discuss the Comprehensive Plan.

With no further business, Chairman Burke adjourned the meeting.

The meeting adjourned at 6:55 p.m.

JP/mb