

CITY OF LEAVENWORTH PLANNING COMMISSION
COMMISSION CHAMBERS, CITY HALL
100 N 5th Street, Leavenworth, Kansas 66048
REGULAR SESSION
Monday, June 3, 2024
6:00 PM

CALL TO ORDER:

Commissioners Present

Brian Stephens
Don Homan
Kathy Kem
Maryann Neeland

Commissioners Absent

Bill Waugh
Sherry Whitson

City Staff Present

Julie Hurley, Planning Director
Michelle Baragary, Planning Assistant
Mike Stephan, PW Project Manager
Pat Kitchens, Interim City Manager
David Waters, City Attorney

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

APPROVAL OF MINUTES: June 3, 2024

Chairman Stephens asked for questions, comments or a motion on the minutes presented for approval: June 3, 2024. Commissioner Homan moved to approve the minutes as presented, Commissioner Neeland second the motion, and motion passes 4-0.

OLD BUSINESS

None

NEW BUSINESS:

1. 2024-14 SUP – 1701 S 4TH STREET

Conduct a public hearing for Case No. 2024-14 SUP – 1701 S 4th Street, wherein the applicant is requesting a Special Use Permit to allow the operation of a Solid Waste Facility on property zoned I-2, Heavy Industrial District.

Chairman Stephens called for the staff report.

Planning Director Julie Hurley stated that the applicant, Brothers Disposal, LLC, is requesting approval of a Special Use Permit to allow the operation of a solid waste facility at 1701 S. 4th Street. The property is commonly known as Abele's Field. Solid waste facilities are allowed in the I-2, Heavy Industrial zoning district, with approval of a Special Use Permit. The proposed facility would function as a transfer station, allowing for the collection of trash and recyclable materials from both commercial users, including the City of Leavenworth, and residents.

The proposed facility would be accessed by an entrance on 2nd Street, no access would be provided from Poplar. Vehicles would first arrive at a scale house and scale where incoming debris would be weighed. Vehicles would then continue on to the citizen drop off area, recycling area, or to the transfer station building (for commercial

trash trucks). Once trash had been deposited, vehicles would exit the facility onto 2nd Street. Commercial trash trucks will be directed to access the entrance on 2nd Street via Marion Street, to avoid an increase in traffic near the existing Stubby Park to the north.

Trash brought by commercial trucks will be deposited into the transfer station building and loaded into a trailer. Each trailer holds 20 tons of waste, and once full, will be transported to the Hamm Waste Services landfill in Lawrence. The floor of the transfer station building will be concrete and will be cleaned daily, there will be no trash stored outside.

New fencing will be installed along the property lines bordering 4th Street and Poplar Street, as well as landscaping to include dense trees and shrubbery for screening purposes. The existing “Abele’s Field” arch will be retained and maintained. The existing entrance from Poplar Street will be kept but secured with a gate to prevent traffic from entering or leaving the facility, and would only be used in the event that the 2nd Street entrance was inaccessible due to flooding or other unforeseen conditions.

Anticipated hours of operation would be 7am-4pm on weekdays, and 7am-1pm on Saturdays.

The Development Review Committee reviewed the proposed Special Use Permit on Thursday, May 9th. Access to the site and operations were the primary items discussed.

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.

Based upon information provided, staff finds 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 proposed special use will benefit the public in a number of ways. City of Leavenworth trash trucks are currently required to drive to Shawnee to dispose of trash once full, taking an extended amount of time and negatively impacting the level of service to residential customers in Leavenworth. The ability to deposit trash at a transfer station in Leavenworth city limits would significantly reduce the amount of time spent in between loads for each truck, having a positive effect on service for Leavenworth residents. Additionally, residents will have the ability to bring their own trash and recycling items to the proposed facility, instead of needing to drive to the Leavenworth County Transfer Station to dispose of items.

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

The property is zoned I-2, Heavy Industrial district, and is surrounded by other industrial properties to the east and south. Directly to the east is the City of Leavenworth wastewater treatment facility. To the east across 2nd Street is the Geiger Ready Mix facility. To the south, along 4th Street, is Tire Town. To the west, across 4th Street, are multiple commercial properties zoned GBD, General Business District. Directly adjacent to the north is the Tower Self Storage facility. To the north across Poplar Street is Stubby Park, as well as several existing single family homes.

With a number of existing heavy industrial uses in close proximity, and measures put in place to limit truck traffic and disruption for the uses to the north, there is no indication that the proposed special use will cause 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 proposed special use will be accessed via 2nd Street, which already supports a number of industrial uses. The applicant indicates that they anticipate 16-20 commercial trash trucks utilizing the facility each weekday, with less than 5 on Saturdays, and 6 transfer trailers per day. The anticipated volume of commercial traffic does not indicate a significant increase above what is already present in the area. The proposed transfer station will be well contained within the 14 acre property, will be screened, and will not dominate the surrounding neighborhood.

Notification was sent to property owners within 200' of the subject property, as required by Kansas statute. Staff received no comments at the time the policy report was sent out last week. Since then, staff received two emails, and provided copies to the commissioners. The applicant, Bobby Hancock, also brought in a letter from a resident, which copies were provided to the commissioners.

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

City Attorney David Waters stated Kansas courts generally considered the issuance of SUP's to be very similar to rezoning's, so this commission is familiar with the 7 golden factors that are used in a lot cases that come before this commission. The 7 golden factors can generally be applicable as well, in addition to the 4 factors that Ms. Hurley covered in the policy report. Mr. Waters further stated that as the board considers this case, he encourages them to frame their comments in light of those factors; the 4 mentioned in the policy report as well as the golden factors.

Chairman Stephens asked Mr. Waters if he could go over the golden factors.

Mr. Waters stated there is the character of the neighborhood, the zoning and uses of nearby property, the suitability of the subject property for the uses to which it has been restricted, the extent which removal of the restrictions will detrimentally affect nearby property, which in this case it should be read as the extent to which granting of an SUP would affect nearby property, the length of time the property has been vacant as it is currently zoned, the relative gain to the economic development, public health, safety and welfare, the recommendations of staff, and conformance with the comprehensive plan. The last one is such other factors that might be appropriate, which are the 4 factors that Ms. Hurley listed in the staff report.

Chairman Stephens asked for questions from the commissioners about the policy report.

Commissioner Kem asked who and when does the stormwater get addressed.

Public Works Project Manager Mike Stephan stated Public Works Director Brian Faust will review it when a building plan is submitted during the permitting process.

Chairman Stephens asked about waste water possible pooling around the scale when customers come through.

Mr. Stephan stated that specifically was not discussed, however, the applicant stated it will be cleaned on a daily basis. Sanitary sewer is also available so if there is waste under the scale a drain can be installed that would either go to a grease trap or go directly to sanitary sewer. It will not go into stormwater.

Chairman Stephens asked what the city has paid the trash truck drivers in overtime driving to outside facilities.

Mr. Stephan stated he does not have that information with him but could get it for the commissioners.

Interim City Manager Pat Kitchens stated the principal issue is the travel, which is a 45 minute drive to the facility, 1-2 hour waiting in line, then a 45 minute drive back to Leavenworth. Often times, when the trash pick-up is behind or if the schedule is off, other pressures exerted on the system, including employees may be sick or a truck breaks down, etc. all contribute to those pressures, which disrupts the trash service daily. To answer the question, the cost is significant.

Chairman Stephens stated it is his understanding that Thursdays are the largest volume for our trash trucks, and asked what happens when the trash truck is full by early morning.

Mr. Stephan responded that the truck has to go to Shawnee to be dumped, which takes time away from City of Leavenworth resident's trash being picked up.

Chairman Stephens asked if the drivers come back to finish their route or is it pushed to another day.

Mr. Stephan responded the drivers attempt to finish their route if they can.

Chairman Stephens asked how staffing of CDL drivers has been in the past year.

Mr. Stephan stated we have been short staffed. It is difficult to get CDL drivers hired and even harder to retain them because of competitive salary.

Mr. Kitchens stated the principal change between now and last year was a change at the CDL requirement with the cost increasing considerably. Where normally candidates would come to the city prequalified with their CDL, it is much more expensive now which precipitates an additional problem with staffing and hiring a person who is CDL qualified.

Chairman Stephens asked if the city pays for the CDL.

Mr. Kitchens stated they are working on incentive packages where after a person is hired and gets their CDL that perhaps a salary increase would be associated with that.

Chairman Stephens asked if the proposed transfer station would have any impact on city operations.

Mr. Stephan replied that it would lessen the travel time, which would give drivers more time to complete routes in a timely manner. Would also be more convenient in the fact that recycling would be moved to the transfer station, which would free up more space at the Service Center for items that need to be stored onsite, and would not have the cost of paying someone to handle the recycling.

Chairman Stephens asked what the hours for the transfer station would be.

Ms. Hurley responded 7am-4pm Monday thru Friday, and 7am-1pm on Saturdays.

Chairman Stephens asked if those hours are more than the city's current operation is.

Mr. Stephan responded in the affirmative.

Chairman Stephens asked the applicant to speak.

Rhonda Levinson, with Bateman Law Group, stated they represent Brothers Disposal in trying to get this project going. Wants to clarify one thing and follow-up with what Mr. Waters was saying. In reference to the nature of the request that is listed on the front of the packet that Ms. Hurley went over, we would rely on the nature of the request as set out in the actual special use permit application that Brothers submitted. On page 5 of the packet, it is the First City Transfer Station, and those are the actual items that hit the golden factors that this commission should consider. Many of the items listed on that first page of the packet are items that are under negotiation with the city as part of a separate process, and they do not really have relevance to the golden factors or to whether or not the special use permit should be issued.

Applicant, Bobby Hancock (1119 Limit St), stated that he and his brother David Matthews were both raised in the City of Leavenworth, and between the two of them they have about 55 years of solid waste experience. David has managed numerous landfills and transfer stations, and Bobby has managed and worked at several hauling companies, including here in Kansas City at BFI, Allied Waste and Deffenbaugh. Started Brothers Disposal in 2011 with one commercial dumpster and one truck, which was Knights of Columbus. Fast forward a few years, and Brothers was able to purchase another company that had been here for about 35 years, which was N&J Disposal. In 2019, Brothers was able to acquire another local company called Bumpy Roads Disposal. Although the company got bigger, they stayed close to their hometown roots. Brothers currently has 12 employees, all local except for one employee who is from Atchison. Currently they service City of Easton, City of Basehor, a few home associations, and are stretched from Potter through Leavenworth County and end up down in Lenexa, and obviously Basehor and Tonganoxie in between.

Mr. Hancock further stated that 3-years ago they were contracted by the city to clean up a big area underneath the bridge on 4th Street by the old Sonic. This job was completed within two days, and they collected 14 tons of garbage out of there. Two years ago, it's hot, hard to find people to hire, and long travel times to the landfill, the city started getting behind. Mr. Hancock stated he reached out to the city to see how his company could help. Brothers helped out for 2 to 3 weeks to get the city caught up and keep the citizens happy. One year ago is when the residential carts came out. While the city was delivering carts and working through that process, Brothers helped the city out by picking up trash in designated neighborhoods. In the past five weeks, Brothers has helped the city out a lot picking up trash, with about 90 truck hours in and have even worked on Saturdays and Sundays. Mr. Hancock further stated they have grown up here and have a vested interest, so it is important to him and his crew that the city is clean.

Mr. Hancock further stated in 2011 the current owners of the subject property applied for a rezoning to I-2, Heavy Industrial District, which was approved. This is important because many of the golden factor questions that Mr. Waters pointed out look at the zoning of the property. The answer for two of the questions for that zoning is "fits the city's plan for this area". Other answers pointed out the industrial business in the direct area, the recent addition of the traffic light at Poplar Street, and the widening for turning lanes at Poplar and Marion Streets further help the industries in that area. The subject property has been vacant for approximately 14-years, and is in the direct neighborhood of a concrete plant.

Referring to the plot plans, Mr. Hancock stated the aerial pictures were taken using a drone going down 4th Street about 30' in the air. Aesthetics will be a big deal for them. The current picture is from the south traveling north,

which shows a 6' open fence, shrubbery and trees. Next picture is from the north traveling south, which shows the existing locker room, which will be the shop, and more shrubbery and trees. The entrance and exit will be off 2nd Street. The trailers will enter from Marion Street, and then take 2nd Street to the entrance of the transfer station. Having the entrance and exit off 2nd Street protects Stubby Park. After entering off 2nd Street, the trucks would come onto the scale, then continue passed the building, and then backup to the building to offload their load in the building. The building has four large bay doors, which is very important to us, and there is good reason for that. There is a word called smell, and garbage is frequently associated with that. The bay doors and misting system help mitigate any type of smells. Keep in mind this is a much smaller operation with 120 tons compared to Olathe, which is about 500 tons.

Mr. Hancock further stated they expect a parklike atmosphere and want to show it off. They want to bring school buses through the facility to education kids on what happens with garbage and recycling. They would be open to tours as well, if a group of people want to visit the facility.

Mr. Hancock proceeded to state that the existing recycling area is open sometimes, and other times it is not open due to a labor issue. The proposed project would have the recycling center at new facility, with a drop off area open from five-and-a-half days a week and will be fully staffed. The process works by the person going to the scale, then driving around to the citizen drop-off area, toss the couch, mattress, etc. into the roll-off box, and then drive back out of the facility. The new facility would also offer the free Saturday dump that the City of Leavenworth currently offers now. In this case, the building would be open to the public. The person's license would be checked to verify they are a resident of the city, they would drive across the scale, they dump their garbage or large items into the building, and then drive out of the facility. This is a savings for the city because they do not need to staff for this service, haul the roll-off boxes or transfer it to the landfill. The city would only be paying for the tonnage that comes across the scale. There is no garbage left on the floor at night whatsoever. The large trailers are loaded at the end of the day, the bay doors are closed and the misters are on. They anticipate six trailers leaving the facility every day, which is not even a drop in the bucket compared to a lot of the truck traffic in that area.

Mr. Hancock stated additional benefits for the city are a reliable long-term contract to dump there, the recycling center, the citizen drop-off area, first Saturday of the month dump days, and the new facility would accept car batteries, the household hazardous materials and tires. The city would also save money on fuel, labor, and wear & tear on trucks. How often does the city have to buy a truck when the trucks are driving back and forth to Kansas City as compared to driving 5-10 minutes to the proposed facility? This is a huge deal as it could change from buying a truck every two years to buying one every five years, and these trucks are expensive. Brothers expects fast dumping times. They will have a commercial lane just for commercial trucks so cash customers will not be held up. Brothers anticipates hiring an additional six new employees to their payroll.

Mr. Hancock further stated that the buildings are only up to about the 30-yard line so there is a lot of green space left. Brothers would anticipate community events to occur in that green space such as car shows, swap-n-shops, etc., and even have food trucks. That is how confident Brothers is in this facility, that it will not be an eyesore, and that it will be a state-of-the-art, aesthetically pleasing, and parklike atmosphere.

Mr. Hancock proceeded to read a couple excerpts from a letter that was sent last night. The letter is from Mike McDonald, who is the retired Public Works Director. An excerpt from that is "it was at the time, and appears still to be cost effective in the sense of dollars/ton to haul the refuse to Johnson County rather than use the County Transfer Station. Use of a local, cost effective transfer station will allow City Collection Vehicles to avoid a 1.5-3.0 hour round trip for disposal, increasing efficiency of collection. Construction of a well operated and well maintained transfer station central to Leavenworth offers the opportunity to bring performance back in-line with resident expectations

for regular refuse collection. That the property is zoned I-2 is a critical part of the approval process. Many people are not aware that Geiger Concrete, LAM (Asphalt Plant), Tire Town (retail and wholesale tire operations), Great Western Manufacturing, Wastewater Treatment Plant and other warehouse/manufacturing/material handling operations are part of the same zoning block created back in the dawn of time for Leavenworth. All of these have served the community well. I am not closely familiar with the actual plans and layout of the site, but was pleased to see that the access would be from 2nd Street. This will allow refuse trucks and transfer trailers to use the signals at Marion/4th Street to enter and exit 4th Street. This industrial use was part of the justification for the upgrading of these traffic signals over the years with substantial grants from KDOT. In conclusion, a well operated transfer station, with a commitment to hours of operation, noise/light control, and litter collection should be supported by the Planning Commission. It offers substantial opportunity for the City to stabilize refuse collection services as well". Mr. Hancock stated he thinks we are all in line with that, and that the transfer station is a win-win for the city, and a win-win for the residents. Brothers has been working toward a better community for a number of years, and this project is an extension of that goal. Brothers is excited to see what ideas the citizens can offer to use the green space leftover after the base project. Brothers believes this would be a partnership with fellow citizens, and work together for a better Leavenworth. Lastly, how does Abeles Field Transfer Station sound?

Chairman Stephens called for questions from the commissioners.

Commissioner Neeland asked if the fence along 4th Street is 6' in height.

Mr. Hancock responded in the affirmative.

Commissioner Kem stated the fencing is talked about in several places in the packet, and wants to know which type of fence will be installed. In one place it says that there will be new fencing along 4th Street and Poplar, the application states it will be replaced as necessary and the DRC notes states there was going to be plastic slats put in the fence.

Mr. Hancock responded that the slats and replacement of the fence are under negotiation. Part of the fence was hit within the past year and that area has brand new fencing. At first glance, they were going to replace the part that was not brand new. They are definitely going to put fencing and gates on the north side and then the gate on the 2nd Street side. The slats would be something nice because there are people that are worried about what they will see but the trees and shrubbery will do a great job screening the area as well.

Commissioner Kem asked about the circulation of traffic. People will be coming in off 2nd Street and going around the building so will there be two lanes?

Referring to the site plan, Mr. Hancock demonstrated how people with recycling will come in and get out without getting caught up in any type of traffic. He further demonstrated the driving path for those dropping off garbage and/or debris, dropping off large items, commercial trucks, and cash customers. The route the commercial trucks take is wider so they are able to get in and then get back out.

Commissioner Kem asked for clarification that a resident would not be in the same queue as the commercial trucks.

Mr. Hancock responded in the affirmative stating they want to focus on convenience and not have this be an intimidating experience for residents.

Commissioner Kem asked that after the trash is put into the building and it goes down the tilt floor, the trash will be put into the transfer trailers.

Mr. Hancock replied the trailers are called tipper trailers. The tipper trailers backup to the building and a machine puts the trash in the trailer. Once the trailer is full, the load is tarped and the trailer company hauls it away.

Commissioner Kem asked if the tipper trailer is inside or outside of the building.

Mr. Hancock stated the tipper trailer is backed inside the building and is at a lower elevation than the floor with the trash, so the trash is pushed down into the tipper trailer, not pushed up into the trailer.

Commissioner Kem asked that at the end of the day if the tipper trailer is not full, will it stay on site.

Mr. Hancock responded that is when the bay doors come into play. The bay doors are closed and the misters are going. They do not anticipate anything being full sitting outside because the trucks are constantly being hauled out.

Commissioner Kem asked staff if the landscape plan will go through the same process.

Ms. Hurley stated that is correct. When they come in for a building permit that would be reviewed by staff.

Commissioner Kem asked how many tons is the Leavenworth County transfer station.

Mr. Hancock replied around 150-170 tons.

Chairman Stephens asked what the proposed transfer station be comparative to the county transfer station.

Mr. Hancock responded 110-120 tons.

Commissioner Neeland stated she dumped her couch at the county transfer station and was charged her \$5. She asked what the \$5 goes to.

Chairman Stephens stated the applicant cannot speak for the county. He further asked what fees Brothers would charge and what would those fees go towards?

Mr. Hancock responded that there will be a set price to drop off items such as a couch or something like that, and these people would not need to go back across the scale. Anybody with a trailer or a construction company would need to scale back out, and at that point it is a price per ton or whatever that gate rate is set at.

Commissioner Neeland stated her question about where the \$5 went is more about if this would be taking money away from the city because in her head the city would have received the \$5 she was charged.

Mr. Hancock responded the county is no longer funded by tax dollars, and has not been for a while. That is when that gate rate went up significantly, and the city started bringing their trash to a different landfill for a better gate rate. One cannot call the county transfer station a for-profit operation because they are revenue neutral that money is used for running their facility.

Commissioner Homan asked if the wall along 4th Street will be torn down.

Mr. Hancock responded in the negative.

Commissioner Homan asked if the wall is not going to be torn down so it can have more graffiti.

Mr. Hancock replied that the wall is attached to the stands, and there is some concern of it being there for as long as it has been on what that structurally would do to 4th Street. Furthermore, that is not really graffiti on the wall but is actually a mural now. Brothers does want the aesthetics to stay pristine.

Commissioner Homan asked about how large the trees will be when planted.

Mr. Hancock responded that the trees are 8-9 feet when planted. The landscaping will include 10 gallons worth of shrubbery as well. There will be two to three different types of trees and shrubs.

Commissioner Homan asked if there will be a free drop-off day for residents.

Mr. Hancock replied in the affirmative stating instead of the free Saturday being at the Service Center where it is now, it will be at the new location at Abeles Field.

Commissioner Homan asked if Brothers will incorporate the city trucks and city employees into this new company.

Mr. Hancock responded that Brothers is not in partnership with the city but that they would have a long-term contract with the city to dump at the new facility, which would save the city money.

Commissioner Homan asked how long is the long-term lease.

Mr. Hancock stated he did not speak of a long-term lease. Brothers would be purchasing the property at Abeles Field.

Commissioner Homan asked how long would the contract be with the city.

Mr. Hancock responded that would be a negotiation with the city. It would be much like the contract that the city has with Waste Management.

Referring back to possible events being held at the open green space, Commissioner Neeland asked if people could park in the grass during an event, such as a concert, if needed.

Mr. Hancock replied that while thinking about different community events, they thought about maybe a movie night with a big screen, where people can bring their lawn chairs as well as use the existing stands. He further stated that he was thinking car shows that would be in the grass or swap & shops that would also be in the grass, with food trucks along the outside. Mr. Hancock also stated the roads will be asphalt.

Chairman Stephens asked the applicant if he has secured the funding needed to undertake this large project or is that something he is still working on.

Mr. Hancock responded they are currently in the middle of that process.

Chairman Stephens asked what the plan is to mitigate wastewater and other contaminants that are germane to this type of facility.

Mr. Hancock replied that all of that is covered through the permitting process with KDHE. There are also monthly, yearly, and surprise inspections performed by KDHE. This biggest part of this would be in the area where the trailer is, so there would be a separate drain there that would be handled by the wastewater treatment plant. The other drain would be rainwater on the outside of the pit.

Chairman Stephens asked if public utilities already exist on the property.

Mr. Hancock responded in the affirmative stating water, electric, and sewer are already there.

Commissioner Homan asked the timeframe for completing the project.

Mr. Hancock responded the KDHE permitting is anywhere from 6-9 months. During this time, Brothers will be getting the financing. He further stated it takes 90 days to get the building on-site. Overall, they anticipate 12-15 months before the facility is operational.

Commissioner Kem asked if the recycling will be taken to the same place in Lawrence as the solid waste.

Mr. Hancock responded in the negative stating the City of Leavenworth would still handle that portion and would keep any revenue from the recycling. The reason for moving the recycling to the new facility is so that the citizens could rely on open hours.

Chairman Stephens asked how large of an investment this project might be.

Mr. Hancock replied somewhere around \$2.8M, which includes the equipment.

Chairman Stephens asked staff what that does to the tax burden.

Interim City Manager Pat Kitchens responded that the team has done some preliminary calculations. Certainly, the property tax value would be significantly higher than it currently is now.

Chairman Stephens stated that currently the assessed value is \$29,000 that generated about \$4,000 worth of tax revenue for the city for 2023. If that type of money was invested into this property, then the tax revenue would increase?

Mr. Kitchens replied that it depends on where they end up landing on the number total but believes it would be in the \$80,000 - \$100,000 year.

Chairman Stephens asked the applicant if they will be charging sales tax.

Mr. Hancock responded that there is no sales tax for tipping trash or picking up trash, but there is sales tax for dumpster rentals.

Chairman Stephens asked if Brothers would be responsible for trailering the waste to Lawrence.

Mr. Hancock stated that would be contracted out to a company in Olathe, KS.

Chairman Stephens asked how much trash will be left outside during the day or overnight.

Mr. Hancock responded that there will not be any trash left outside in the trailers whatsoever. The only thing that could be left would be if there were something in the trailer at the end of the day because the trailer is not full. If a trailer is only halfway full, then it would not be hauled away until the next morning when it is full but again that trailer would be inside in the building, bay doors closed, and misters going. Trash will never be stored outside.

Commissioner Homan stated his sweet smelling sprinkler system will be working all the time then.

Mr. Hancock responded in the affirmative.

Chairman Stephens asked where the trash is stored currently when the city trash trucks cannot get the trash hauled away that day or if the facility is closed.

Mr. Hancock responded that the trash stays in the truck.

Chairman Stephens asked where the truck that still have trash in it parked.

Mr. Stephan responded at the Service Center.

Mr. Hancock further stated that Brothers is a private business so if the city trash truck is running behind, city staff can contact Brothers and Brothers would keep the facility open so the city truck can dump their trash.

Commissioner Homan asked if the city will still be picking up the trash or if there is a possibility that Brothers would be subcontracted.

Mr. Hancock stated that the city would still be picking up trash. Brothers cannot speak for the city but he thinks it would be the idea that if the city truck is not driving 25 miles away to haul off trash, the city would then have the time to pick up garbage in the neighborhoods, and then the city would not need Brothers to help pick up the garbage. This is another cost savings for the city because the city would no longer be paying Brothers to help pick up the garbage.

Before opening the public hearing, Chairman Stephens stated that he takes this seriously, has done his own research, and wants to share some of his findings. He spoke with a few city workers that drive the trucks and pick up the trash, and learned that they start out at \$16/hr. for their CDLs, where everybody else starts out at \$18-\$20/hr., so \$16/hr. for a CDB is not very competitive. The biggest complaint the city trash workers have is the two hour round trip to dump their load. This takes time away from picking up trash in the city, has the city employees working late and missing time with their families, and cost the city more with overtime pay. Chairman Stephens further stated that he asked the city workers what the proposed transfer station would do for them and their ability to serve the citizens. Generally, they were happy with the prospect of not having so much long distance road time.

Chairman Stephens continued by stating he also spent a couple hours speaking with residents who live in the apartment complex behind the existing Recycling Center at Lawrence Ave and Pennsylvania St. He specifically asked about the smell and traffic. No one complained about the smell, and it just so happened that two of the trash trucks were parked there with trash in them. Most of the complaints were about the noise, the beeping of the trucks, etc. Chairman Stephens went on to say that if you have not been to the Recycling Center, it is not just recycling. There is some waste that is there and bins that contain trash that are all out in the open.

Chairman Stephens further stated he also spoke with people who live near Stubby Park. The people he spoke with did not know about the proposed transfer station, and one couple was military who just moved here. That couple did ask about the trash and recycling regulations, was interested in knowing that there would be more, and that it was not the idea of the city that you can just put out however much trash you want, which was one of the military member's belief from hearing what other people in the city were saying. Two other people in that area had recently moved back to Leavenworth and stated the proposed transfer station did not have any impact in their views of the city, but what they were disappointed in is that it did not seem as though Leavenworth was growing like other communities. Some of the folks that have lived in that area for a while did talk about the smell that is currently there, and that is the asphalt plant. They asked if it would be more than the asphalt plant, which Chairman Stephens could not answer. They also asked if it would be worse than the sewage smell that is already there, and again Chairman Stephens could not answer that. Most people did have complaints about the traffic until Chairman

Stephens showed them the proposal. When they noticed that all of the traffic is 2nd Street, it no longer seemed to be of concern because the park would not see any of that traffic.

Lastly, Chairman Stephens mentioned the impact on property taxes, stating everyone knows property taxes have gone up and that is mostly based on the assessed values. One of the biggest sources of funding for the city is the CCA building (Corrections Corporation of America) that used to generate over a million dollars' worth of just property tax revenue. For example, 2019 was assessed at \$6.7M that generated \$867,000 for the city. After speaking with the Appraisers Office, they stated that because this property can no longer be used as a prison, the Appraisers Office had to reduce that valuation, so instead of \$6.7M it is now valued at \$4.1M, which is about \$500,000 in tax revenue just on property tax. Chairman Stephens further stated he encourages everybody to take that into consideration that when we have such a significant investment in our community, whether it is this project or your own home that increases the appraised value of things that can increase your taxes but can also have some benefits. Hopefully, everybody has listened to all this information with an open mind.

Chairman Stephens opened the public hearing for any public comment that is relevant to this Special Use Permit request. Planning Assistant Michelle Baragary has a list of the folks that have signed up to speak.

Ms. Hurley suggested that if folks have questions for the applicant on something specific they want addressed that staff and the commissioners keep track of those and circle back to all of those at the end once everybody has had a chance to speak.

Mr. Kitchens stated he has some answers for the questions that the commission asked earlier about overtime. In 2024, \$88,000 was budgeted for refuse staff overtime expenses. If we anticipate not having to work that much, about two-thirds of that will go down so we are thinking somewhere in the neighborhood of about a \$50,000 savings in overtime. There is about 1,560 trips a year driven from the City of Leavenworth to Shawnee and back, which about 78,000 miles a year, so the city trucks would have significant less travel time on them and reduction in fuel costs.

Mike Cordes, 900 S. Esplanade St., stated that listening to this evening's presentation has mitigated some of the challenges that he has with this project, but does request clarification on the mitigation of what he sees as three challenges that have not been addressed so far. First, will there be any type of trash created that would be potentially windborne with bay doors open, etc.? Second, would be mitigation of noise with the trucks backing up and alarms occurring. Third, is tire recycling. Would the used tires be stored inside a warehouse or stored outside where they would collect rainwater?

Ron Kilgore, 2214 S. 5th St., stated his concerns are windblown trash, odor and traffic. One of his black trash bags ripped open this morning as he pulled it out of the bin, and the odor forced him to run to the curb with the trash bag. He wants everyone to think about a couple hundred of those trash bags are put in that truck every day. Now Brothers is going to dump all that trash on the floor inside a building and load it into an open topped trailer. Also concerned about insects and rodents. Feels that this is the wrong place to put a facility like this no matter how well Brothers operates the facility. Leavenworth still has the original traffic design from the 1920's when they started making US and state highways. As a 35-year veteran of driving a tractor-trailer, these big rigs drive in the left lane because when you get in the right lane people in this area think they have to come to a complete stop before they pull into a parking lot or driveway. Tractor-trailers do not accelerate that fast so they stay in the left lane to avoid that, which means when you get behind one you are going to be behind it all the way passed Lansing and down to Basehor. If hours of operation for the transfer station is 7am – 4pm, and a tractor-trailer leaves the facility at 4pm, then it will be driving down 4th Street during rush hour. Believes there is a better location for this type of facility.

Dick Gervasini, 108 Vine St., stated he has a few items for consideration. First, having served on the Planning Commission as well as the Board of Zoning Appeals, he thought that special use permits were supposed to be given based on the utilization of the land, and all he heard Mr. Hancock give was a presentation on economics. Second, as the Chairman of the Waterworks Board for the city, there is a 12" water main that goes from 2nd Street to 4th Street, across 4th Street and up the road over the hill. This has not been addressed.

Michelle Becker, 1316 5th Ave., stated her concerns are the smell and seeing the facility while driving down 4th Street. There is a newly renovated park in that area, and who wants to take their family to that park to listen to trash trucks being dumped and the smell of the garbage because the doors will be open. There is also a restaurant nearby. The sewer plant already puts off a terrible odor, and now you would be adding to that smell. Asked why Leavenworth cannot team-up with the facility in Lansing, and expanding that facility.

Chairman Stephens asked Ms. Becker if the mitigation strategies provided by the applicant for the smell and the visual aspect were satisfactory.

Ms. Becker responded they were not.

Chairman Stephens asked Ms. Becker what would be to her satisfaction.

Ms. Becker replied that there is nothing that would be satisfactory if this type of facility is located on 4th Street.

Louis Klemp, 1816 Pine Ridge Dr., stated there is history on Abeles Field, and nobody in the city cares about the history. It has been interesting that now all of a sudden we have somebody that wants to take Abeles Field, which the Jewish gentleman sold to us way back when, and where ROTC used to fight wars up and down the hill, and nobody cares about any of this. Mr. Klemp further stated he knows the property is zoned industrial but there are two properties out on Eisenhower that could be used.

Chairman Stephens stated we are not here to discuss where a transfer station could be. We are here to talk about the proposal in front of us here today.

Mr. Klemp stated he does not think the proposed location is the place for a transfer station because it is a higher price than what it would be out on Eisenhower.

Chairman Stephens asked higher price for who.

Mr. Klemp responded to Mr. Hancock who is buying the property.

Chairman Stephens asked Mr. Klemp if he is advising him for his business.

Mr. Klemp responded that he is telling Mr. Hancock to look some other place because there is a zoning on Eisenhower and on 2nd Street where the oil is and where the big building is that has been there for 100 years where they launched the war wagons during World War II.

Chairman Stephens stated there is a lot of history there.

Mr. Klemp stated history is unimportant. There is no sense talking about history.

Chairman Stephens responded those are your words, sir, not mine.

Mr. Klemp stating that an article states that the board has already approved this.

Chairman Stephens responded in the negative.

Commissioner Neeland stated she thinks Mr. Klemp is referring to the fact that it was previously approved for Kaaz to rezone the property.

Chairman Stephens asked to rezone it to industrial 15 years ago?

Commissioner Neeland responded that she did not read the article but is assuming that is what the article is referring to.

Chairman Stephens stated that yes, in 2011 it was approved to be rezoned to industrial to match (inaudible, Mr. Klemp interrupted).

Mr. Klemp stated do not talk about the history because that does not mean anything since the Muncie's got here in the 1850's and the Klemp's got here in the 1860's.

Rick Avena, 4732 Shrine Park Rd., stated he is not tied to Abeles Field emotionally but he believes this is the wrong location because no matter where people drive out of it, it still butts-up against 4th Street. Mr. Avena stated he is not a trash guy but did pull an EPA study off the internet. Wastewater runoff is an issue with the plant or the areas in Kansas City. Concerned with the noise, traffic, smell and site. The renderings look nice but we know that what we plan is probably not going to be executed like that. Concerned with trash blowing out even if the trailers are covered. There is a rodent and bird issue there, and it is close to Stubby Park. Believes this is the wrong location, and that there are better locations for the transfer station. Mr. Avena further stated he has three questions. First, how big is the footprint? Second, what are these golden factors? Third, how does the money that the city would save reduce his tax burden? In the last 16 years he has owned an uranium company in Colorado so he knows how things go, and so when the applicant says they are going to mitigate this or that, it does not normally work out like that. Then there are some unintended consequences, and although Mr. Avena does not know what those unintended consequences are for the transfer station, he assumes there will be smell, garbage blowing around, and that it will affect the park. He thinks this area could be used for something much better than a transfer station, and he has ideas for what the property could be used for.

Alisha Herzog, 316 S 5th St., stated she is a citizen of the city and a user of Stubby Park. She wants to commend Brother's Disposal on their plan to create a transfer station. Based on the factors presented, believes it is very important that we create one, not only for the cost savings but to the citizens of the city. As a mother and a person who frequents the facilities at Stubby Park, she does have concern, even with the mitigation efforts that are laid out and seem to be very well thought out and planned. She recently attended a birthday party at the newly renovated shelter, which is a wonderful addition to the park, and is sorry to hear that we may potentially have a location next door that could add to the already loud sounds in that area. She is also concerned with the smell, rodents and insects that will be increased inevitably just because of the type of facility it would be.

Chairman Stephens stated he wants to remind everyone that this is a special use permit to create a transfer station, so if the special use permit is not approved, whoever owns that property can do whatever they want with it. If they wanted to fill it with unmitigated trash, they could do that with their property, so that needs to be considered as well.

Ms. Hurley stated the owner can do what they want with allowed uses in that zoning district, for instance a concrete plant.

Anna Enter, 1501 Columbia Ave., stated she has lived here since 1956, and has a lot of history at Abeles Field. Believes we need a transfer station but does not think this is the right location. When it comes to recycling, she tries to recycle herself by separating trash, plastic, paper, etc. She loads the separate boxes into her car to take to the Recycling Center just to find out that it is closed, and when she goes on Saturday's the line goes all the way around the corner. Out of frustration, she throws everything into the trash bin and sets it out on the curb, and then the trash truck does pick her trash up on time. Ms. Enter further stated she is concerned about accidents with these trash trucks trying to make the turn at Price Chopper and then again at 2nd Street. She also said this is kind of like a dream world if all of this works the way it has been presented, but wants to know if she will be stuck behind the trash trucks when using the recycling area at the new facility. She is not in favor of the location of the transfer station. Ms. Enter proceeded by stating she is part of the First City Museum and all of the old history of Leavenworth, and that Abeles Field is an almost 100-year old landmark. 4th Street is the only way you can get from Lansing to the Centennial Bridge, and it would look awful if this property on 4th Street were lined with slatted fence panels. This is supposed to be the First City of Kansas. How are we supposed to invite people to our town to help it grow with a transfer station on 4th Street?

Chairman Stephens asked Ms. Enter if she would prefer it to stay exactly as it is right now, and have people coming into the city see it how it looks today versus a transfer station.

Ms. Enter responded in the affirmative.

Chairman Stephens asked Mr. Kitchens if the intersections at 4th Street & Marion and 4th Street & Poplar were recently redeveloped, and has there been any difficulties with trucks trying to make that turn?

Mr. Kitchens responded that 4th Street and Marion (inaudible due to chattering in the audience) and 4th Street and Poplar were redeveloped for Geiger trucks and the asphalt plant. Mr. Kitchens stated that he's sure there has been accidents but would need to check to see if it has increased. The 4th Street and Marion intersection was completely widened to allow for trucks movements.

Mr. Stephan stated that before he worked for the City of Leavenworth, he worked for an engineering company that inspected the 4th Street and Marion project for the City of Leavenworth. There are many trucks that come in town, and that was a KDOT design. There is a large radius at that corner so trucks do not have to get in the left lane. Semi-trucks that deliver rock to Geiger use this intersection all the time, and the asphalt plant has semi-trucks that use it as well. This intersection was designed for trucks.

Commissioner Homan asked if this intersection was designed for coming from the south and heading northbound.

Mr. Stephan responded in the affirmative.

Commissioner Homan asked that this intersection was not so much designed for trucks going west and turning southbound.

Mr. Stephan responded in the affirmative.

Chairman Stephens called for the next person on the list to speak.

Linda Bohnsack, 701 N 12th Street, stated she lives in a beautifully renovated historic little home. This whole town is full of beautifully preserved little homes and older buildings that make this town a wonderful place to live. This city also has beautiful new subdivisions, wonderful commerce and a lot of economic development opportunities, with many of these being development over the last 25 years when she moved her. Ms. Bohnsack further stated

she came to here as a Planner for Leavenworth County, served as a Planner for Tonganoxie and Desoto, Kansas, and served on Leavenworth Planning Commission for several years. The use that is being proposed for this site is a particularly obnoxious use. The only worse use for this site would be a salvage yard. It is not about how well it can be screened because it is still going to be a loud, noisy, and distasteful use. The facility would be on the main street that runs through town, a famous historic town in the State of Kansas. Ms. Bohnsack continued by stating when she first moved here, she lived in a house on Pine Street, and she could hear the crowds cheering as the high school teams took the field. It was a beautiful part of a small city life. There are other sites for this type of use that would not be quite as public and visible. Abeles Field was built lower than the street for visibility because people wanted to see into the site. It will take many years to grow trees to buffer and screen that site from the public view. Another thing to consider is once a use like this is goes it, it never leaves.

Chairman Stephens asked Ms. Bohnsack if she is okay with keeping Abeles Field in the condition it is now.

Ms. Bohnsack stated with a little bit of creativity, a lot more could be done with that site other than a dump.

Thomas Beal, 2106 S 5th St., stated he would rather see Evergreen trees that stay green all year and that do not lose their leaves. He has also seen trash truck just ignite in fire. Will there be fire hoses and fire hydrants on site or will the city fire trucks have to bring the pumpers in to put out the fire? Brothers will be charged by the other company to haul the trash away so how would this save money for the city because it would be cheaper for the city trucks to spend one-and-a-half to three hours to drive to Kansas City than to pay what Brothers would charge.

Joseph Hancock, 1119 Limit St., stated he would like to preface and say that actions speak louder than words sometimes. He believes that his and his brother's team were the last to every play on Abeles Field. In all his life he has heard about a lot of things being said to happen at this property but obviously nothing has happened. There is a lot debris, concrete piles, overgrown weeds, and the track is cracked up. It is an eyesore, and hurtful to him that he spent that amount of history on that field and to see it in the condition it is today. With all the stipulations put in place and thought from the city and Brothers Disposal, he believes it is worth giving gratitude for someone who is actually wanting to help develop our city rather than let it be a place for homeless people to sleep, graffiti on the walls, messed up concrete, and who knows what else is going to happen there. Obviously with anything, there will be implications like the waste system that is in this area. There are negatives and positives with everything, and he believes many people came tonight with a preconceived notions concerning that. Mr. Hancock further stated if not this, then who is going to step up and put something on this property to make it usable in the foreseeable future because with the hundreds of thousands of dollars that the city is spending in addition to disposing of waste when it could be done in town and it would also create more jobs, he could only imagine that tax dollars are going to raise as well, and then you are losing more money than what you were wanting to gain in the first place.

Cassandra Blakely, 1000 5th Ave., stated her opinion is that this is not the place to have a transfer station. Will Brothers be purchasing the land if this request is approved? If approved, does Brothers move forward with constructing buildings or are there more steps in the process that allow the citizens to have a voice?

Chairman Stephens addressed that question stating the Planning Commission will make their recommendation to approve, deny, or table this request. That recommendation goes to the City Commission, and the City Commission has two hearings.

Mr. Waters stated the City Commission has two readings but are not necessarily required to hold a public hearing but this does come before the City Commission, and the City Commission has the authority to decide whether to accept additional public comment.

Chairman Stephens proceeded by stating there are two readings of this and the public can make public comment to the City Commissioners even before that date. The City Commissioners are elected leaders so citizens can talk with them at any time, which is encouraged. Whatever decision is made this evening by this body goes up as a recommendation to the City Commission, and it will be announced when that is on the agenda.

Ms. Hurley stated the earliest the City Commission would hear this item is July 23rd.

To answer Ms. Blakley's other question, Chairman Stephens stated that the applicant has already addressed that they are in the purchasing process.

Commissioner Homan asked the current property owner, Mr. Kaaz, when did he purchase the property.

Steve Kaaz, 1701 S. 4th Street, responded that he purchased it when the school board sold it in 2010.

Commissioner Homan asked why nothing was done with Abeles Field before now.

Mr. Kaaz stated he is one of the owners and the property was for sell for quite a while. They had hauled dirt in to try to improve the property and make it more sellable. That did not have the outcome they wanted so they worked with an Indian Reservation but they backed out of the deal.

Commissioner Homan asked if the property was purchased as an investment.

Mr. Kaaz responded in the affirmative.

Commissioner Homan wonders why it was not taken care of even though the property was for sell.

Mr. Kaaz asked what he means by the property not being taken care of.

Commissioner Homan responded that everyone has talked about how terrible the property looks and the graffiti on the building.

Mr. Kaaz stated that the property is just a construction laydown area right now.

Chairman Stephens asked the applicant to come back up to the podium.

Referring to how a building looks, Mr. Hancock stated the tire warehouse is not the best looking building on 4th Street, and we could go from north to south and see many buildings that do not look nice. Along the wall is a mural. It used to be graffiti but now there are actual pictures along that wall. There was graffiti on the arch that has since been painted over.

Commissioner Homan stated the reason the tire warehouse building has not been torn down is an EPA problem because batteries were made there and it got into the ground so the building has to stay.

With many folks talking, Ms. Hurley stated we need to have people not talking in the background as it interferes with the recording quality, which is needed for the meeting minutes.

Chairman Stephens stated the arch and its historical significance was mentioned several times, and asked the applicant to speak of his plans for the arch.

Mr. Hancock replied that he did not hear any specifics about the arch but rather the history of the field itself. They understand there is a lot of history to this property, but the fact of the matter is it is not a football field anymore,

and it ceased being a football field well over a decade ago. When the rezoning was approved for heavy industrial, one of the permitted uses at that time was a solid waste transfer station. Since then, it has changed to requiring a special use permit. A few uses that are currently permitted by-right include an automotive parts recycling business, a junkyard/salvage yard, etc.

Chairman Stephens said in the proposal there was a plan to maintain and upkeep the arch.

Mr. Hancock responded that is under negotiation. Need to determine if it is structurally sound and what exactly does it take to keep and maintain the arch, which is probably in the six-digit figure.

Chairman Stephens asked about the pest and rodent mitigation.

Mr. Hancock stated that is part of the KDHE permitting and inspection. The biggest way for them to combat that is to not have garbage leftover outside overnight, and there would not be any such garbage. All garbage would be inside the building in the trailer with the doors closed, and not outside or even on the floor inside the building.

Chairman Stephens asked about the intersection at 4th Street and Marion.

Mr. Hancock responded that there would only be 5 or 6 tractor-trailers over a 9 hour period. This intersection was designed for these types of trucks to come in, and the tractor-trailers definitely have made it out the same way.

Commissioner Neeland asked Mr. Hancock to address the concern about tires and mosquitoes.

Mr. Hancock replied that the tires would be stacked in a box truck. Once that is full, it is taken to the tire facility. Again, nothing would be outside, even the recycle bins are enclosed.

Commissioner Neeland asked about the footprint of the facility, and how much space it will take up.

Mr. Hancock responded that the top right corner of the large building is basically where the goalpost was located. From the goalpost to the outer edge of the track is 126 feet and then 70 feet to the south. In rough numbers, it is about 50 yards by 40 yards, and that includes the concrete in front of it, which they call the apron; so it is about 50 x 40 yards for that portion. The asphalt in the middle is about the same. Just guessing, Mr. Hancock thinks there is about 9-10 acres left of green space.

Someone in the audience asked that only 5 acres would be used for the facility.

Mr. Hancock responded that they need that longer approach to avoid vehicle stacking. The line at the county transfer station goes out to Gilman Road a lot of the times.

Someone else in the audience asked to speak and Chairman Stephens said to just shout out the question.

Ms. Hurley stated we cannot have the back and forth with the audience, and it needs to be cut off.

Another person in the audience shouted that the end zone is exactly where that 12" water main is, and it was (inaudible).

Ms. Hurley stated this is not going to be in the record with comments shouted from the audience.

Mr. Hancock stated the water main is actually in the south end of the property, and it angles. It has been located and blue flags have been placed on the property indicating where the water main is.

Chairman Stephens asked about the concerns some citizens had about blowing trash.

Mr. Hancock responded that they require anyone coming in to be tarped, and if you do not have a tarp, you will be fined. Will also have people patrolling 4th Street. For the tractor-trailers, it all goes to the integrity of the company hauling the trash. There are already a lot of trash trucks around here now, and having this transfer station will not change that. In other words, it's not like we're going to ask Kansas City to bring their trash trucks here. Brothers would just be maintaining the garbage that we have now as a city.

Chairman Stephens asked if the large trailers hauling the garbage away are tarped.

Mr. Hancock responded that the tractor-trailers are open on the top so trash can be dumped in it but then they are tarped. The trucks are loaded correctly so the garbage does not rip the tarp.

Chairman Stephens asked how will the smell be mitigated.

Mr. Hancock stated the garbage needs to be removed from the floor as quick as possible, must have readily available trailers so you cannot go cheap on the amount of trailers, and you cannot go cheap on the person hauling the trailers. The misters will constantly be running and the building has bay doors. You can point at many different things that make smells, like even stagnant water, but Brothers will mitigate it as best as they can. Mr. Hancock further stated they have approximately 300 commercial customers in the city, such as the Taco Bells, Starbucks, Luigi's, etc. If their dumpsters are only dumped three times per week and that garbage is sitting in there on Tuesday and Thursday, how are people possibly eating around that but they are.

Chairman Stephens asked about fire suppression.

Mr. Hancock replied this is also regulated by KDHE, and you absolutely have to make sure that you have a fire station that knows your location. Brothers would also have fire suppression equipment in the building.

Chairman Stephens asked if there is a fire hydrant on the property.

David Matthews, co-owner of Brothers Disposal, stated it is called a dry system, and sprinklers will be installed in the building because the last thing we want is to lose the investment of our building.

Chairman Stephens asked if they will be accepting electronic waste and batteries as well.

Mr. Hancock responded in the affirmative stating we want to take as much off the city as we can. It would be silly to take part of the recycling but tell the city they have to be there for a battery.

Ms. Hurley asked Mr. Hancock if he could go over a little bit more about the traffic flow internal to the site, and how people will go through there.

Mr. Hancock responded that some citizens were concerned about stacking if you are dropping off recycling and you did not want to be around the big trucks. Referring to the site plan, Mr. Hancock stated that lane is 126 feet. So if you could picture 70 feet, 126 feet and then another 100 feet before you even get to the recycling area. A lot of things would have to happen for that to actually be bound up. To run things efficiently, such as a restaurant drive-thru, you want to work as efficiently as you possibly can because you do not want people waiting in line. Again, that is part of the issue now is people waiting in line at the existing Recycling Center.

Chairman Stephens stated it sounds like recycling traffic will be routed to one area and commercial traffic would be routed to another area.

Mr. Hancock replied that is correct. People who come to the recycling area are typically in a car or SUV with the recycling items in the trunk, and they do not need to be around the big trucks. We want to make this as easy as possible for them to come in, drop off their recycling, and drive back out.

Mr. Hancock stated that he wanted to provide more information about the trees since a citizen asked about that. On the north end of the property, there will be ten 2" Autumn Blaze Maples on the hill staggered with seven 9' Eastern Cedars between the maple trees, 10 gallon Gold Tip Juniper Spreaders, and 9 Barks and more Junipers throughout, and this is only on the north end. Looking at the rendering, you can see the trees are lined in an L-shape around the building to keep noise down.

Chairman Stephens asked for the golden factors to be read again.

Before going over the golden factors again, Mr. Waters stated he will go with a bigger picture to start. In zoning decisions like these, a city's determinations are supposed to be reasonable, and not supposed to act in an arbitrary or capricious manner. What the golden factors refers to is a case called *Golden v. City of Overland Park*, which is a 1978 case decided by the Kansas Supreme Court. Speaking very broadly, one of the problems the courts were facing in considering zoning matters was that they were getting records up in the court that they had no idea on what basis cities were making their determinations. Either the minutes were not very well reflected, there is no staff reports, there is nothing like that so courts had no idea how to decide these cases. What the Kansas Supreme Court did was set forth a list of 8 factors that they thought cities should be considering these factors in rezoning. Those factors are not all extensive in some ways. Sometimes 6 of the 8 factors might be applicable, sometimes one might weigh out the others, and sometimes there may be some that are not applicable at all but they try to kind of say here are some factors that we really want these cities to have a showing of consideration. Whether you decide for or against it, we need to have something that shows you considered these types of things. Now, this was a rezoning case that the Kansas Supreme Court did. Generally speaking, as SUP's and conditional use permits kind of became more popular and being used, Kansas courts have generally treated them very similar to how you should consider rezoning cases as well. So the Golden Factors named after the Golden case are: 1) that cities should consider the character of the neighborhood, 2) the zoning and uses of nearby property, 3) the suitability of the subject property for the uses to which it has been restricted, and that is generally can the property be developed as it has been zoned or is a change of some type needed, whether a change in zoning or perhaps an issuance of a special use permit, 4) the extent to which the change will detrimentally affect nearby properties, 5) the length of time the subject property has remained vacant as currently zoned; the idea being is the current zoning or the current lack of issuance of a permit somehow inhibiting development, 6) the relative gain to the public health, safety, and welfare; this is the balancing act on if you approve something how does that harm the community versus if you don't how does that harm the individual land owner and kind of where do those balance out, 7) the recommendations of your professional staff, and 8) conformance with your comprehensive plan. Now, Kansas Statute also has a statute that allows cities to enact their own regulations as well, and in this case as in your staff report, the city has four other factors that they have you consider, and those are the main factors. Some of them kind of vibe in-line with what the golden factors are. The idea being that as you consider these things, those are the types of factors you should be considering. Mr. Waters further stated he is not here to tell the commissioners one way or the other how those factors weigh but it would be his recommendation that as you discuss this and make your recommendations to the City Commission that those are the types of considerations that you take into account.

Chairman Stephens thanked Mr. Waters for the helpful information.

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

Commissioner Homan stated his biggest question is if they recommend approval and the applicant does not get his loan for the project, does the special use permit stay in place.

Mr. Waters responded that it depends on what kind of conditions you put on it. If it is just a straight we are granting a special use permit on this, then another user could come in perhaps and have a special use permit to do that. If the financing does not go through for Brothers, some other future developer could come in say he does not need the special use permit because I am going to develop it for an industrial use because that is already allowed, or a new developer could request something else that requires a special use permit. There are conditions you could consider, such as the amount of time to put on something like this. Mr. Waters further stated he would need to take a little better look if it is going to be personal to a certain applicant that could be a condition of some kind. Ultimately, Mr. Waters' expectation would be that if you approve a special use permit of some kind, generally speaking it would run with the land for whatever amount of time is determined, unless and until you put on some sort of other different conditions on it. Believes staff has some examples of conditions.

Ms. Hurley stated it would depend on what this commission wanted to do but we could potentially limit it to a specific user, so the special use permit could be conditional upon being operated by Brothers Disposal, LLC, or you could put a time limit on it, etc.

Chairman Stephens asked if we voted to limit it to only Brothers Disposal that does not change the designation to a transfer station and allow somebody else to come in to use it as a transfer station as well.

Ms. Hurley responded that it would be more that the special use permit was tied not only to the land but to this certain operator, Brothers Disposal LLC. As far as the timeframe, that is generally more like a 5 or 10 year period where then it would come back for review.

Mr. Waters stated in terms of time, if that was to be a consideration, there is certainly a balancing act. You may want review periods to make sure that it is all going well. Too short of a time period does not provide a developer any incentive to get financing or a bank to approve anything if it could be taken out from under them in two years. They would never see a return on investment, so that could be a problem on that end as well. So if you wanted to put a time period on it, what is appropriate such that you have appropriate reviews or that at the very least there could be a return on investment. Maybe if you have a longer time period with the special use permit, you could impose certain conditions on it, such as annually provide KDHE certification or other sort of control factors such that if the condition is not met, the permit would come back for review, and if a condition is not satisfied the special use permit could be revoke for violation of whatever condition was not satisfactorily met.

Ms. Hurley stated the city does this for childcare centers. The childcare center must annually provide us with their license from that state, and if that is not done then the special use permit is revoked.

Chairman Stephens asked if this is standard in the transfer station business for cities.

Mr. Waters responded that when he first started practicing law the Deffenbaugh site in Shawnee was going through a 20-year special use permit process at that time, and there has been some renewal for the main dumpsite. Even the main dump that the city's trash would go to operates under a special use permit but for a longer period of time.

Commissioner Neeland stated that they could table it and decide on these factors.

Chairman Stephens stated they have three options. We can recommend approval, recommend denial or table this, and then we would have to discuss why we are tabling it.

Mr. Waters stated the statutes for this are a little unclear. He is comfortable tabling it one or two times but the statute says that a failure to make a recommendation counts as a vote for a recommendation of denial. The statute does not really speak to tabling much more than that.

Commissioner Neeland stated to Mr. Waters that he keeps going back to these four factors, and telling the us to consider them, but I just feel like what Mr. Waters is saying is do not consider all the people who spoke and said they just do not want this. Commissioner Neeland asked Mr. Waters if that is what he is indicating.

Mr. Waters responded not necessarily. The golden factors are not an exclusive list of considerations, but the key in protecting the city is that should there be a challenge of some kind, I would have to be able to show that any decision that was made by the city was reasonable and was not arbitrary. To the extent that there is not a record of your consideration of what the Kansas Supreme Court has said and what your code says are the factors that should be considered, I have a harder time doing that. That does not mean that there are factors not listed that cannot be important. There is some case law that aesthetic and cultural values can be considered, even though those may not be listed. Again, what the courts will be looking for in case of a challenge is if there evidence that there was reasonable consideration of this matter, and that it just wasn't a no because no or a yes just because yes. Whatever the decision is, it is important that there has been a consideration by you of what you and your own code have established are the factors that you are supposed to consider.

Chairman Stephens called for more discussion from the commissioners or a motion.

Commissioner Homan moved to table the issue stating we need more time between us to discuss it, and we do not have the time now. I do not know if we need to set up another meeting or what.

Chairman Stephens asked what information is expected with tabling this issue.

Commissioner Homan stated he wants to know where the applicant is on their financing and wants to see more information on their truck routes and operations.

Mr. Waters stated from a land use perspective, I do not think we are going to be in a position to provide you with types of the financials that (inaudible, Commissioner Homan interrupted).

Commissioner Homan responded he just wants to know where they are sitting in the way of their finances. Does not want to recommend approval, and then it takes 12 months to get their financing.

Mr. Waters stated that is going to be relevant to a land use discussion.

Chairman Stephens asked Commissioner Homan if that is his only reason for motioning to table the issue.

Commissioner Homan responded that he still has questions about the truck traffic and the trees.

Ms. Hurley asked if there is something more about the truck traffic that you do not feel has been answered. (inaudible, Commissioner Homan interrupted). Ms. Hurley continued by stating the answer is that the city is going to be directing them to go south on 2nd Street, through Marion, and down 4th Street.

Commissioner Homan stated he does not think 4th Street and Marion is a good spot, and does not think where they come out is a going to be a good spot.

Chairman Stephens asked if he is asking for a traffic study.

Commissioner Homan responded in the affirmative.

Chairman Stephens stated there is a motion to table the issue for additional information on traffic and operations.

Commissioner Homan elaborated on the operations asking that when they dump the trash are those doors shut after they dump the trash before the next load comes in or are they open all the time during the day.

Ms. Hurley responded that has been asked and answered already but that could be addressed again tonight, if needed.

Mr. Hancock stated there are four bay doors, and only the ones that need to be open will be open.

Commissioner Homan asked if they will be open all day.

Mr. Hancock responded only the ones that needed to be open as far as a truck dumping.

Commissioner Homan asked that once the truck dumps and it is on the floor and the truck comes out then the doors are closed.

Mr. Hancock stated they would load the garbage in the trailers, and if there is nobody else coming in then the doors will be closed, but if someone comes in the doors will need to be open for them to dump. Mr. Hancock also stated that as far as the traffic study goes, I want to refer back to the letter from the former Public Works Director Mike McDonald. This entire area is zoned industrial, either I-1 or I-2, and in the letter from Mr. McDonald it states that the industrial use was part of the justification for the upgrading of those traffic signals over the years with substantial grants from KDOT. Mr. Hancock is positive that KDOT did that work that is being asked about, and when those grants were given to the city it was based upon industrial use in this area, which most industrial uses use larger trucks. Again, we are only talking about six extra trucks. Not sure the exact number of trucks Geiger runs through Marion or Poplar but it is dozens.

Commissioner Homan stated that answered his questions, and proceeded to drop the motion.

Chairman Stephens called for another motion. With no one wishing to motion, Chairman Stephens asked if he could make a motion as the Chairperson.

Mr. Waters stated generally speaking, you are not supposed to but (inaudible).

Commissioner Neeland moved to table the issue with the conditions that within a certain time frame the trees will be planted and the fence installed.

Chairman Stephens stated a motion has been made to table this issue until we can discuss as a board in a study session the available options.

Commissioner Kem asked if that is permitted per open meeting rules.

Mr. Waters responded that it must be an open meeting. He further asked if that is the direction of staff to bring the board conditions.

Chairman Stephens asked the other commissioners if that would be another discussion of the proposal with the applicant and the public, in other words, just redoing this hearing.

Commissioner Neeland responded not to do the whole hearing but just to discuss the time frames.

Commissioner Kem asked if we could do that now because we cannot do that without the benefit of public input and staff because of the open meetings laws.

Chairman Stephens asked if there is a second to the motion.

Commissioner Homan second the motion.

Chairman Stephens stated we have a motion to table for discussion at another meeting, and a second. Chairman Stephens called for a vote. Commissioners Homan and Neeland vote yea, and Chairman Stephens and Commissioner Kem vote nay. The motion fails 2-2.

Commissioner Kem stated that there has been a lot of good discussion tonight, and looking at all the factors we have to consider staff has presented an excellent report, and I do not see anything in what they have presented that I would be opposed to in all four of these conditions. The information that has been presented supports approval of all of that. As far as the golden factors, there are some there that perhaps are not as clear-cut and perhaps not as conducive to favorably approving the special use permit as others, but there are many that do support it, such as it is in conformance with the Comprehensive Plan, recommendation from staff, and the length of vacancy, which it has been vacant for a very long time. A transfer station would not be my first choice, but I want to see the land development, and it has been vacant for a long time so we do have to consider that. It is appropriately zoned and is one of the uses that is permitted. There are other factors that are a little more problematic like the character of the neighborhood, the suitability of the project, and is it a detriment to nearby properties. In balancing all this and weighing these back and forth, the bottom line is having the ability to add some of the conditions, such as time limitations, having it reviewed periodically, having the requirement for KDHE certification to be submitted to staff on a yearly basis, and a recommendation for no slats in the fencing.

Commissioner Kem proceeded by making a motion to recommend approval with those conditions.

Mr. Waters stated we need a list of those conditions because the importance of this is that if the governing body wants to change or add that sets what type of threshold vote they might need to have.

Commissioner Kem stated that 5 years might be a standard for the length of the special use permit from what she is hearing.

Mr. Waters stated that would probably be fairly low for something like this because of the level of investment. Thinks it would be difficult to finance a project of this magnitude if it is going to expire by its own terms in 5 years.

Commissioner Kem asked the other commissioners their thoughts on 8-10 years.

Chairman Stephens stated he was thinking 7 years.

Commissioner Kem stated the conditions would include length of the special use permit would be 7 years, and the annual KDHE certification submitted to staff, or whoever the appropriate person would be. Commissioner Kem asked if there are other certifications or approvals that we might need to see beyond KDHE.

Chairman Stephens responded that KDHE certification encompasses wastewater, environmental, EPA, stormwater, etc.

Mr. Hancock further added there could be surprise visits, monthly visits, there is definitely yearly visits, and there is yearly reporting to every entity.

Commissioner Kem asked if there are other certifications you are required to have on a periodic basis.

Mr. Hancock replied there is OSHA for safety requirements, DOT, etc.

Mr. Waters asked to cover all of them could you just stated that we have to obtain all necessary permits to operate.

Commissioner Kem responded that is a given that they have to obtain all permits to operate, but this would just be a submission of their annual certifications back to the city showing they have met the certification.

Mr. Hancock further stated that when it comes to the fencing, if you do not like slats that is fine, and slats would not be used.

Chairman Stephens stated we have a motion to recommend approval to the City Commission with conditions being a 7 year special use permit and proof of obtaining regulatory annual certifications from KDHE and other regulatory entities that require re-certifications, and no slats in the fencing. Chairman Stephens also stated that he does not know if anyone is already working with the Historical Society or not but considering how many people spoke tonight of the historical significance of the land, it should be taken into consideration in their plans. We are not mandating that they keep the arch or anything like that but the historical significance of Abeles Field is (inaudible).

Ms. Hurley stated Abeles Field is not a registered property so it may be a little ambiguous to just say consider the historical significance.

Chairman Stephens responded sure.

Inaudible due to numerous comments and mumbling coming from the audience.

Ms. Hurley reiterated the three conditions: 1) that it is a 7-year special use permit that would need to be renewed at that time, meaning it would need to come back to the Planning Commission and City Commission, 2) that the KDHE certification is provided to the city annually, and 3) that there would be no slats in the fencing.

Mr. Waters stated this motion needs a second, and then if you want to add conditions you can make a motion to amend the motion.

Chairman Stephens stated he second the motion.

Commissioner Homan stated the Chairperson cannot second a motion.

Mr. Waters responded that he does not see any issue with the Chairperson seconding a motion.

Commissioner Kem stated that since the Chairperson can vote, he should be able to second a motion.

Chairman Stephens stated we have a motion and a second, and asked if there are any amendments for discussion. With no further discussion, Chairman Stephens called for a vote. Chairman Stephens and Commissioner Kem vote yea, and Commissioners Homan and Neeland vote nay. The motion fails 2-2.

Mr. Waters stated that at some point if there is not a motion that will pass, then this will be treated as a recommendation of denial, unless there is another attempt on a motion.

Ms. Levinson, with Bateman Law Group representing the applicant, asked for those who are opposed, are you just opposed to anything, and are just going to say no to any proposal, or would there be conditions that would make you say yes.

Mr. Waters stated to the commissioners that they do not need to answer that.

Commissioner Kem stated she thinks the commissioners should have more discussion.

Commissioner Neeland responded that was her motion.

Commissioner Kem replied not more discussion in delaying it but more discussion helping to get you to a decision rather than just a (inaudible, Commissioner Homan interrupted).

Commissioner Homan stated not tonight. In his opinion, they are finished for tonight.

Chairman Stephens asked if that is a motion to adjourn.

Commissioner Homan stated he moves to adjourn. Chairman Stephens asked if there is a second. Commissioner Neeland second the motion. Chairman Stephens stated there is a motion and a second, and called for a vote. Commissioners Homan and Neeland voted yea, Chairman Stephens and Commissioner Kem voted nay. The motion fails 2-2.

Chairman Stephens stated at some point we need to make a decision. If we are going to table it, we need to come up with specific things that we want to accomplish in that, or this will probably continue for a couple more votes before the city attorney shuts it down, and then it goes as a no recommendation to the City Commission, so that is just us punting to the City Commission, which I am not in favor of. The issue is in front of us and a lot of time and effort has gone into this. Looking at the golden factors, I cannot see any of them that have been strongly violated or that there are some questions that have not been resolved tonight. Everyone has said a transfer station at Abeles Field is not my top choice, however, I know my trash has not been picked up on a regular basis since we went to the bin system. My trash has sat out there for days before it was picked up. If this is something that can help with retaining our city staff, and maybe even looking at a pay raise for them, if it helps our property taxes, and relieves the pressure off personal property taxes and residential property taxes, for all of those reasons, and moving the city forward in terms of progress, I cannot see anything specific that would feed a recommendation of no.

Commissioner Homan responded that the Chairman votes when there is a tie, and there was no tie. Additionally, it would be better when we have all six commissioners here, so that is why we ought to delay it.

Ms. Hurley stated that tabling it to the August meeting is not going to guarantee that we will have all members present.

Commissioner Kem stated that those members would not have had the benefit of this public hearing either.

Commissioner Homan responded that the meeting is recorded, and that he thought the Chairman could not vote unless it was a tie.

Mr. Waters responded that there is nothing in the city code on that, and he does not have the Planning Commission's bylaws. You are all equal vote members of the Planning Commission, it is just that one of you operates as a chairman for running meeting.

Commissioner Kem asked the commissioners what kind of discussion can we have to help you guys find the answers you are looking for to be able to make a vote.

Commissioner Homan replied that he does not like 4th Street the way it is now. The east side of 4th Street is trashy once you get past Price Chopper. We have Great Western that is building a new building and there is Tire Town that

looks terrible, so we do not need a trash place next to that. Additionally, it is next to Stubby Park where kids go sledding, and we do not need that kind of traffic or that kind of mess over there. Thinks what Brothers has is a great idea, but does not think Abeles Field is the right position, and that is how I feel. I have not lived here all my life but have lived here for 42 years, and have seen a lot of things like kids play football and run track at Abeles Field.

Chairman Stephens stated that when we look at the condition of the (inaudible, Commissioner Homan interrupted).

Commissioner Homan stated it does not matter to me.

Chairman Stephens stated but when we look at the condition of the area that it is in, it is all industrial.

Commissioner Homan stated but it is not all crap. I would not say Great Western is all crap.

Chairman Stephens asked Commissioner Homan what he would classify Abeles Field as right now, and if it looks nice.

Commissioner Homan responded stating it does not look nice, and it should be cleaned up, but a transfer station will not clean it up. It does not clean up so people want to come to live in Leavenworth when they drive down 4th Street, and we have the military coming in all the time. That is my opinion, and that is how I am voting on my opinion. There is nothing you can say, Brian. You have said everything you had to say, and you do not have to ask me any other questions.

Chairman Stephens asked if he has a motion to recommend denial then, if there is nothing that will move your vote.

Commissioner Homan stated he moves to recommend denial of the special use permit. Chairman Stephens asked if there is a second. Commissioner Neeland second. Chairman Stephens called for a vote. Commissioners Homan and Neeland vote yea, Chairman Stephens and Commissioner Kem vote nay. Motion fails 2-2.

Mr. Beal hollered from the audience that in 15 years the city ain't told the Kaaz's to clean the place up. You're worried about it being a mess (inaudible).

Mr. Kitchens told Tom Beal that is enough.

Chairman Stephens asked Commissioner Neeland if she is in the same boat as Commissioner Homan, and that there is not anything that will change your mind on this.

Commissioner Neeland responded that every person who spoke, except the applicant's son, did not want it, so I would side with the majority of the citizens.

Chairman Stephens stated with that the commission is recommending a denial.

Mr. Waters stated if there is a consensus of that, then you have reached a deadlock on this, and I am seeing all the commissioner's heads being nodded as it appears that to be the case, then assuming there is a motion to adjourn without any other intervening motion here that we would take this to the City Commission as a recommendation of denial.

Chairman Stephens asked the commissioners if we have consensus, and if so, he called for a motion to adjourn. Commissioner Homan moved to adjourn, Commissioner Neeland second, and the motion passes 4-0.

Meeting adjourned at 9:03 p.m.

Minutes taken by Planning Assistant Michelle Baragary.

DRAFT