

CITY OF LEAVENWORTH PLANNING COMMISSION

COMMISSION CHAMBERS, CITY HALL
100 N 5th Street, Leavenworth, Kansas 66048
REGULAR SESSION
Monday, June 6, 2022
6:00 PM

CALL TO ORDER:

Commissioners Present

Claude Wiedower
Joe Burks
Donald Homan
Brian Stephens

Commissioners Absent

James Diggs
Bill Waugh
Sherry Hines Whitson

City Staff Present

Julie Hurley
Michelle Baragary

Chairman Wiedower called the meeting to order at 6:20 p.m. and noted a quorum was present.

APPROVAL OF MINUTES: June 6, 2022

Chairman Wiedower asked for comments or a motion on the minutes presented for approval: June 6, 2022. Commissioner Stephens moved to approve the minutes as presented, seconded by Commissioner Burks and approved by a vote of 4-0.

OLD BUSINESS:

None

NEW BUSINESS:

1. **2022-13 REZ – 2101 VILAS AND A PORTION OF 2013 VILAS**

Conduct a public hearing for Case No. 2022-13 REZ. The applicant/owner is requesting a rezoning of the property located at 2101 Vilas and a portion of the property located at 2013 Vilas from R1-25, Low Density Single Family Residential District, to R1-9, Medium Density Single Family Residential District.

Chairman Wiedower called for the staff report.

Planning Director Julie Hurley stated the subject property is owned by Greenamyre Rentals, Inc. The applicant is requesting a rezoning of their property located at 2101 Vilas and a portion of the property located at 2013 Vilas from R1-25 to R1-9. The two parcels are situated on the south side of Vilas Street

between 20th and 22nd Streets and are currently vacant. The total size of the property to be rezoned is 4.54 acres. To the east is Henry Leavenworth Elementary School.

The rezoning is being requested in order to allow for the development 6 single family residential lots. All 6 proposed lots are approximately .75 acres in size. Between 20th and 22nd Streets, there are a total of 18 existing lots with frontage on Vilas Street, including the property developed with Henry Leavenworth Elementary School. Of those 18 lots, a total of 8 are smaller in size than the lots proposed to be developed with this rezoning request, with the smallest being .35 acres in size. The associated preliminary and final plats are also on this agenda.

The Development Review Committee reviewed the project at their May 12, 2022 meeting and discussed items related to required improvements to Vilas Street, additional dedication of ROW, utilities, sidewalks, and stormwater. All items discussed will be addressed prior to the issuance of building permits.

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 vacant and is surrounded by single family residential development. To the east is Henry Leavenworth Elementary School. To the west is a traditional single family residential neighborhood.
- b) The zoning and use of properties nearby;
The immediately surrounding properties are zoned R1-25, Low Density Single Family Residential District. Henry Leavenworth Elementary School to the east, as well as the residential lots on the north side of Vilas closest to 20th Street are zoned R1-9, Medium Density Single Family Residential District. The single family residential neighborhood to the west is zoned PUD, Planned Unit Development.
- c) The suitability of the subject property for the uses to which it has been restricted;
The subject property is currently zoned R1-25, Low Density Single Family Residential, which is typical of agricultural and large lot residential uses in the City. The property is vacant and is surrounded by single family residential uses on varying sizes of lots, but may be suitable for a variety of residential uses.
- d) The extent to which removal of the restrictions will detrimentally affect nearby property;
The proposed rezoning should not have a detrimental impact on nearby property. The proposed 6 residential lots are consistent with the scale of development in the area, and will not introduce a significant increase in traffic. The associated final plat dedicates additional ROW for Vilas Street to accommodate future roadway improvements.
- e) The length of time the subject property has remained vacant as zoned;
The property has always been single-family/agricultural in nature.
- f) The relative gain to economic development, public health, safety and welfare by the reduction of the value of the landowner's property as compared to the hardship imposed by such reduction upon the individual landowner;

The proposed rezoning would have a positive effect upon the economic vitality of Leavenworth by allowing for additional residential development.

- g) The recommendations of permanent or professional staff;

Staff recommends that the item be approved.

- h) The conformance of the requested change to the adopted or recognized Comprehensive Land Use Plan being utilized by the city;

The subject area is identified as appropriate for Conservation/Open Space. The Comprehensive Plan states in regard to the Conservation/Open Space category that "Conservation areas balance the protection of sensitive environmental features with the development rights of property owners. Areas of conservation are appropriate in areas containing steep slopes, woodlands, drainage corridors, or other valued natural features." The size of the proposed lots will allow for homes to be situated while preserving open space and natural features. The Comprehensive Plan also identifies infill residential development that is "appropriate to the character of the neighborhood" as a strategy to accomplish the goal of promoting growth and development that is "sustainable, responsible, and meets the needs of future generations". This proposed infill development meets that strategy.

- 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 of note.

After the required notice was published and mailed to property owners within 200' of the subject property, staff received several inquired about the exact nature of the request from notified property owners.

REZONING ACTION/OPTIONS:

- Recommend approval of the rezoning request from R1-25 to R1-9 to the City Commission
- Recommend denial of the rezoning request from R1-25 to R1-9 to the City Commission
- Table the issue for additional information/consideration.

Chairman Wiedower asked the commissioners if there are any questions about the staff report.

Referring to the rezoning application in December 2020, Commissioner Stephens asked if there will be an entrance to this development only from Vilas Street and not Limit Street.

Ms. Hurley responded that all the lots front on Vilas Street so there is no road being proposed as part of this development. All six lots will have direct driveway access onto Vilas Street.

Commissioner Stephens asked about curved gutters in that area.

Ms. Hurley stated that is further to the east on Vilas. As discussed with the property owner at the Development Review Committee (DRC) meeting, there will be future improvements required to Vilas Street. The additional right-of-way (ROW) that is required will accommodate future road improvements.

Commissioner Stephens asked if those improvements are part of this plan.

Ms. Hurley responded that Public Works did not feel it was necessary to require those improvements at this time with just the six proposed lots.

Referring back to the initial rezoning in December 2020, Commissioner Stephens stated the Police Department had made a comment about traffic. Commissioner Stephens asked if the Police Department had any comments for current proposal.

Ms. Hurley responded in the negative.

With no further questions about the staff report, Chairman Wiedower opened the public hearing and asked the applicant to speak.

Jeremy Greenamyre, applicant/owner, stated there had been a discussion with Public Works about a road impact fee. 20 ft. of right-of-way is being dedicated for the future expansion of Vilas Street. Mr. Greenamyre believes at the time of permit, Public Works would address the curb and guttering. Mr. Greenamyre is not sure if that is him putting in the road or paying an impact fee for when the road improvements occur in the future.

Ms. Hurley stated Public Works had covered that and felt comfortable that could be addressed at the time any building permits are applied for. Permits would not be issued until the items with the road are addressed satisfactorily.

Mr. Greenamyre stated another requirement he has for this development is the extension of sewer. Currently sewer stops south on Limit Street. The only way to provide sewer to the proposed development is to pull the sewer up north and to branch off to the proposed lots. The city does not allow you to only bring the sewer to the proposed lots. It is required that the sewer is brought all the way to Vilas Street to accommodate sewer for the property owners across the street. Mr. Greenamyre further stated he does not need to pay for the connection to the sewer for the property owners across the street, but is required to bring the sewer up so those properties to the north of Vilas Street can connect to the sewer.

Ms. Hurley stated Jeremy is correct. Public Works requires the proposed lots be connected to sewer, and instead of bringing the sewer up to the south end of the proposed lots, he is required to extend the sewer to the north of the proposed lots so potential future development could tap into the sewer.

Mr. Greenamyre stated they took the public comments from the initial rezoning request in December 2020 and reworked the development plan. During that initial rezoning meeting, most comments were about issues with Limit Street, which is why there are no requests to rezone the property off Limit Street at this time. Mr. Greenamyre stated they waited to submit the current rezoning request until the parking was added to the school, which alleviates the extended pick-up lines that were occurring along Vilas Street.

Mr. Greenamyre provided the commissioners and the public a map showing 8 properties from 20th Street to 22nd Street that are nonconforming with the current R1-225 zoning district because the properties do not meet the 160' required road frontage.

Chairman Wiedower stated the subject properties have always been vacant but sooner or later something will be developed on this land. Six single-family homes on .75 acre lots seems appealing and to be a win-win for everyone. Chairman Wiedower asked what the price range will be for the homes.

Mr. Greenamyre responded they have no immediate plans to build anything. The rezoning is a way to put the land in a better situation to make something happen, such as sell the lots.

Commission Homan asked if the applicant knew if the single-family homes would be sold or rented.

Mr. Greenamyre responded he has no interest in renting single-family homes. If the homes are rented, they would be rented by someone else, not by Mr. Greenamyre.

Commissioner Stephens asked Mr. Greenamyre if he thought construction vehicles would be able to navigate Vilas Street and if the road would hold up.

Mr. Greenamyre stated he does not know, and that Vilas Street is a city road. His assumption is that if something gets broken in the duration of construction that it will be required to be repaired.

Ms. Hurley stated Vilas would have been accommodating any construction traffic for the neighborhood to the west when that was built a number of years ago, and Public Works did not express any concerns about construction vehicles on Vilas now.

Ms. Hurley further stated for the record that zoning regulations have nothing to do with rental versus owner occupied. That is not something that zoning legally can address. The "use" is single-family and that is what the commission needs to focus on.

Commissioner Stephens asked if that also includes Airbnb and other vacation type rentals.

Ms. Hurley responded that is a completely separate issue and there are provisions in the Development Regulations for Special Use Permits for those types of uses.

Chairman Wiedower asked for anyone in the audience who would like to speak to come to the podium and provide your name and address for the record.

Jerry Heintzelman, 2089 Limit St., stated his biggest concern is stormwater runoff. There are two creeks across the street that rundown both sides of his property. The new parking lot at the school will cause more water runoff in the main creek to the east of him. The school does have a retention pond but Mr. Heintzelman is not sure if it will accommodate all the water runoff. Mr. Heintzelman stated the creek to the west floods fairly deep. He provided pictures for the commissioners to look at of the creek flooding approximately 10 years ago. Ever since the ditch at 22nd Street was worked on, the flooding has been worse. Adding six more houses on Vilas will create more water runoff. Mr. Heintzelman stated the city required him to have 220 feet of road frontage when he built his house 20 years ago and he had to annex into the city.

Commissioner Burks asked when the photos of the creek were taken.

Mr. Heintzelman believes it was in 2009. He further stated if the subject properties were not rezoned, the applicant could still build five houses instead of six. What will the applicant be required to do for stormwater runoff? What is the applicant's plans for the properties to the south that come off Limit Street?

Chairman Wiedower looked to staff for clarification that stormwater would fall under Public Works and if water runoff becomes an issue when the houses are developed, the developer would have to address that issue.

Ms. Hurley stated in the notes that are included in the packet from the Development Review Committee, one of the notes from the Public Works Director does address stormwater quality and quantity. At the time of building permits, the developer would be required to submit a stormwater quality and quantity plan for these lots. When lots are developed, graded and any dirt starts moving, they are required to present a plan to show the lot has been engineered and will be graded so that there will not be any additional runoff coming from that property to any other property.

Chairman Wiedower stated they are sensitive to Mr. Heintzelman's water issue that he presently has now but that is a Public Works issue.

Mr. Heintzelman stated that when he looked into developing his property at 2089 Limit Street, he was told he would need to install a storm drainage system. Will the developer of the subject properties be required to do the same and would the drainage go onto his property or run around his house? Mr. Heintzelman stated he called the city engineer but never received a call back.

Commissioner Stephens asked staff how the stormwater plans are shared when submitted by the developer.

Ms. Hurley responded the plans are reviewed and approved by the Public Works Department.

Chairman Wiedower asked the applicant when the proposed lots are developed and there are known existing water flow issues, would the developer not coordinate with Public Works and take any required corrective action at that time?

Mr. Greenamyre stated that is fair to say. He further added that after the DRC meeting, it was suggested they work with their engineer to provide a drainage report, which has been submitted to the city. Mr. Greenamyre's engineer thought they could keep all the drainage on site. The lots are 110 ft wide by 300 ft deep. Most of the house will be pushed up towards Vilas Street. The engineer's calculations were that any water that runs off the roof, driveway, or any other hard surfaces would end up being captured and absorbed into the 200 ft between the back of the house and the lot line.

Ms. Hurley stated, as with any development, a developer is not required to correct problems outside of their property; they just cannot make them worse.

Commissioner Stephens asked if road improvements and an agreement that water runoff would be taken care of is included on the plat.

Ms. Hurley responded that the additional right-of-way is included in the plat, but something like a requirement for a stormwater plan would not be part of a recorded plat.

Commissioner Stephens asked if the road would be developed.

Ms. Hurley stated the road will not necessarily be built but the right-of-way is being placed there.

Chairman Wiedower stated the zoning request is not dependent on the water issue that exists now. The commissioners are sensitive on the existing water issues, but it is not part of the rezoning the Planning Commission is going to vote on.

Chris Howell, 2115 Vilas St., asked what the difference is between the current zoning of R1-25 and the requesting zoning of R1-9.

Ms. Hurley responded the primary differences are the lot width and lot size requirements.

Mr. Howell stated there is a difference between permanent development for homes that are being sold to somebody versus renting. There is a different quality of care between the two. This is concerning because Greenamyre is a rental company.

Commissioner Burks stated unfortunately as a board they are only looking at the zoning of the properties.

Mr. Howell asked what the future plan is for the properties to the south because taking the northern lots and southern lots in isolation is probably not the right way to look at long-term zoning development. Anticipating what the southern portion would eventually be for the long-term impact, not just taking bite size pieces out of this now and then changing it.

Chairman Wiedower responded the commission cannot deal with the unknown. If and when an application came through for the southern portion, the commission would deal with that at that time it see if it is in harmony with the neighborhood by going through the economic impact factors.

Mr. Howell stated the hydrology aspect and the flow of the land does flow from northeast to southwest. When it rains, there is standing water on the north side of his home, and then it flows down falling on the natural flow of the land. There is concern about water runoff that would come to the north side of his property.

Chairman Wiedower stated the present stormwater runoff is a valid issue but this board cannot deal with that as it is a public works issue.

Everett Rogers, 1206 Joshua Ct, Lansing, KS, owns the property at 2103 Limit. Mr. Everett stated the lot width for R1-25 is 160 ft., therefore, the applicant could have four lots versus the six lots that are being requested. Mr. Everett asked if platting will be discussed separately from the rezoning.

Ms. Hurley responded in the affirmative stating each agenda item will be voted on separately.

Mr. Everett stated he does not have an issue with the rezoning request but he does with the plat.

Ms. Hurley stated the Planning Commission will address the plats because they do not require a public hearing so any concerns about the subject property should be voiced now.

Mr. Everett asked when the portion to the south of the subject property that fronts Limit Street will be discussed.

Ms. Hurley stated that is not part of the plat request.

Mr. Everett had no further questions or concerns.

Kevin Baker, 2101 Limit Street, asked why the commission is talking about rezoning when everyone has a problem with Vilas Street. Vilas will not carry the additional cars and traffic with this rezoning. Furthermore, if construction equipment damages Vilas this will cause all traffic to go through Limit Street. Regardless if it is an additional four houses or six houses added to this area, that would be another two to three cars per house, which just increases the load on Vilas. Vilas Street needs repaired; it needs drains, curb and guttering.

Commissioner Homan stated even if the development is for four lots, and each property has 2-3 vehicles, this increases the traffic on Vilas. However, this is a public works issue and not a situation for the Planning Commission.

Chairman Wiedower stated the property will be developed for something sooner or later. Need to look at the greater good for the area and the economic impact. There are worse things that could be developed at this location than six single-family homes. When property is developed, the developer is required to work with the Public Works to deal with stormwater and runoff, traffic flow, etc.

Commissioner Burks stated it is difficult to predict the future. This is a rezoning request, and that is what this commission has to focus on. Commissioner Burks asked Mr. Baker what he would do with this vacant property if he owned it.

Mr. Baker responded that what Mr. Greenamyre is doing is great, but steps are being bypassed, such as fixing the street before allowing more homes to be developed.

Chairman Wiedower stated he understands the concerns being made. However, this commission is responsible to look at the rezoning request only. The development of the land will require coordination with Public Works, and hopefully their requirements will help with some of the concerns that are being brought up.

Commissioner Stephens stated he hears Mr. Baker saying that as the Planning Commission, there should be plans before doing things. Commissioner Stephens asked staff for clarification that the lots in this area are not on city sewer.

Ms. Hurley responded the two lots that are part of the rezoning request, which are proposed to be subdivided into six lots, will be required to connect to sewer. The Planned Unit Development (PUD) to the west is all connected to sewer.

Commissioner Stephens said if the rezoning request is approved without any plans, then he understands the neighbor's apprehension since this has happened before with the city saying they will add sewer lines and then just skip over people that are currently there.

Ms. Hurley asked if the question is about the sewer line because the sewer line comes down Limit Street, as depicted by the green line on GIS.

There was discussion from the audience not at the podium. Chairman Wiedower stated comments shall be made at the podium to be recorded. Chairman Wiedower again stated they need to focus on the Planning Commission's role on the rezoning only.

Before responding, Ms. Hurley had to request that the background with the people in the audience speaking over her be stopped. Ms. Hurley continued by stating the lots as part of this proposal are required to meet all of the city's current standards. Ms. Hurley cannot speak to what standards were 15 years ago or how that determination was made with utilities in the past when the subdivision to the west was developed. The lots proposed to be developed are required to connect to utilities, and as has been mentioned, the sewer and water is required to connect all the way through that lot for potential development beyond that. Aside from that, it is not required to connect to other lots that are not part of this proposal.

Chairman Wiedower stated this commission's role is not to impose and tell people they can do something after you do this first. Issues are being brought up that are beyond the scope of the Planning Commission. This commission is looking only at the zoning request to allow the applicant to subdivide the parcels into six separate single-family lots, knowing they will have to deal with issues when it is developed. Again, the applicant is not stating when it will be developed. The rezoning would just give the authority to develop it.

Mr. Baker stated by rezoning this, the commission is part of the problem because they would rezone something but still have not got the problem fixed, which is the street.

Chairman Wiedower stated he understands there is an existing stormwater problem, and regardless of what Mr. Greenamyre does, there is still an existing stormwater problem. We cannot make promises but at the same

time the rezoning request gives them authority to develop the land, and as mentioned numerous times, the developer will need to coordinate with Public Works to hopefully improve an existing problem with stormwater and water runoff. But again, this commission does not have the authority to make approval of a rezoning request contingent on Mr. Greenamyre or anyone else fixing an existing problem.

Commissioner Homan stated he noticed the housing development to the west on Vilas Street and the housing development to the south of the school are PUDs. Does that require anything different from the R1-9 zoning, and doesn't a PUD have to have approved plans?

Ms. Hurley responded in the negative stating what a developer will do a PUD for is for differences in lot sizes, lot frontages, etc. A PUD would not remove utility requirements or street improvements. Ms. Hurley further stated that when a development is submitted one of the things city staff looks at in terms of road improvements is that a developer is only required to do what is directly in front of their property. This was a point of discussion with the Public Works Department, such as do we require the developer to improve this section of Vilas Street or do we require the developer to dedicate additional right-of-way, etc. If the requirement is for the developer to improve the section of Vilas in front of their property, there would be no continuity and no connectivity because it would only be for the section directly in front of their property, which would not improve any sort of situations. The determination of the Public Works Department at this point is to get that additional right-of-way because additional right-of-way will also be needed to the east and to the west to do any eventual improvements to the roadway as a whole.

Denise Baker, 2101 Limit Street, asked why this property would even be rezoned instead of leaving it as four lots. There would be less water runoff with four lots. Most of the homes in this area sit on acreage. Creating these smaller frontage lots will look odd in this area and are not welcoming. Mrs. Baker further stated she has lived on her property for 23 years and has dealt with flooding every year.

Chairman Wiedower asked for clarification from Mr. Greenamyre about constructing six single-family homes in the immediate future.

Mr. Greenamyre stated he has no plan to build six family homes.

Ms. Hurley stated should the rezoning request be approved and the subsequent plats be approved, which are for the six lots, that would be recorded with the county and those six lots would be the plan. Land can be platted and nothing built on it for years and years. Therefore, if Mr. Greenamyre, as the owner, decided at some point he does not want to do these six lots but rather do something else that fits within the zoning district, they can come back and request a replat from the Planning Commission.

Chairman Wiedower stated the rezoning and plats just gives Mr. Greenamyre the authority to build six homes but does not force him to do this.

Mr. Greenamyre stated a variety of things could happen. He could advertise these as buildable lots and they could sell out in the first week or there could be someone who wants to put a house in the middle of all those lots and have their own 4.5 acre estate.

Chairman Wiedower asked staff the process for that type of situation.

Ms. Hurley stated, say for instance someone wanted to buy two of the lots and combine them into one lot, or buy three of the lots and combine them into one, they would apply for a replat not a rezoning, unless the owner wanted to do something that did not fit within the R1-9 zoning district.

Chairman Wiedower asked Mr. Greenamyre, as a developer that if he knew there was existing water runoff issues around the area he was going to develop, that he would need to work with public works and the city to make sure that what is being build will not cause more problems.

Mr. Greenamyre responded dealing with water runoff is something they have to deal with for every development. EPA rules changed about 10 years ago and they have been a lot more stringent upon having zero runoff as the goal or at least having onsite retention. Mr. Greenamyre further stated that although he is sympathetic to the neighbor's concerns, he does not think there has been a project done in Leavenworth or Lansing that has not had to have approved engineer plans that construction will not impact downstream water.

Chairman Wiedower asked if that would require Mr. Greenamyre to incur the expense to fix the water problem.

Ms. Hurley responded it would only be for the properties Mr. Greenamyre owns. He would not be required to solve problems outside of his property.

Commissioner Stephens asked what plans Mr. Greenamyre has for this property if the rezoning request does not get approved.

Mr. Greenamyre responded he is here today because his initial proposal submitted two and a half years ago for a multi-family subdivision. At the December 2020 Planning Commission meeting, most of the concerns were with Limit Street. Mr. Greenamyre stated he chose to withdraw the multi-family rezoning application at that time. What is being submitted today is his Plan B. After the December 2020 meeting, Mr. Greenamyre stated he drove out to that area during school drop-off and pick-up, and stated the neighbors had legitimate points about the traffic during these hours as he witnessed traffic backed up all the way down Vilas to 22nd Street and around the corner. Taking into consideration people's concerns with traffic and the condition of Limit Street is why this rezoning request does not include the parcels fronting Limit Street. Mr. Greenamyre further stated he waited until now to submit the rezoning so that the parking lot at the school would be complete. It is his understanding the grade levels attending that school have changed and the number of buses needed has changed as well, therefore, there should be little to no traffic actually on Vilas Street.

Commissioner Stephens asked what is behind the decision to split the land into six lots.

Mr. Greenamyre stated it is based on what they believe makes sense in this area and what they think is sellable. Mr. Greenamyre stated he has heard people tonight say he could divide the land into "this" number of lots or "that" number of lots. However, if you divide the lineal footage of what is there by an R1-9, which is what the current rezoning request is for, you could get 8.8 lots across Vilas Street. He could have requested 7 lots or even 8 lots but he is requesting 6 lots because he thought it made more sense to have nice size lots at 3/4 acre each where someone can build their dream home on land larger than just a standard subdivision size of just a quarter acre.

Mr. Greenamyre stated on a personal note, "rentals" is in their company name but their portfolio is about 98% multi-family and a handful of single-family houses, and this is for a variety of reasons such as, they cannot compete in the single-family space and do not want to compete in the single-family space. The subject property is land they purchased that they planned to develop as multi-family but was unable to do that. What is presented today is Plan B as a way to somewhat exit out of it and leave a nice development.

Don Stubbings, 2301 Hebbeln Dr., stated when this property was originally zoned R1-25, the considerations for that were probably many of the items discussed tonight. There have been no improvements to the street, the sewer or anything else to make this viable as a medium condensed housing area. If the roads were improved,

streets widened, sidewalks installed, etc. the neighbors would not even be here tonight. There has been no improvements to any of the existing neighborhoods to add density to this area.

Chairman Wiedower stated Mr. Stubbings brought up a good issue with the city's priority, budget money, commitment, and deciding what projects have priority. Although this is a valid issue, this board cannot address and does not have the authority to address those issues.

Travis Denney, 2610 S. 22nd Ter., asked why Mr. Greenamyre is rezoning only half of the land.

Commissioner Burks responded that he was in attendance at the December 2020 Planning Commission meeting, and they originally were trying to rezone this land for multi-family use. The community spoke up about their concerns, which is why Mr. Greenamyre has relooked at this development and is requesting a different rezoning so he can take advantage of the property that he owns.

Mr. Denney asked if the property owner could request rezoning for the southern lots fronting Limit Street and have more lots to sell.

Ms. Hurley stated that Mr. Greenamyre did address that by saying the concern last time was that Limit Street is in a much different state than Vilas Street. This rezoning request keeps any impact off of Limit Street and directs it to Vilas Street.

Mr. Denney responded that people will use both Limit and Vilas Street.

Ms. Hurley responded the current proposal does not introduce any driveways off Limit Street.

Commissioner Burks asked Mr. Denney what he would do with the property on Vilas Street if he owned it.

Mr. Denney responded he is not in opposition of the rezoning or of building homes on the property. He would like to see the streets fixed first. Mr. Denney stated Limit Street should be fixed first, then build the homes, then fix Vilas Street.

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

Commissioner Homan stated he doesn't understand why go from four lots to six lots because four lots would probably sell for as much as six lots would. Referring to the map Mr. Greenamyre passed out, there are three lots that are 100 ft. in width and five lots that are 140 ft. or 150 ft. in width. If the land was divided into four lots instead of six lots, that would give each of the four lots 150 ft. of road frontage, which is similar to many lots in that area.

Commissioner Burks stated the questions he is asking himself and considering prior to voting on this item is first, does the zoning request meet its intent in front of us as a committee, and it is our responsibility to not speculate. Second, is there a need to rezone? Are four lots versus six lots enough for this property right now given Mr. Greenamyre's work, reconsideration, submitting another application for this and trying to see an economic development that could potentially be positive as well.

Commissioner Stephens stated he too is looking at the size of the lots and how many lots there needs to be, as well as the valid concerns that they have heard tonight about some of the infrastructure and if it could support

this development. There were several questions brought up tonight that Commissioner Stephens is not satisfied with how they were answered.

Chairman Wiedower stated he is well aware of the traffic situation on Vilas and Limit Streets. There are other uses for this property that Chairman Wiedower would have trouble with, but this request is for single-family homes and not for an apartment complex. He is hopeful this rezoning request has a viable impact and that coordinating with the city is going to improve some of the issues the residents have made the board aware of.

Chairman Wiedower stated the options are to recommend approval or denial to the City Commission or to table the issue for further information/consideration. Chairman Wiedower further stated he does feel tabling the issue for another 30 or 60 days would give the board any additional input than what they have heard tonight.

Chairman Wiedower called for a motion. Mr. Stephens moved to table the issue for additional information. Would like another hearing where the Public Works Department could talk through some of the engineering questions that the citizens have brought up.

Chairman Wiedower asked staff if that is a valid request to delay this zoning request and have Public Works attend the next meeting to address some of these issues.

Ms. Hurley stated Public Works could certainly come and answer questions.

Commission Burks asked if brining Public Works in to answer questions wouldn't still be speculative on the commissioner's part.

Commissioner Stephens stated either way it would be speculative. If the board approves this, they are not sure what Mr. Greenamyre is going to build there, so that's speculation.

Commissioner Burks responded to have someone else come to a meeting and answer speculative questions does not change the fact that we have something in front of us to vote on.

Commissioner Stephens stated he feels he needs for information, which is why he made the motion.

Chairman Wiedower asked staff if Public Works were to attend the next meeting, they still could not make promises that the streets are going to change, the sewer will be fixed and the water runoff will be taken care of before Mr. Greenamyre could proceed.

Ms. Hurley responded Public Works would just be answering more technical questions, but there would not be any sort of guarantees. Public Works could speak more in detail to their specific requirements.

Commissioner Stephens stated there was a discussion about permits. He wants Public Works to explain the permit needed to build, what those requirements are and what the expectation is.

Commissioner Homan seconded the motion to table the issue for additional information/consideration.

Chairman Wiedower state Commissioner Stephens made a motion to defer the issue, further stating the commissioners can either vote on that or we can go to another motion.

Ms. Hurley stated the procedure is when a motion is made, it must be seconded and then the commissioners will vote on that motion.

Chairman Wiedower asked staff if they need to specify in the motion that the issue will be tabled for 30 days.

Ms. Hurley responded the board will just table it to the next Planning Commission meeting. Further stating at whatever point this moves on to the City Commission, at that point there will be another public hearing, and Public Works staff is present at City Commission meetings to address concerns at that meeting.

Commissioner Stephens stated he does not want the same questions to go unanswered at this meeting to then just get shifted to the City Commission meeting when that is this board's responsibility here to be that buffer.

Chairman Wiedower asked staff if the folks who have attended tonight's meeting will be notified of the next Planning Commission meeting that Public Works will be present at.

Ms. Hurley responded in the negative stating State Statute requires staff to notify people who are within a 200 ft. radius of the subject property but staff does not send out notices to update on motions or meeting results. Information about city meetings is posted on the City's website.

Commissioner Burks stated they are in a difficult situation. There are four commissioners and there is another motion that could be made right now. Commissioner Burks moves to make a motion to recommend denial to the City Commission for the rezoning request. He further stated he does not see a need or reason for six lots. Commissioner Stephens seconded the motion.

Chairman Wiedower looked to staff about Robert's Rule of Order to handling the different motions being made.

Commissioner Stephens stated he withdraws his motion to table the rezoning request.

Chairman Wiedower stated Commissioner Stephens moved to table the rezoning request until the next Planning Commission meeting and requests that Public Works to be present at the meeting, seconded by Commissioner Homan; however, the commissioners did not vote on that motion.

Commissioner Stephens stated a vote was not made on his first motion to table the issue so he now wants to withdraw his motion.

Chairman Wiedower states that a new motion was made by Commissioner Burks to recommend denial of the rezoning, and seconded by Commissioner Stephens. Chairman Wiedower called for a roll call. The motion to recommend denial to the City Commission on the rezoning request carries 3-1. Chairman Wiedower voted nay.

Chairman Wiedower stated he wants the citizens present tonight to understand this is the Planning Commission, and we have heard your concerns and have assessed the total situation. Further stating the applicant still has the right to request an appeal of this board's decision to recommend denial to the City Commission.

Ms. Hurley responded this is not an appeal. The Planning Commission's recommendation goes to the City Commission on Tuesday, August 23, 2022, and so (inaudible with too many people speaking over her).

Commissioner Stephens stated the people would have public comment during that time to share their concerns.

Chairman Wiedower stated to the audience present that the City Commission could reverse the Planning Commission's recommendation of denial.

2. 2022-14 SUB – GREENAMYRE SUBDIVISION PRELIMINARY PLAT

Consider a preliminary plat for Greenamyre Addition.

Ms. Hurley stated there is a preliminary and final plat associated with the rezoning request. Since the plats are contingent upon the rezoning, Ms. Hurley suggests the plats be tabled until such time the City Commission has made a final ruling on the rezoning request. Should the City Commission approve the rezoning, the plats can just come back to the Planning Commission and would not need a new application.

Chairman Wiedower asked if each plat needs a separate motion and vote.

Ms. Hurley responded in the affirmative.

Chairman Wiedower called for a motion for the preliminary plat. Commissioner Stephens moved to recommend to table the preliminary plat until the City Commission makes a final ruling, seconded by Commissioner Homan, and passed by a vote of 4-0.

3. 2022-15 SUB – GREENAMYRE SUBDIVISION FINAL PLAT

Consider a final plat for Greenamyre Addition.

Chairman Wiedower called for a motion for the final plat. Commissioner Stephens moved to recommend to table the final plat until the City Commission makes a final ruling, seconded by Commissioner Homan, and passed by a vote of 4-0.

4. 2022-17 SUP – 3400 IOWA STREET

Conduct a public hearing for Case No. 2022-17 SUP. The applicants/owners are requesting a Special Use Permit to allow the operation of a Child Care Center in their home located at 3400 Iowa Street. The property is currently zoned R1-9, Medium Density Single Family Residential District. Child Care Centers are allowed in the R1-9 zoning district with issuance of a special use permit.

Chairman Wiedower called for the staff report.

Planning Director Julie Hurley stated the applicants, Brenda Reza and Liberty Hazelton, are requesting a Special Use Permit to allow the operation of Child Care Center in their home located at 3400 Iowa Street. The property is currently zoned R1-9 (Medium Density Single Family Residential). Child Care Centers are allowed in the R1-9 zoning district with issuance of a special use permit. The applicant previously received approval of a Special Use Permit in 2017 to operate a Child Care Center in their home at 3611 Shrine Park Road. The family has recently moved and intends to continue their Child Care operation in their new home. No concerns or complaints were received by the City regarding the operation of a Child Care Center at their previous home.

The applicant is licensed by the State of Kansas to care for a maximum of 12 children, dependent upon the ages of the children in care.

CONDITIONS OF DETERMINATION

In recommending approval of a special use, the Planning Commission may impose such conditions, safeguards and restrictions as may be necessary to carry out the general purpose and intent of the ordinance. The development regulations stipulate specific conditions as a requirement for the approval of Child Care Centers as follows:

1. Shall not be located along an arterial street as designated on the Major Street Plan Map unless indirect vehicular access to that street, such as with a frontage road is available. The City Planner, with the advice of the DRC, shall determine if the drop off and pick up arrangements of a childcare center or business appear safe. Appeal of any negative decision shall be to the City Commission.

The subject property is located along Iowa Street, which is classified as a Residential street.

2. Shall provide at least one hundred (100) square feet of open space per child. This open space shall be 100% enclosed by a minimum four (4) foot high fence or wall.

The subject property includes a back yard area of approximately 10,700 sqft., enclosed by a 4' chain link fence.

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

The subject property includes a driveway capable of accommodating 4 cars.

4. Shall conform to all requirements of the State of Kansas and shall acquire a State of Kansas Child Care Center License.

The applicants have provided a copy of their Group Day Care Home permit from the Kansas Department of Health and Environment.

5. All childcare centers operated in residential zoning districts shall be the only legal residence of the operator.

The home functions as the only residence of the operator/owner.

6. Childcare centers in residential districts may have one non-illuminated monument sign with no more than 3 square feet per side and a maximum of 2 sides or one non-illuminated sign affixed to the main structure of 3 square feet.

Any signage displayed will conform to this requirement.

COMMISSION FINDINGS

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

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

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

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

Child Care Centers are an essential service to working parents in the community, and promote the economic development, welfare and convenience of the public.

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

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

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

No new structures or building modifications are proposed as part of this special use permit. The property will continue to look and function as a residential structure.

Notification was sent to property owners within 200' of the subject property, as required by Kansas State statute. Since notifications were mailed, staff has not received any contact from notified property owners.

STAFF RECOMMENDATION:

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

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

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

ACTION/OPTIONS:

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

Chairman Wiedower asked for questions about the staff report.

Commissioner Homan asked what the maximum number of children they can care for.

Ms. Hurley responded up to 12 children.

Chairman Wiedower asked for the applicant(s) to speak about their child care center.

Liberty Hazelton, 3400 Iowa Street, stated he is co-owner of the child care center, and they are permitted to have up to 12 children present at a time.

Chairman Wiedower stated there are five violations listed in the agenda packet. Two of those were rectified immediately. Chairman Wiedower stated the other three violations have also been corrected but asked what the nature of those three violations were.

Mr. Hazelton stated the violations can be anything as simple as their child leaving a tube of toothpaste in the bathroom that is used as the public restroom for the child care center. Mr. Hazelton further stated they have never had a violation where they had to shut down the child care center. Most of their violations are with incomplete paperwork, such as current immunizations records, on a new child entering the child care center.

Chairman Wiedower asked how long the business has been open.

Mr. Hazelton responded for over 10 years.

Chairman Wiedower asked if it is typical to have 12 children at a time, and if so how is that staffed.

Mr. Hazelton responded in the affirmative stating the staff include himself and Brenda Reza, which meets State requirements.

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

With no further discussion, Chairman Wiedower called for a motion. Commissioner Homan moved to recommend approval to the City Commission for the Special Use Permit to allow the operation of a child care center located at 3400 Iowa Street, seconded by Commissioner Stephens and passed by a vote of 4-0.

OTHER BUSINESS:

Ms. Hurley presented outgoing Chairman Wiedower with a certificate of appreciation for his 7 years served on the Planning Commission.

Chairman Wiedower stated he has enjoyed his years on the Planning Commission. One thing he has learned through the years and feels to be of extreme importance is that people need to vent and have their concerns heard. This helps people accept the determination or recommendation from the Planning Commission because they know they have been heard and their concerns were considered when making a decision.

With no further business, Chairman Wiedower adjourned the meeting at 7:59 p.m.

The next Planning Commission meeting is scheduled for Monday, September 12, 2022.

Minutes taken by Administrative Assistant Michelle Baragary.