

**EDGERTON CITY COUNCIL
MEETING AGENDA
CITY HALL, 404 EAST NELSON STREET
January 9, 2014
7:00 PM**

Call to Order

1. **Roll Call** ____ Roberts____Longanecker ____Crooks____Cross____Wiseman____ Brown
2. **Welcome**
3. **Pledge of Allegiance**

Consent Agenda *(Consent Agenda items will be acted upon by one motion unless a Council member requests an item be removed for discussion and separate action)*

4. Agenda Approval
5. City Council Meeting Minutes December 12, 2013

Regular Agenda

6. **Public Comments.** Persons who wish to address the City Council regarding items not on the agenda and that are under the jurisdiction of the City Council may do so when called upon by the Mayor. Comments on personnel matters and matters pending before court or other outside tribunals are not permitted. Please notify the City Clerk before the meeting if you wish to speak. Speakers are limited to three (3) minutes. Any presentation is for informational purposes only. No action will be taken.
7. **Declaration.** At this time Council members may declare any conflict or communication they have had that might influence their ability to impartially consider today's issues.

Business Requiring Action

8. **CONSIDER DONATION FOR ADOPT A CHARITY SHOOT**

Motion: _____ Second: _____ Vote: _____

9. **CONSIDER CHARTER ORDINANCE NO. 20 EXEMPTING THE CITY OF EDGERTON FROM THE PROVISIONS OF K.S.A. 12-4110 AND K.S.A. 12-4112 AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT; AND FURTHER REPEALING CHARTER ORDINANCE NO. 8**

Motion: _____ Second: _____ Vote: _____

10. **CONSIDER ORDINANCE NO. 962 ADOPTING THE PLANNING COMMISSION'S RECOMMENDATION TO APPROVE A CONDITIONAL USE PERMIT TO ALLOW USE OF LAND, IN THE L-P, CITY OF EDGERTON LOGISTICS PARK ZONING DISTRICT LOCATED AT THE SOUTHWEST CORNER OF 191ST STREET AND WAVERLY ROAD, FOR "CARGO STORAGE, MAINTENANCE, AND REPAIR FACILITIES"**

Motion: _____ Second: _____ Vote: _____

11. **CONSIDER ORDINANCE NO. 963 ADOPTING THE PLANNING COMMISSION'S RECOMMENDATION TO APPROVE A CONDITIONAL USE PERMIT TO ALLOW USE OF LAND, IN THE L-P, CITY OF EDGERTON LOGISTICS PARK ZONING DISTRICT LOCATED AT THE SOUTHEAST CORNER OF 191ST STREET AND HOMESTEAD LANE, FOR "CARGO STORAGE, MAINTENANCE, AND REPAIR FACILITIES"**

Motion: _____ Second: _____ Vote: _____

12. **CONSIDER ORDINANCE NO. 964 ADOPTING A RECOMMENDATION BY THE CITY PLANNING COMMISSION TO APPROVE REZONING OF APPROXIMATELY 20 ACRES OF LAND [LOCATED AT APPROXIMATELY 30700 WEST 191ST STREET] IN EDGERTON, KANSAS FROM JOHNSON COUNTY RUR, RURAL ZONING TO CITY OF EDGERTON L-P LOGISTICS PARK ZONING DISTRICT**

Motion: _____ Second: _____ Vote: _____

13. **CONSIDER ORDINANCE NO. 965 ADOPTING THE PLANNING COMMISSION'S RECOMMENDATION TO APPROVE A CONDITIONAL USE PERMIT TO ALLOW USE OF LAND, IN THE L-P, CITY OF EDGERTON LOGISTICS PARK ZONING DISTRICT GENERALLY LOCATED AT 30700 WEST 191ST STREET, FOR "CARGO STORAGE, MAINTENANCE, AND REPAIR FACILITIES"**

Motion: _____ Second: _____ Vote: _____

14. **PUBLIC HEARING REGARDING PARTIAL ASSIGNMENT OF RESOLUTION OF INTENT FOR INLAND PORT IV**

15. **CONSIDER RESOLUTION NO. 01-09-14A CONSENTING TO THE PARTIAL ASSIGNMENT OF A RESOLUTION OF INTENT FROM EDGERTON LAND HOLDING COMPANY, LLC TO ELHC IV, LLC, OR ITS SUCCESSORS IN INTEREST**

Motion: _____ Second: _____ Vote: _____

16. **CONSIDER CONTINUING PUBLIC HEARING FOR FIRST AMENDMENT TO MASTER RESOLUTION OF INTENT TO JANUARY 23, 2014**

17. **CONSIDER CHANGE ORDER #3 TO AGREEMENT WITH FOR BIG BULL CREEK WASTEWATER TREATMENT FACILITY AND CONVEYANCE SYSTEM**

Motion: _____ Second: _____ Vote: _____

18. **CONSIDER RECESSING INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319 (b) (2) FOR ATTORNEY CLIENT PRIVILEGE TO INCLUDE BOND COUNSEL AND CITY ADMINISTRATOR**

Motion: _____ Second: _____ Vote: _____

RECONVENE INTO OPEN SESSION

19. **Report by the City Administrator**

20. **Report by the Mayor**

21. **Future Meeting/Event Reminders:**

- January 14th 7:00 PM – Planning Commission
- January 15th Noon – Senior Lunch
- January 16th 7:00 PM – City Council Work Session
- January 23rd 7:00 PM – City Council Meeting

22. **Adjourn** Motion: _____ Second: _____ Vote: _____

**City of Edgerton, Kansas
Minutes of City Council Regular Session
December 12, 2013**

A Regular Session of the City Council was held in the Edgerton City Hall, 404 E. Nelson, Edgerton Kansas on December 12, 2013. The meeting convened at 7:00 p.m. with Mayor Donald Roberts presiding, and City Clerk Janeice L. Rawles recording.

Council members in attendance: Heidi Wiseman
 Clay Longanecker
 Jody Brown
 Cindy Crooks
 Frances Cross

Staff in attendance: City Administrator Beth Linn
 Administrative Services Director Anna Marie Keena
 City Attorney Patrick Reavey
 Public Works Superintendent Mike Mabrey

Consultants in attendance: Scott Anderson Edgerton Bond Counsel
 Shaine Pennington Johnson County Sheriff Dept.

ROLL CALL

Mayor Roberts called the roll of the Governing Body.
With a quorum present, the meeting commenced.

WELCOME AND PLEDGE OF ALLEGIANCE

CONSENT AGENDA

Motion by Longanecker, seconded by Wiseman, to approve the consent agenda with the removal of Item 20, Resolution No. 12-12-13C declaring the boundaries of the City of Edgerton.

Motion carried 5-0-0.

PUBLIC COMMENTS

None at this time

DECLARATIONS BY COUNCIL MEMBERS

There were none.

BUSINESS REQUIRING ACTION

AGREEMENT FOR SALE OF WHOLESALE WATER WAS CONSIDERED

The City Administrator presented an agreement with Consolidated Oil Well Services, LLC for the purchase of wholesale water. Per the agreement, Consolidated Oil would rent a two and a half inch water meter from the City at a rate of \$50.00 per month, and pay monthly for their water usage

City of Edgerton Regular Session Minutes
December 12, 2013

Motion by Cross, seconded by Crooks to approve the agreement for sale of wholesale water.

Motion carried 5-0-0

AN AGREEMENT FOR FACILITY USE AND MAINTENANCE WITH EDGERTON HISTORIC SOCIETY FOR EDGERTON COMMUNITY MUSEUM WAS CONSIDERED

Charlie Troutner, President of the Edgerton Historic Society was present and thanked the City Staff, Mayor and City Council for all the help with the Edgerton Community Museum.

Motion by Cross, seconded by Wiseman to approve an agreement for Facility use and Maintenance with Edgerton Historic Society for Edgerton Community Museum.

Motion carried 5-0-0.

AN AGREEMENT WITH THE JOHNSON COUNTY SHERIFF'S DEPARTMENT FOR THE PROVISION OF LAW ENFORCEMENT SERVICES FOR FISCAL YEAR 2014 WAS CONSIDERED

The Johnson County Sheriff's Department provides law enforcement for the City of Edgerton. The contract for 2014 will have the same level of service as the 2013 contract. The term of the agreement is January 1, 2014 through December 31, 2014.

Motion by Longanecker, seconded by Brown to approve an agreement with the Johnson County Sheriff's Department for the provision of Law Enforcement services for fiscal year 2014.

Motion carried 5-0-0

APPLICATION FOR FP-10-18-2013B FOR FINAL PLAT OF INTERNATIONAL TRANSLOAD LOGISTICS, LOT 1 AT THE SOUTHEAST CORNER OF 191ST STREET AND HOMESTEAD LANE WAS CONSIDERED.

The City of Edgerton Planning Commission recommended approval of Application FP-10-18-2013A.

Motion by Brown, seconded by Longanecker to approve application for FP-10-18-2013B for Final Plat of International Transload Logistics, Lot 1 at the southeast corner of 191st Street and Homestead Lane.

Motion carried 5-0-0

APPLICATION FOR FINAL PLAT EDGERTON LOGISTICS PARK (Lot 1) FP-10-18-2013B WAS CONSIDERED.

The City of Edgerton Planning Commission recommended approval of Application FP-10-18-2013B

Motion by Brown, seconded by Longanecker to approve application for Final Plat Edgerton Logistics Park (Lot1) FP-10-18-2013B.

Motion carried 5-0-0

RESOLUTION NO. 12-12-13D AMENDING THE PERSONNEL RULES AND REGULATIONS OF THE CITY OF EDGERTON, KANSAS SPECIFICALLY REGARDING ARTICLE M. WORKPLACE SAFETY WAS CONSIDERED.

Motion by Wiseman, seconded by Crooks to approve Resolution No. 12-12-13D amending The Personnel Rules and Regulations of the City of Edgerton, Kansas Specifically regarding Article M. Workplace Safety.

Motion carried 5-0-0

PUBLIC HEARING FOR FIRST AMENDMENT TO MASTER RESOLUTION OF INTENT

Mayor Roberts opened the Public Hearing for First Amendment to the Master Resolution of Intent. The City had previously adopted a Master Resolution of Intent for the issuance of up to \$500,000. The First Amendment to Master Resolution of intent is for the issuance of up to 1,000,000,000. Tim Gates, with Agnes Gates Realty was present and addressed the Council, on behalf of his clients. Judy White was present and addressed the Council about a development plan she is working on to bring into the City of Edgerton.

Motion by Wiseman, seconded by Longanecker to continue the Public Hearing until the Regular Scheduled City Council Meeting on the 9th of January 2014.

Motion carried 5-0-0

ORDINANCE NO. 961 CORRECTING LEGAL DESCRIPTION FOR PROPERTY ANNEXED BY ORDINANCE NO. 954 WAS CONSIDERED.

Motion by Longanecker, seconded by Cross to approve Ordinance No.961 correcting legal description for property annexed by Ordinance No. 954.

Motion carried 5-0-0

RESOLUTION NO. 12-12-13C DECLARING THE BOUNDARIES OF THE CITY OF EDGERTON, JOHNSON COUNTY, KANSAS WAS CONSIDERED.

Motion by Longanecker, seconded by Cross to approve Resolution No. 12-12-13C declaring the boundaries of the City of Edgerton, Johnson County, Kansas.

Motion carried 5-0-0

ADDITION TO AGENDA

AN AGREEMENT FOR INTERIM OPERATION & MAINTENANCE SERVICES TO CITY OF EDGERTON, KANSAS BY FACILITY OPERATION SERVICES, LLC (FOS)

The City of Edgerton Big Bull Creek Wastewater Treatment Facility and Conveyance system requires a Class III Wastewater Operator to operate the plant. To meet the State of Kansas requirement, staff recommends the City enter into a short-term agreement with Facility Operation Services, LLC (FOS). The specific length of agreement is anticipated to be three months and up to six months.

Motion by Brown, seconded by Crooks to approve the agreement for interim operation & maintenance services to City of Edgerton, Kansas by Facility Operation Services, LLC (FOS).

Motion carried 5-0-0

REPORT BY CITY ADMINISTRATOR

The Quiet Zone Project to proposed to start on Monday.

REPORT BY MAYOR

Representatives with the Johnson County Nutrition program (Choice) will be at the Senior Citizens Luncheon on Wednesday to discuss a healthy meal program for seniors 60+.

Thank you to all who have contributed to the Mayor's Christmas Tree Fund.

The holiday lighting contest winners are 1) Kenny Pritchard; 2) Glyn Powers; 3) Daniel & Crystal Deaton, And a Thank you to the Bridgewater Neighborhood for their participation in the lighting contest.

Mayor Roberts announced that City Administrator Review has been completed and that all expectations were exceeded.

Motion by Crooks, seconded by Wiseman to approve a salary increase for City Administrator.

Motion carried 5-0-0

ADJOURN

Motion by Crooks, seconded by Cross, to adjourn.

Motion carried 5-0-0

Meeting adjourned at 8:15 p.m.

Janeice L. Rawles, CMC

Approved by the Governing Body on XXXXXXXXXXXXXXXX

Adopt the Children Charity Clay Shoot

Cedar Hill Gun Club

918 E 1650th Rd., Baldwin City, Kansas

Saturday, September 20, 2014

STATION SPONSORS (13 Stations Available)

- ☐ **Platinum Station Sponsor (\$450)**
 - Two free shooters for the Sporting 100
 - Company name banner (3 x 6 feet)
- ☐ **Tournament Tower Sponsor (\$450)**
 - Two free shooters for the Sporting 100
 - Company name banner (3 x 5 feet)
- ☐ **Gold Station Sponsor (\$350)**
 - One free shooter for the Sporting 100
 - Company name banner (3 x 4 feet)

OTHER SPONSORSHIPS AVAILABLE

- ☐ **Towel Sponsor (\$1200)**
 - Four free shooters for the Sporting 100
 - Company name and logo on all towels
- ☐ **Food Sponsor (\$350)**
 - One free shooter for the Sporting 100
 - Company name banner (3 x 4 feet)
- ☐ **Trophy Sponsor (\$350)**
 - One free shooter for the Sporting 100
 - Company name on each trophy
 - Representative may assist in awards presentation
- ☐ **Trap House Sponsor (\$350)**
 - One free shooter for the Sporting 100
 - Company name banner (3 x 4 feet)

ALL BANNERS ARE BASED ON BUSINESS CARDS!!

Proceeds after expenses go to the Adopt a Child Program, Harvesters, and the Mayors' Christmas Tree Funds of Gardner and Edgerton, Kansas. Trophies will be awarded after the last group is on site.

Food and refreshments will be available.

Place a check mark next to the sponsorship you would like to reserve, then return this form with a check made payable to "Adopt the Children / Harvesters" to:

Mike Gardner
32230 West 56 Hwy.
Gardner, KS 66030

Questions? Contact:

Mike Gardner at (913) 856-7116 - Home
(913) 669-1304 - Cell
debmike.gardner@embargmail.com

Johnnie Howe at (913) 238-1976 - Cell
johnniehowe69@yahoo.com

AGENDA ITEM INFORMATION FORM

Agenda Item: Consideration of Charter Ordinance No. 20 exempting the City of Edgerton from the provisions of K.S.A. 12-4110 and K.S.A. 12-4112 and providing substitute and additional provisions on the same subject; and further repealing Charter Ordinance No. 8.

Department: Administration

Background/Description of Item: Article 12, Section 5 of the Constitution of the State of Kansas, provides Kansas cities broad constitutional powers for self-government. These powers are referred to as "Home Rule" powers and were granted to Kansas cities in 1961. This enables cities to pass ordinances regarding their local affairs. However, Home Rule authority is not absolute and cities must comply with state laws that apply uniformly to all cities as well as comply with applicable federal laws and the US and Kansas constitutions.

K.S.A. 12-4110 states the city attorney in person, or by assistants, shall prosecute all cases in the municipal court. K.S.A. 12-4112 allows for assessment of costs and fees. In 1982 the City of Edgerton Governing Body elected to exempt the City from the provisions of K.S.A. 12-4110 by designating a Municipal Court Judge and K.S.A. 12-4112 by assessing specific fees upon adoption of Charter Ordinance No. 8. However, much has changed since 1982. There are now significant fees prescribed by statute such as, but not limited to; the judicial branch education fund, the law enforcement training center fund, the local law enforcement training reimbursement fund, and the detention facility processing fee. Therefore it is recommended the Governing Body adopts the provision that the Municipal Court Judge, may by Administrative Order, establish and assess court costs as deemed appropriate.

A Charter Ordinance requires a 2/3 vote of the governing body (which by definition, includes both the councilmembers and the mayor). Because the mayor is included in the original vote, the mayor is unable to veto a charter ordinance. The ordinance must be published once each week for two consecutive weeks in the official city newspaper. There is a 60 days period after publication to allow time for the public to petition for a referendum on the matter. If no petition is filed during this period, the charter ordinance becomes effective on the 61st day after publication. The city clerk must send the Kansas Secretary of State a copy of all charter ordinances passed by the City. If a valid protest petition is filed by 10% of the number of electors who voted in the last regular city election, then an election must be held and a majority of voters must approve the charter ordinance for it to become effective.

Enclosure: Draft Charter Ordinance No. 20
Administrative Order by Judge Torline

Related Ordinance(s) or Statute(s): K.S.A. 12-4110, K.S.A. 12-4112, Charter Ordinance No. 8

Recommendation: Approve Charter Ordinance No. 20 exempting the City of Edgerton from the provisions of K.S.A. 12-4110 and K.S.A. 12-4112 and providing substitute and additional provisions on the same subject; and further repealing Charter Ordinance No. 8.

Funding Source: N/A

Prepared by: Anna-Marie Keena, Administrative Services Director
Date: January 9, 2014

Charter Ordinance No. 20

A CHARTER ORDINANCE EXEMPTING THE CITY OF EDGERTON, KANSAS FROM THE PROVISIONS OF SECTION 12-4110 AND SECTION 12-4112 OF THE KANSAS STATUTES ANNOTATED AS ADOPTED BY THE KANSAS LEGISLATURE; AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISION ON THE SAME SUBJECT; PRESCRIBING CONDITIONS UNDER WHICH THE CITY ATTORNEY FOR THE CITY OF EDGERTON SHALL PROSECUTE CASES HEARD BY THE MUNICIPAL COURT OF THE CITY OF EDGERTON, KANSAS; AND AUTHORIZING THE ASSESSMENT OF COURT COSTS IN CASES HEARD IN THE MUNICIPAL COURT OF THE CITY OF EDGERTON, KANSAS AND FURTHER REPEALING CHARTER ORDINANCE NO. 8.

Section 1. The City of Edgerton, Kansas, a city of the third class, by virtue of the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to exempt and does exempt itself from and makes it inapplicable to it, Section 12-4110 of the Kansas Statutes Annotated as adopted by the Kansas Legislature which are not uniformly applicable to all cities, the legislature having made special provisions applying to certain classes of cities in said enactment.

Section 2. In lieu of Kansas Statutes Annotated 12-4110, the Governing Body of the City of Edgerton, Kansas, hereby adopts the following provision:

The City Attorney of Edgerton, in person or by his assistants such as the named prosecuting attorney, shall prosecute all contested cases in the Municipal Court, and shall appear to prosecute such other cases as the Judge of the Municipal Court of the City of Edgerton shall deem necessary.

Section 3. In lieu of Kansas Statutes Annotated 12-4112, the Governing Body of the City of Edgerton, Kansas hereby adopts the following provision:

The Municipal Court Judge by Administrative Order shall establish and assess court costs to the defendant for each and every case that shall result in a conviction in the Municipal Court.

Section 4. Charter Ordinance No. 8 is hereby repealed upon the effective date of this Charter Ordinance.

Section 5. This Charter Ordinance shall take effect 61 days after final publication unless a sufficient petition for a referendum is filed and a referendum held on this Charter Ordinance as provided in Article 12, Section 5, Subdivision (c) (3) of the Constitution of the State of Kansas, in which case this Charter Ordinance shall become effective if approved by the majority of the electors voting thereon.

Adopted and approved this 9th day of January 2014, by the Governing Body of the City of Edgerton, Kansas.

Donald Roberts, Mayor

ATTEST:

Janeice L. Rawles, City Clerk

(SEAL)

Approved as to Form:

Patrick G. Reavey, City Attorney

IN THE MUNICIPAL COURT OF THE CITY OF EDGERTON, KANSAS
ADMINISTRATIVE ORDER

On this, the 1st day of January, 2014, it is hereby ordered that the following costs and fees shall be assessed in each case filed in the city of Edgerton, Kansas, when appropriate:

1. \$50 for court costs.
2. \$15 for fingerprint fees.
3. \$100 for each warrant issued, to be modified to \$50 if the warrant is withdrawn by the Judge upon motion. Said \$50 shall be paid at the time of the withdrawal of the warrant.
4. \$35 per day for each person in custody in the Johnson County Adult Detention Center.
5. \$81 for each case as a reinstatement fee when the license of the defendant has been suspended through the municipal court of this city.
6. \$5 fee for each case in which the court clerks mailed a notice of a possible upcoming suspension for failure to appear.
7. \$100 for each case in which a public defender was appointed.
8. \$400 for each case in which a defendant had substances tested either through the Johnson County Crime lab or the Kansas Bureau of Investigations.

The clerks are authorized to charge all applicable fees, unless specifically waived by the prosecutor or the Judge. These fees are in addition to any fines or diversion fees, etc., that are imposed by either the prosecutor or the Judge.

IT IS SO ORDERED

Karen L. Torline
Judge, City of Edgerton

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Ordinance No. 962 Adopting the Planning Commission's Recommendation to Approve a Conditional Use Permit to Allow Use Of Land, in the L-P, City Of Edgerton Logistics Park Zoning District Located at the Southwest Corner of 191st Street And Waverly Road, For "Cargo Storage, Maintenance, And Repair Facilities"

Department: Administration

Background/Description of Item: The City has received application CU-09-16-2013 requesting a conditional use permit for operation of a cargo container storage, maintenance, and repair facilities at the southwest corner of 191st and Waverly Road from TSL Edgerton, Tom Hastings property owner.

Johnson County Planning staff, on behalf of the City of Edgerton, reviewed this conditional use permit application with respect to the City of Edgerton Unified Development Code (UDC). Please find enclosed with this packet the Staff Report prepared for the Planning Commission meeting on October 22, 2013.

In order to recommend approval or disapproval of a proposed conditional use permit (CUP), the Planning Commission and Governing Body shall determine whether the proposed use is found to be generally compatible with surrounding development and is in the best interest of the City. In making such determination, Section 7.1 (C) of Article 7 of the UDC states that the Planning Commission and Governing Body may consider all factors they deem relevant to the questions of compatibility and the best interest of the City. In addition, Section 7.2 (D) of the UDC details requirements to be considered for a conditional use permit for cargo container storage, repair and maintenance facilities. The analysis of these factors is detailed in the attached staff report.

The Planning Commission held a public hearing on October 22, 2013 regarding this conditional use permit application. The Planning Commission recommended approval of the conditional use permit application. The application was presented to the City Council on November 14, 2013 with a recommendation from staff that it be remanded back to the Planning Commission to reconsider additional information regarding the reuse of existing structures and have those structures identified on the amended site plan.

The Planning Commission considered and approved the amended final site plan on December 10, 2013. In addition, on December 10th the Planning Commission recommended approval of the conditional use permit with the following stipulations:

1. The property owner shall continuously comply with all performance criteria in Article 7 pertaining to Cargo Container Storage Facilities and Cargo Repair and Maintenance Facilities, including, but not limited to, noise maximums and cargo container and chassis stacking height requirements. There is residentially zoned property abutting and across the street from the subject property. The application can comply with the requirement by not utilizing the Phase II area of the property and foregoing the use of the southern-most row of trailer parking in Phase 1. This condition shall be continually met until the residentially zoned property is changed to a nonresidential use.
2. The property shall be developed in accordance with the *amended* Site Plan, as approved by the City, prior to commencement of the cargo container storage use. Plant material shall be continuously maintained and replaced when dead. When the project is complete, new trees shall be added to fill the gaps in the existing trees (on the north and west property lines) to fulfill the screening requirements.

3. All existing building exteriors shall be modified in accordance with the City of Edgerton Unified Development Code. Applicant shall provide documentation for review and approval by City for service of utilities and compliance with ADA standards for all existing buildings to remain.
4. Cargo containers and chassis may be stored only in the designated, stripped areas shown on the Site Plan.
5. No other outside storage of equipment or materials shall be allowed on the property.
6. Any future phases or additional areas used for cargo container maintenance and repair uses shall not commence until a Site Plan is submitted and approved by the City for that phase, including photometric and landscaping plans.
7. This Conditional Use Permit shall be valid for ten years from approval by the City of Edgerton..

Enclosure: Draft Ordinance No. 962

Staff Report from October 22 and December 10, 2013 Planning Commission
Application

Related Ordinance(s) or Statute(s):

Recommendation: Approve Ordinance No. 962 Adopting the Planning Commission's Recommendation to Approve a Conditional Use Permit to Allow Use Of Land, in the L-P, City Of Edgerton Logistics Park Zoning District Located at the Southwest Corner of 191st Street And Waverly Road, For "Cargo Storage, Maintenance, And Repair Facilities"

Funding Source: N/A

Prepared by: Beth Linn, City Administrator

Date: January 3, 2014

ORDINANCE NO. 962

AN ORDINANCE ADOPTING THE PLANNING COMMISSION'S RECOMMENDATION TO APPROVE A CONDITIONAL USE PERMIT TO ALLOW USE OF LAND, IN THE L-P, CITY OF EDGERTON LOGISTICS PARK ZONING DISTRICT LOCATED AT THE SOUTHWEST CORNER OF 191ST STREET AND WAVERLY ROAD, FOR "CARGO STORAGE, MAINTENANCE, AND REPAIR FACILITIES"

WHEREAS, the Edgerton Planning Commission did hold a public hearing on the requested Conditional Use Permit in accordance with the requirements as set forth in the Edgerton Zoning Regulations; and

WHEREAS, the Edgerton Planning Commission voted to approve the Conditional Use Permit for use of land for "Cargo Storage, Maintenance, and Repair Facilities" but such vote was conditioned on the following being adhered to by the Applicant:

1. The property owner shall continuously comply with all performance criteria in Article 7 pertaining to Cargo Container Storage Facilities and Cargo Repair and Maintenance Facilities, including, but not limited to, noise maximums and cargo container and chassis stacking height requirements. There is residentially zoned property abutting and across the street from the subject property. The application can comply with the requirement by not utilizing the Phase II area of the property and foregoing the use of the southern-most row of trailer parking in Phase 1. This condition shall be continually met until the residentially zoned property is changed to a nonresidential use.
2. The property shall be developed in accordance with the *amended* Site Plan, as approved by the City, prior to commencement of the cargo container storage use. Plant material shall be continuously maintained and replaced when dead. When the project is complete, new trees shall be added to fill the gaps in the existing trees (on the north and west property lines) to fulfill the screening requirements.
3. All existing building exteriors shall be modified in accordance with the City of Edgerton Unified Development Code. Applicant shall provide documentation for review and approval by City for service of utilities and compliance with ADA standards for all existing buildings to remain.
4. Cargo containers and chassis may be stored only in the designated, striped areas shown on the Site Plan.
5. No other outside storage of equipment or materials shall be allowed on the property.
6. Any future phases or additional areas used for cargo container maintenance and repair uses shall not commence until a Site Plan is submitted and approved by the City for that phase, including photometric and landscaping plans.

7. This Conditional Use Permit shall be valid for ten years from approval by the City of Edgerton.

WHEREAS, the City Governing Body, after reviewing the Conditional Use Permit and considering the criteria set forth in Article 7 of the City Zoning Regulations and the recommendations of the Planning Commission, finds the Conditional Use Permit should be approved.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS:

Section 1. The proposed Conditional Use Permit for use of the following land [located at the southwest corner of 191st Street and Waverly Road] for “Cargo storage, Maintenance, and Repair Facilities” is hereby approved:

Beginning at the Northwest corner of the East 1/2 of the Northeast 1/4 of Section 3, Township 15, Range 22, Johnson County, Kansas; thence South 330 feet; thence East 575.1 feet; thence North 330 feet; thence West 575.1 feet to the point of beginning, except that part in road and except the East 390.46 feet of the West 575.10 feet of the North 40.00 feet of the East 1/2 of the Northeast 1/4 of Section 3, Township 15, Range 22, Johnson County, Kansas, excluding the existing road right-of-way.

And

That part of the Northeast Quarter of Section 3, Township 15, Range 22, Johnson County, Kansas, described as: Beginning at a point on the North line of said Northeast Quarter which is 480 feet West of the Northeast corner of said Northeast Quarter; thence South 330 feet; thence West 264.0 feet, more or less, to a point which is 575.1 feet East of the West line of the East half of said Northeast Quarter; thence North 330 feet, more or less to a point on the North line of said Northeast Quarter which is 575.1 feet East of the Northwest corner of said East half; thence East along said North line 264.0 feet, more or less, to the point of beginning, except the North 40 feet thereof deeded for Street or Road Right-of-Way.

And

The East 301.2 feet of the North 188 feet of the Northeast Quarter of Section 3, Township 15, Range 22, Johnson County, Kansas, except that part thereof in roads.

And

Beginning at the Northeast Corner of the Northeast 1/4 of Section 3, Township 15, Range 22, Johnson County, Kansas; thence South 330 feet; thence West 480 feet; thence North 330 feet; thence East 480 feet to the Point of Beginning, except the East 301.2 feet of the North 188.0 feet and also except that part in roads.

And

Beginning 330 feet South of the Northeast corner of the Northeast 1/4 of Section 3, Township 15, Range 22, Johnson County, Kansas, thence South 330 feet; thence West 1319.4 feet; thence North 330 feet; thence East 1319.4 feet to the point of beginning, except any part in road.

Section 2. The Conditional Use Permit approved by this Ordinance is expressly conditioned on the Applicant's strict compliance with the seven Conditions set forth above, which were recommended by the Edgerton Planning Commission.

Section 3. The effectiveness of this Conditional Use Permit is conditioned upon the strict compliance by the applicant with the provisions contained herein and in the City of Edgerton Zoning Regulations. Should applicant fail to comply with any term or provision thereof and shall such failure continue following notice from City to applicant specifying the breach and actions to be taken to cure the same, then, at the direction of the City Administrator, applicant will be notified that this Conditional Use Permit is revoked and all uses permitted herein on the Property must immediately cease. Reinstatement following default may only be effected by action of the Governing Body. Wholly separate and apart from the specific conditions of the City's Zoning Regulations are the City's interest and duties to protect the public health, safety and welfare. Applicant agrees that this Ordinance shall not operate or be construed to impede or impair the lawful function of City government operation in this area.

Section 4. This ordinance shall take effect and be enforced from and after its publication once in the official city newspaper. All Zoning and Regulations of Edgerton, Kansas, affecting the use of the real property heretofore described which are inconsistent with this ordinance are hereby made inapplicable to said property until the Conditional Use Permit is vacated or is declared null and void.

PASSED by the Governing Body of the City of Edgerton, Kansas, and approved by the Mayor on the 9th day of January, 2014.

Donald Roberts, Mayor

(Seal)

ATTEST:

Janeice Rawles, City Clerk

APPROVED AS TO FORM:

Patrick G. Reavey, City Attorney

STAFF REPORT

October 18, 2013

To: Edgerton Planning Commission
Fr: Beth Linn, City Administrator
Mike Mabrey, Zoning Administrator
Re: Application CU-09-16-2013 for Conditional Use Permit for TSL Edgerton for a Cargo Container Storage, Maintenance and Repair Facility, southwest corner of 191st Street and Waverly Road

APPLICATION INFORMATION

Applicant/Property Owner: TSL Edgerton

Requested Action: Conditional Use Permit for TSL Edgerton for a Cargo Container Storage, Maintenance and Repair Facility

Legal Description: Part of Section 3, Township 15, Range 22

Site Address/Location: Approximately 20 acres at the southwest corner of 191st Street and Waverly Road

Existing Zoning and Land Uses: Multiple parcels containing residences and accessory structures

Surrounding Zoning and Uses: BNSF Intermodal Facility and L-P zoned land for warehouse development to the north in the City of Edgerton; unincorporated County to the south and east; and land in the City of Edgerton at the northeast corner of Waverly and 191st.

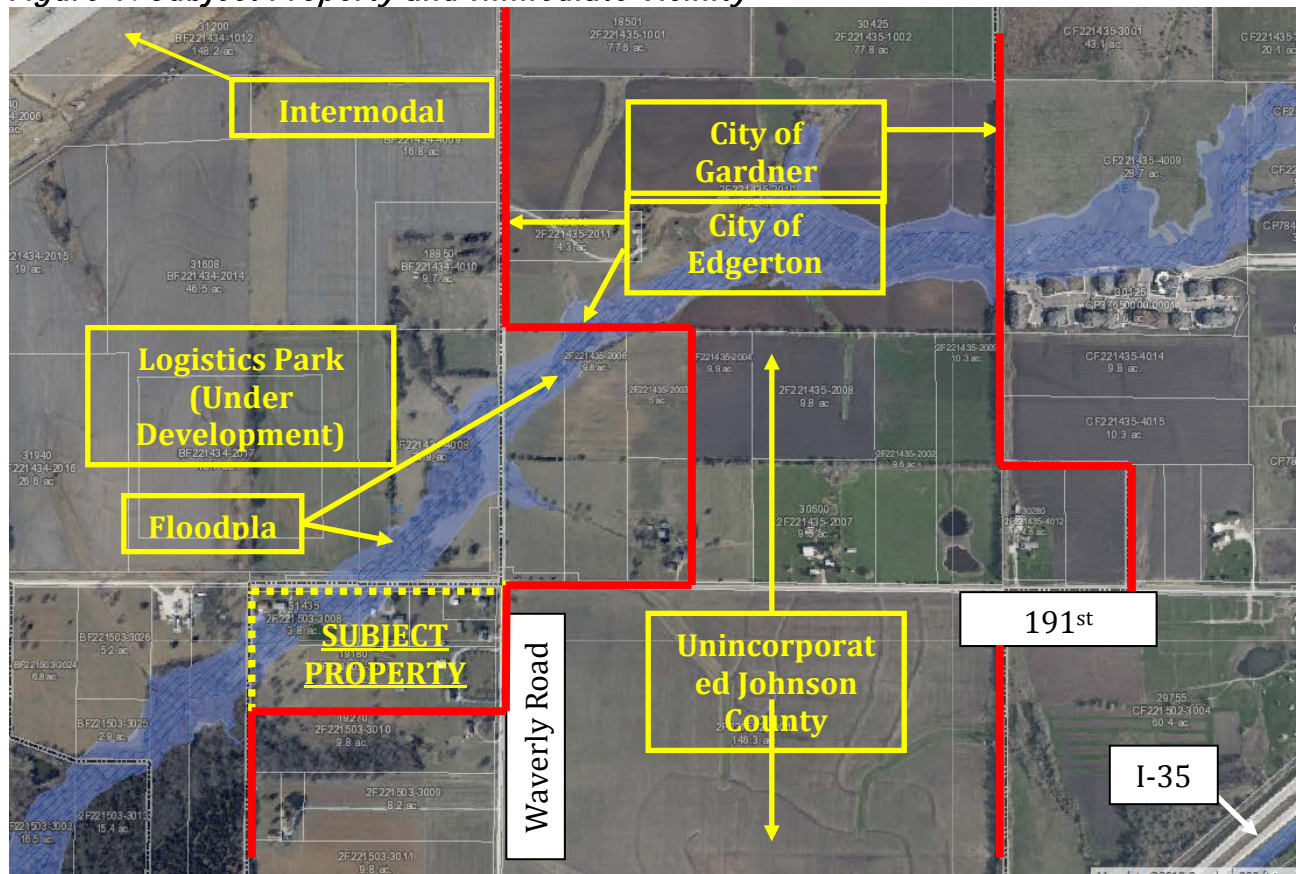
Existing Improvements: Single family homes with accessory structures

Site Size: Approximately 20 acres

Reason for Conditional Use: This land was annexed into the City of Edgerton on September 12, 2013. The conditional use has been requested to facilitate the development of the property for a cargo container storage facility. The BNSF intermodal facility is located about 1/2 mile to the northwest and a warehouse industrial (logistics) park is adjacent, across 191st Road to the north. Demand for businesses to store and maintain cargo containers and chassis, such as the facility proposed here, is a by-product of the activity on and around the

intermodal facility. The logistics park and intermodal's primary function is to transport and redistribute containers and the products they contain. Since they are not in the business of storing containers for an extended period of time, there is a need for companies, like the applicant's, that specialize in storage and maintenance.

Figure 1: Subject Property and Immediate Vicinity



Background Information

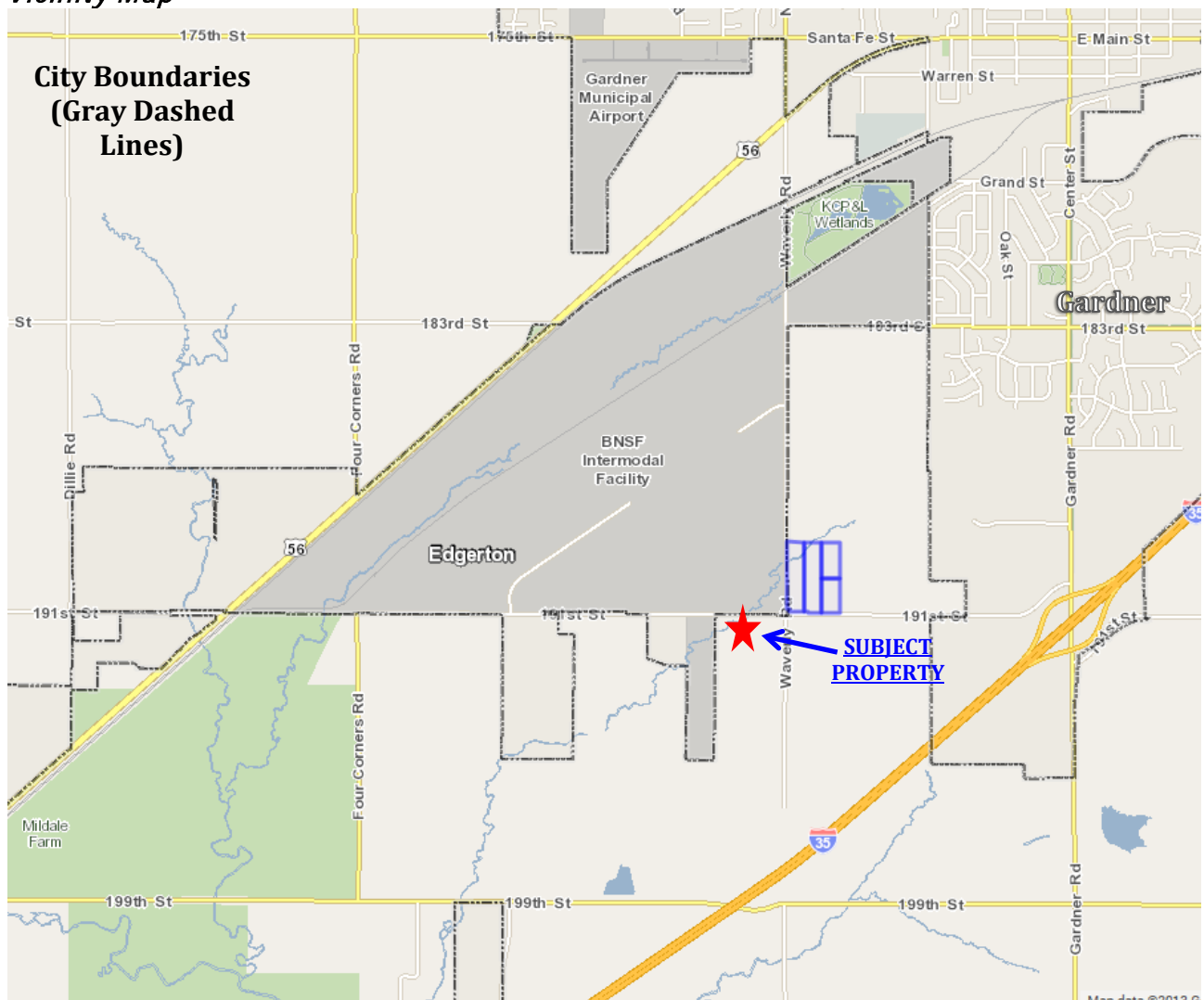
The subject property is located on the southwest corner of 191st Street and Waverly Road, with about 1,300 feet of frontage along 191st and about 640 feet along Waverly Street. The property, annexed in September 12, 2013, is entirely within the City of Edgerton.

Infrastructure and Services:

- Waverly Road, currently gravel surfaced but planned for future improvement to pavement that will support intermodal and logistic park traffic, will provide access to the proposed facility. 191st Street west of Waverly is paved/heavy haul. 191st Street east of Waverly is paved (6" asphalt).
- The property is located within the Big Bull Creek watershed, which flows south from 167th Street to the southern edge of the county at Homestead Lane.
- A little over three acres of the west and southwest portion of the property is located within the flood plain of a tributary of Bull Creek. The site plan does not show any development within the floodplain.

- d. The property does not currently have sanitary sewer service, but the City of Edgerton is constructing a sewer system that can likely serve this property. No new buildings are planned that would necessitate sewer hook-ups. The existing homes are on septic systems.
- e. The property is located within the service area of Rural Water District No. 7. A 12-inch water main is located along the Waverly Road property frontage, which is able to supply domestic needs. No new buildings are planned that would necessitate water connection in Phase I.
- f. Police protection is provided by the Johnson County Sheriff's Department under contract with the City of Edgerton. Fire protection is provided by Johnson County Rural Fire District No. 1. A fire station is located in the City of Edgerton, to the west.

Vicinity Map



STAFF ANALYSIS

Conditional Use Permit

The UDC allows cargo storage, maintenance, and repair facilities in the L-P Zoning District if a Conditional Use Permit is first approved. The Planning Commission, in accordance with the procedures and standards of the UDC, may authorize buildings, structures, and uses as conditional uses in the specific instances and particular districts set forth provided that the location is appropriate, consistent with the Comprehensive Plan, that the public health, safety, morals, and general welfare will not be adversely affected, and that necessary safeguards will be provided surrounding property, persons, and neighborhood values, and further provided that the additional standards of this Article specified as a condition of approval. No conditional use shall be authorized unless the Planning Commission finds that the establishment, maintenance, or operation of the Conditional Use meets the standards set forth in the UDC. The burden of proof is on the applicant to bring forth the evidence and the burden of persuasion on all questions of fact that are determined by the Planning Commission.

GENERAL CRITERIA

- a. The extent to which there is a need in the community for the proposed use. Demand for businesses to store and maintain cargo containers and chassis, such as the facility proposed here, is a by-product of the activity on and around the intermodal facility. The logistics park and intermodal's primary function is to transport and redistribute containers and the products they contain. Since they are not in the business of storing containers for an extended period of time, there is a need for companies, like the applicant's, that specialize in storage and maintenance. Placing these container storage facilities adjacent to the rail yard and the logistics park reduces the distance of travel, which equates to less pollution, wear on streets, cuts transportation costs, and centralizes perceived negative impacts from these facilities on the surrounding community. Staff determination: ***Positive***
- b. The character of the neighborhood, including but not limited to: zoning, existing and approved land use, platting, density (residential), natural features, and open space. The recently opened BNSF Intermodal Facility is located to the northwest. There is City of Edgerton zoned L-P District land across 191st to the north and across Waverly Road to the northeast. There is one farmstead located to the east along 191st and one to the north along Waverly. There are rural residences to the south. Farming and vacant land lie to both the east and south. The City of Gardner is one-half of a mile to the east.

With the rapidly progressing intermodal development, recently completed road improvements, and the new I-35/Homestead interchange nearby, the character of the area is changing significantly from rural to industrial. The regional parks and floodplain areas nearby will generally remain undeveloped, providing open space, wildlife corridors, streamway buffers, and hiking, biking, and pedestrian corridors. Staff determination: ***Positive***

- c. The nature and intensity of the proposed use and its compatibility with the zoning and uses of nearby properties. Such determination should include the location, nature, and height of structures, walls, fences, and other improvements connected with the proposed use, their relation to adjacent property and uses, and the need for buffering and screening. Facilities such as the one proposed provide for the storage, staging, and maintenance of cargo containers, semi-trailers, and chassis. The conditional use permit performance criteria

require that this activity be conducted in a manner that minimizes the noise, dust, traffic congestion, aesthetic blight and other adverse environmental impacts of such a use on surrounding property. To ensure that the cargo container, semi-trailers, and chassis storage, repair, and maintenance facilities are operated in a safe manner, the permitted height of stacking of such containers, the cargo within the containers, the location and surface used, methods of securing the containers so as to prevent safety hazards, and accessibility for emergency and maintenance equipment are all factors addressed by the regulations. Adequate visual screening and landscaping of cargo containers from the public right-of-ways and adjacent properties is also required. The site must also be of sufficient size to accommodate the clean, safe and orderly storage and maintenance of cargo containers, semi-trailers, and chassis with adequate lighting and signage.

The foregoing factors are addressed in the specific performance criteria, below. Staff determination: ***Positive***

- d. Suitability of the uses of the property without the proposed conditional use permit. The property no longer in residential use. With the construction of the intermodal freight terminal and the logistics park adjacent to the north and west, the best use of this property has become industrial. Staff determination: ***Positive***
- e. Length of time the subject property has remained vacant without the proposed conditional use permit. Before annexation, the property was in residential use in unincorporated Johnson County. Staff determination: ***Positive***
- f. The extent to which the proposed use may detrimentally affect nearby property. As noted, the nearby residential and rural uses are likely short-term in nature. With the buffering and setbacks proposed, the residential uses can be protected. Staff determination: ***Positive***
- g. The adequacy of ingress and egress to and within the site of the proposed use, traffic flow and control, the adequacy of off-street parking and loading areas, the adequacy of required yard and open space requirements and sign provisions. As noted in the Site Plan review, adequate ingress, egress, parking, and loading is provided. The stream and floodplain areas will be undeveloped and as such, they provide adequate open space. No signage is proposed. Staff determination: ***Positive***
- h. The availability and adequacy of required utilities and services to serve the proposed use. These utilities and services include, but are not limited to, sanitary and storm sewers, water, electrical and gas service, police and fire protection, schools, parks and recreation facilities and services, and other similar public facilities and services. The site plan shows the utilities and services required to operate the trailer storage and repair facility proposed. Future site phases of construction will require site plan submittal for review and approval by the City. Staff determination: ***Positive***
- i. The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the proposed use, or present parking problems in the vicinity of the property. 191st Street to the west is improved to a standard that can accommodate industrial development traffic in the area. The City continues to evaluate the timing and type of improvement needed for Waverly Road based on anticipated development of this property and other industrial development anticipated along the

corridor to the north. As indicated in the site plan review, Phase I of this project shall access the road network via 191st Street, which has been improved to accommodate industrial traffic. On-street parking will not be allowed and adequate parking is provided for Phase 1 of this project. Staff determination: *Positive*

- j. The environmental impacts that the proposed use would create (if any) including, but not limited to, excessive storm water runoff, water pollution, air pollution, noise pollution, excessive nighttime lighting or other environmental harm. The City will follow NPDES (stormwater management requirements) guidelines that require the developer to address runoff and water pollution mitigation measures as part of the development of the property. Mitigation of pollution in the form of light, off-site, is adequately addressed by the photometric plan. Staff determination: *Positive*
- k. The economic impact of the proposed use on the community. Prior to the development of the BNSF intermodal and logistics park, there have been few commercial and industrial uses within the City. Warehousing and related uses in the L-P District, if built, have the potential to benefit the residents and community in a positive way by providing needed jobs and tax revenues. Staff determination: *Positive*
- l. The relative gain (if any) to the public health, safety, and welfare from a denial of the application for conditional use permit as compared to the hardship imposed upon the conditional use applicant from such denial. There would be little gain to the public health, safety and welfare of the City of Edgerton and the property owner would be denied a use compatible with the intermodal facility if the zoning is denied. The City would be adversely impacted due to the lost opportunity for jobs and tax revenue if anticipated logistics park uses were to locate in another nearby community. Staff determination: *Positive*
- m. Consistency with the Comprehensive Plan, Capital Improvement Plan, ordinances, policies, and applicable City Code of the City of Edgerton, and the general safety, health, comfort and general welfare of the community. The Future Land Use Map (attached) within the Comprehensive Plan designates the subject property for industrial development. Staff determination: *Positive*
- n. The recommendation of professional staff. (Ord. 798; 2005) Please see the Recommendations Section, below.

CARGO CONTAINER STORAGE, REPAIR, AND MAINTENANCE FACILITY PERFORMANCE CRITERIA.

All cargo container storage and cargo container repair and maintenance facilities (collectively referred to as "facilities") shall be subject to the following performance provisions:

1. Access: No cargo containers or semi-trailers (either on or off a chassis), or a chassis, may be stored in a manner that impedes access to public rights-of-way, public utility or drainage easements, structures, and buildings. **The site plan needs to be adjusted to accommodate right-of-way dedication, easements and setback requirements.**
2. Exterior Lighting: Facilities shall provide lighting on-site, including at all vehicular entrances and exits. A lighting plan shall be submitted and approved. **No exterior lighting information**

has been provided. Property owner is required to submit a Photometrics plan in conformance with the Photometrics standards included in the L-P District.

3. Minimum Lot Size: Facilities shall have a minimum lot size of twenty (20) acres. **The application complies when adjacent right-of-way is included.**
4. Noise: Noise from businesses and facilities shall not exceed 60 dB(A) in any adjacent residential district or 70 dB(A) in any adjacent commercial or industrial district or property. **Noise issues are not addressed in the applicant's proposal; however, the use must continuously comply with these noise maximums in the conduct of the business.**
5. Paving: All interior driveways, parking, loading, and storage areas shall be paved and dust-free. For purposes of this stipulation:
 - i. Paving shall mean concrete or asphalt: and
 - ii. Dust-free shall mean that all interior driveways and storage area surfaces shall be kept free of dust, dirt or other materials to prevent the migration of dust off-site.

Site Plan Sheet C3 indicates parking area will have temporary gravel surface installed. Permanent hard surface shall be installed no later than July 1, 2013. Permanent parking area material has not been specified. As part of the Site Plan Approval, permanent surface must be asphalt or concrete.

6. Parking: Facilities shall comply with the Article 5.2 L-P District Off Street Parking and Loading regulations. No portion of any required off-street parking or loading/unloading areas shall be used for the storage of cargo containers, semi-trailers (either on or off a chassis), chassis or similar storage devices. **Site Plan complies.**
7. Cargo Container Stacking: Cargo containers shall not be stacked more than five (5) in number. **The proposed use must continually comply and not exceed the maximum stacking height.**
8. Chassis Stacking/Racking: Empty chassis may be stored on end (racking), or may be stacked. When stacked, chassis shall not be more than five (5) in number. **The proposed use must continually comply and not exceed the maximum stacking height.**
9. Screening and Landscaping: Screening may be required on the perimeter of the property. Screening shall be a combination of fencing and landscaping or berming and landscaping. Screening shall comply with requirements Article 5.2 L-P District Landscape Standards. **The Site Plan shows new landscaping/screening on the east, south and a portion of the north property line. The new landscaping satisfies the screening requirement. Existing trees are intended to satisfy required screening on the remainder of the site. When the project is complete, new trees shall be added to fill the gaps in the existing trees to fulfill the screening requirements. Plant material must be continuously maintained and replaced when dead.**
10. Setbacks and Separation Distance: All buildings, structures, parking and other uses on the property, shall be subject to the setback requirements in Article 5.2 L-P District Setback, Yard, Area Regulations, except, however, the parking or storage of cargo containers or semi-trailers (either on or off a chassis), and chassis (racked or stacked) shall be subject to the following setback standards that may vary depending upon the different scenarios set forth below:
 - i. When abutting (touching), or across the street from non-residentially zoned property, such parking or storage shall be setback from any exterior property line of the subject property a distance equal to the height of the cargo container or semi-trailer (either on or off a chassis), and chassis

- (racked and stacked). **The proposed use must continually comply and not exceed the maximum height requirement.**
- ii. When abutting (touching) public right-of-way, such parking or storage shall be setback from any exterior property line of the subject property a distance equal to the height of the cargo containers or semi-trailers (either on or off a chassis), and chassis (racked or stacked). See Item i., above.
 - iii. When abutting (touching), or across the street from, residentially zoned property, such parking and storage shall be setback a minimum of 250 feet from the nearest property line of the residentially zoned property. There is residentially zoned property abutting and across the street from the subject property. The application can comply with the requirement by not utilizing the Phase II area of the property and foregoing the use of the southern-most row of trailer parking in Phase 1. This condition shall be continually met until the residentially zoned property is changed to a nonresidential use.
 - iv. When abutting (touching), or across the street from, a habitable dwelling, such parking and storage shall be setback a minimum of 300 feet from the nearest dwelling. The nearest home is about 300 feet from the Phase 1 portion and 100 ft. from the phase 2 portion. The proposed use must continually comply.
11. Signage: Business signs shall be allowed according to Article 5.2 L-P District Signage regulations. No signage, other than shipping company identification logos and placards, shall be allowed on any cargo container, semi-trailer or chassis. No signage was submitted with the application. Signage proposed later shall receive separate approval according to the provisions of the UDC.
 12. Site Plan: A site plan shall be submitted with the application. The site plan shall be prepared in accordance with the requirements of Article 9 (B) (3) of these regulations. The proposed Site Plan complies, subject to revisions required by the stipulations in the Site Plan staff report and this staff report.
 13. Other Rules and Regulations. All facilities shall abide by any and all governmental rules, regulations, codes and specifications now in effect or hereafter adopted that would be applicable to this permit or the use of the property by the applicant/landowner. The proposed use must comply with these requirements.

RECOMMENDATIONS

Based on the above staff analysis, city staff recommends **approval** of the conditional use permit, with the following stipulations:

1. The property owner shall continuously comply with all performance criteria in Article 7 pertaining to Cargo Container Storage Facilities and Cargo Repair and Maintenance Facilities, including, but not limited to, noise maximums and cargo container and chassis stacking height requirements. There is residentially zoned property abutting and across the street from the subject property. The application can comply with the requirement by not utilizing the Phase II area of the property and foregoing the use of the southern-most row of trailer parking in Phase 1. This condition shall be continually met until the residentially zoned property is changed to a nonresidential use.
2. The property shall be developed in accordance with the Site Plan, as approved by the City, prior to commencement of the cargo container storage use. Plant material shall be

continuously maintained and replaced when dead. When the project is complete, new trees shall be added to fill the gaps in the existing trees (on the north and west property lines) to fulfill the screening requirements.

3. Cargo containers and chassis may be stored only in the designated, stripped areas shown on the Site Plan.
4. No other outside storage of equipment or materials shall be allowed on the property.
5. Any future phases or additional areas used for cargo container maintenance and repair uses shall not commence until a Site Plan is submitted and approved by the City for that phase, including photometric and landscaping plans.
6. This Conditional Use Permit shall be valid for ten years from approval by the City of Edgerton.

Attachments:

Conditional Use Permit Application CU-09-16-2013

STAFF REPORT

December 6, 2013

To: Edgerton Planning Commission
Fr: Beth Linn, City Administrator
Mike Mabrey, Zoning Administrator
Re: Application CU-09-16-2013 for Conditional Use Permit for TSL Edgerton for a Cargo Container Storage, Maintenance and Repair Facility, southwest corner of 191st Street and Waverly Road

APPLICATION INFORMATION

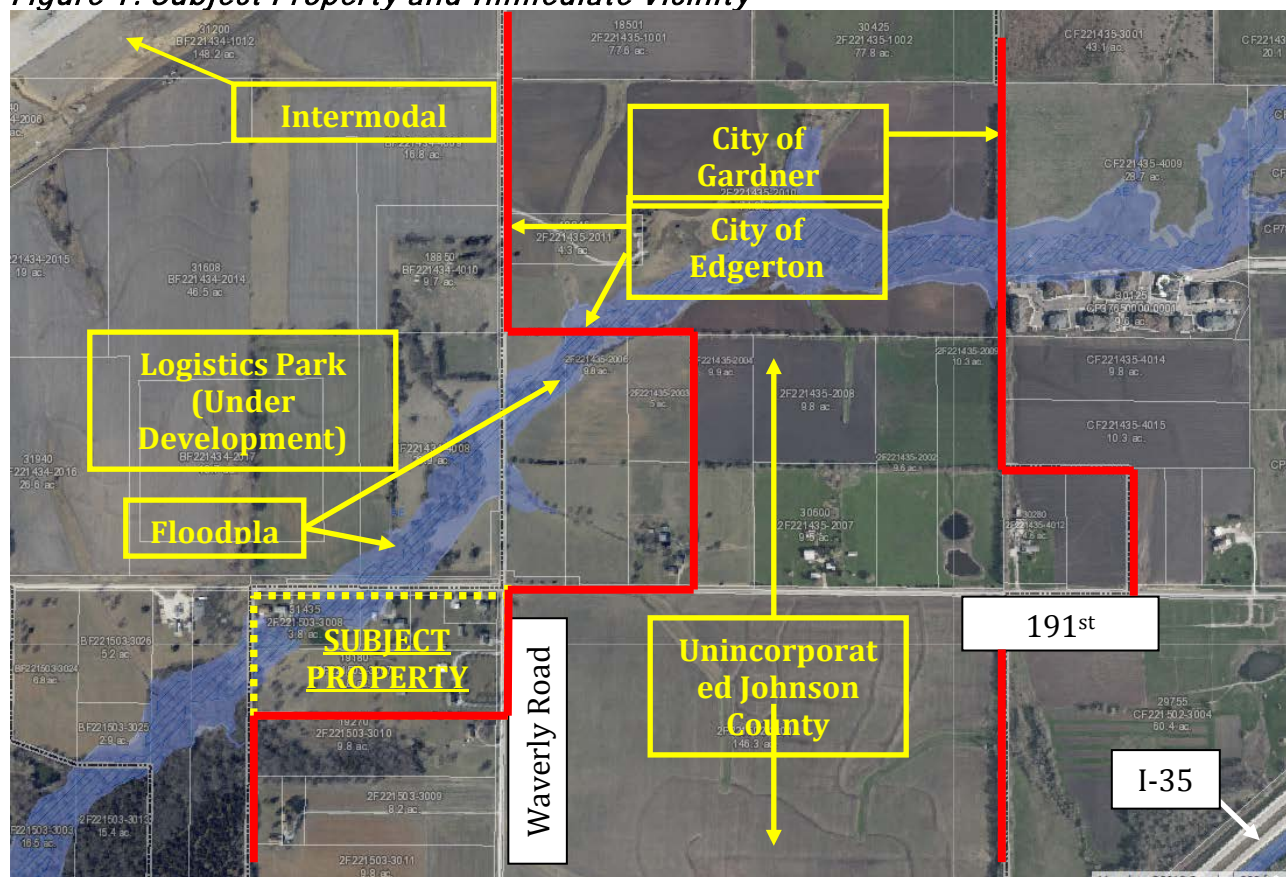
Applicant/Property Owner:	TSL Edgerton
Requested Action:	Conditional Use Permit for TSL Edgerton for a Cargo Container Storage, Maintenance and Repair Facility
Legal Description:	Part of Section 3, Township 15, Range 22
Site Address/Location:	Approximately 20 acres at the southwest corner of 191st Street and Waverly Road
Existing Zoning and Land Uses:	Multiple parcels containing residences and accessory structures
Surrounding Zoning and Uses:	BNSF Intermodal Facility and L-P zoned land for warehouse development to the north in the City of Edgerton; unincorporated County to the south and east; and land in the City of Edgerton at the northeast corner of Waverly and 191 st .
Existing Improvements:	Single family homes with accessory structures
Site Size:	Approximately 20 acres

Project Background and Description: The Planning Commission held a public hearing for this application on October 22, 2013. The Planning Commission recommended approval of the application to the City Council. Between the Planning Commission and City Council meeting, staff received additional information clarifying the applicant's desire to use some existing buildings on the property. Based on this information, staff recommended that the City Council remand the application back to Planning Commission to allow time for the applicant to submit

an updated site plan indicating which building are intended to be salvaged and use for the business operation.

The subject property is located on the southwest corner of 191st Street and Waverly Road, with about 1,300 feet of frontage along 191st and about 640 feet along Waverly Street. This land was annexed into the City of Edgerton on September 12, 2013. The conditional use has been requested to facilitate the development of the property for a cargo container storage facility. The BNSF intermodal facility is located about 1/2 mile to the northwest and a warehouse industrial (logistics) park is adjacent, across 191st Road to the north. Demand for businesses to store and maintain cargo containers and chassis, such as the facility proposed here, is a by-product of the activity on and around the intermodal facility. The logistics park and intermodal's primary function is to transport and redistribute containers and the products they contain. Since they are not in the business of storing containers for an extended period of time, there is a need for companies, like the applicant's, that specialize in storage and maintenance.

Figure 1: Subject Property and Immediate Vicinity

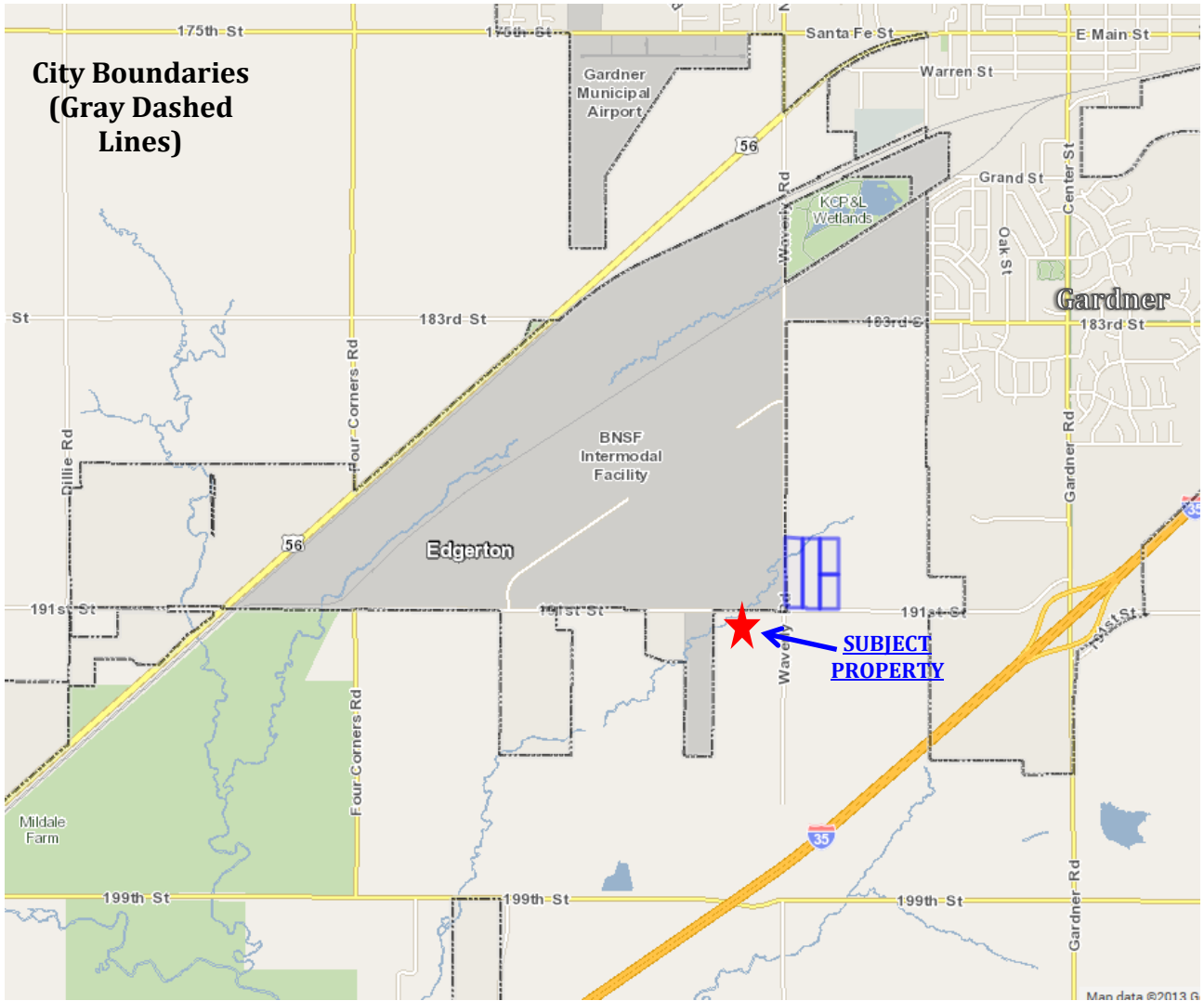


Infrastructure and Services:

- a. Waverly Road, currently gravel surfaced but planned for future improvement to pavement that will support intermodal and logistic park traffic, will provide access to the proposed facility. 191st Street west of Waverly is paved/heavy haul. 191st Street east of Waverly is paved (6" asphalt).

- b. The property is located within the Big Bull Creek watershed, which flows south from 167th Street to the southern edge of the county at Homestead Lane.
- c. A little over three acres of the west and southwest portion of the property is located within the flood plain of a tributary of Bull Creek. The site plan does not show any development within the floodplain.
- d. The property does not currently have sanitary sewer service, but the City of Edgerton is constructing a sewer system that can likely serve this property. No new buildings are planned that would necessitate sewer hook-ups. The existing homes are on septic systems.
- e. The property is located within the service area of Rural Water District No. 7. A 12-inch water main is located along the Waverly Road property frontage, which is able to supply domestic needs. No new buildings are planned that would necessitate water connection in Phase I.
- f. Police protection is provided by the Johnson County Sheriff's Department under contract with the City of Edgerton. Fire protection is provided by Johnson County Rural Fire District No. 1. A fire station is located in the City of Edgerton, to the west.

Vicinity Map



STAFF ANALYSIS

Conditional Use Permit

The UDC allows cargo storage, maintenance, and repair facilities in the L-P Zoning District if a Conditional Use Permit is first approved. The Planning Commission, in accordance with the procedures and standards of the UDC, may authorize buildings, structures, and uses as conditional uses in the specific instances and particular districts set forth provided that the location is appropriate, consistent with the Comprehensive Plan, that the public health, safety, morals, and general welfare will not be adversely affected, and that necessary safeguards will be provided surrounding property, persons, and neighborhood values, and further provided that the additional standards of this Article specified as a condition of approval. No conditional use shall be authorized unless the Planning Commission finds that the establishment, maintenance, or operation of the Conditional Use meets the standards set forth in the UDC. The burden of proof is on the applicant to bring forth the evidence and the burden of persuasion on all questions of fact that are determined by the Planning Commission.

GENERAL CRITERIA

- a. The extent to which there is a need in the community for the proposed use. Demand for businesses to store and maintain cargo containers and chassis, such as the facility proposed here, is a by-product of the activity on and around the intermodal facility. The logistics park and intermodal's primary function is to transport and redistribute containers and the products they contain. Since they are not in the business of storing containers for an extended period of time, there is a need for companies, like the applicant's, that specialize in storage and maintenance. Placing these container storage facilities adjacent to the rail yard and the logistics park reduces the distance of travel, which equates to less pollution, wear on streets, cuts transportation costs, and centralizes perceived negative impacts from these facilities on the surrounding community. Staff determination: ***Positive***
- b. The character of the neighborhood, including but not limited to: zoning, existing and approved land use, platting, density (residential), natural features, and open space. The recently opened BNSF Intermodal Facility is located to the northwest. There is City of Edgerton zoned L-P District land across 191st to the north and across Waverly Road to the northeast. There is one farmstead located to the east along 191st and one to the north along Waverly. There are rural residences to the south. Farming and vacant land lie to both the east and south. The City of Gardner is one-half of a mile to the east.

With the rapidly progressing intermodal development, recently completed road improvements, and the new I-35/Homestead interchange nearby, the character of the area is changing significantly from rural to industrial. The regional parks and floodplain areas nearby will generally remain undeveloped, providing open space, wildlife corridors, streamway buffers, and hiking, biking, and pedestrian corridors. Staff determination: ***Positive***

- c. The nature and intensity of the proposed use and its compatibility with the zoning and uses of nearby properties. Such determination should include the location, nature, and height of structures, walls, fences, and other improvements connected with the proposed use, their relation to adjacent property and uses, and the need for buffering and screening. Facilities such as the one proposed provide for the storage, staging, and maintenance of cargo containers, semi-trailers, and chassis. The conditional use permit performance criteria

require that this activity be conducted in a manner that minimizes the noise, dust, traffic congestion, aesthetic blight and other adverse environmental impacts of such a use on surrounding property. To ensure that the cargo container, semi-trailers, and chassis storage, repair, and maintenance facilities are operated in a safe manner, the permitted height of stacking of such containers, the cargo within the containers, the location and surface used, methods of securing the containers so as to prevent safety hazards, and accessibility for emergency and maintenance equipment are all factors addressed by the regulations. Adequate visual screening and landscaping of cargo containers from the public right-of-ways and adjacent properties is also required. The site must also be of sufficient size to accommodate the clean, safe and orderly storage and maintenance of cargo containers, semi-trailers, and chassis with adequate lighting and signage.

The foregoing factors are addressed in the specific performance criteria, below. Staff determination: ***Positive***

- d. Suitability of the uses of the property without the proposed conditional use permit. The property no longer in residential use. With the construction of the intermodal freight terminal and the logistics park adjacent to the north and west, the best use of this property has become industrial. Staff determination: ***Positive***
- e. Length of time the subject property has remained vacant without the proposed conditional use permit. Before annexation, the property was in residential use in unincorporated Johnson County. Staff determination: ***Positive***
- f. The extent to which the proposed use may detrimentally affect nearby property. As noted, the nearby residential and rural uses are likely short-term in nature. With the buffering and setbacks proposed, the residential uses can be protected. Staff determination: ***Positive***
- g. The adequacy of ingress and egress to and within the site of the proposed use, traffic flow and control, the adequacy of off-street parking and loading areas, the adequacy of required yard and open space requirements and sign provisions. As noted in the Site Plan review, adequate ingress, egress, parking, and loading is provided. The stream and floodplain areas will be undeveloped and as such, they provide adequate open space. No signage is proposed. Staff determination: ***Positive***
- h. The availability and adequacy of required utilities and services to serve the proposed use. These utilities and services include, but are not limited to, sanitary and storm sewers, water, electrical and gas service, police and fire protection, schools, parks and recreation facilities and services, and other similar public facilities and services. The site plan shows the utilities and services required to operate the trailer storage and repair facility proposed. Future site phases of construction will require site plan submittal for review and approval by the City. Staff determination: ***Positive***
- i. The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the proposed use, or present parking problems in the vicinity of the property. 191st Street to the west is improved to a standard that can accommodate industrial development traffic in the area. The City continues to evaluate the timing and type of improvement needed for Waverly Road based on anticipated development of this property and other industrial development anticipated along the

corridor to the north. As indicated in the site plan review, Phase I of this project shall access the road network via 191st Street, which has been improved to accommodate industrial traffic. On-street parking will not be allowed and adequate parking is provided for Phase 1 of this project. Staff determination: *Positive*

- j. The environmental impacts that the proposed use would create (if any) including, but not limited to, excessive storm water runoff, water pollution, air pollution, noise pollution, excessive nighttime lighting or other environmental harm. The City will follow NPDES (stormwater management requirements) guidelines that require the developer to address runoff and water pollution mitigation measures as part of the development of the property. Mitigation of pollution in the form of light, off-site, is adequately addressed by the photometric plan. Staff determination: *Positive*
- k. The economic impact of the proposed use on the community. Prior to the development of the BNSF intermodal and logistics park, there have been few commercial and industrial uses within the City. Warehousing and related uses in the L-P District, if built, have the potential to benefit the residents and community in a positive way by providing needed jobs and tax revenues. Staff determination: *Positive*
- l. The relative gain (if any) to the public health, safety, and welfare from a denial of the application for conditional use permit as compared to the hardship imposed upon the conditional use applicant from such denial. There would be little gain to the public health, safety and welfare of the City of Edgerton and the property owner would be denied a use compatible with the intermodal facility if the zoning is denied. The City would be adversely impacted due to the lost opportunity for jobs and tax revenue if anticipated logistics park uses were to locate in another nearby community. Staff determination: *Positive*
- m. Consistency with the Comprehensive Plan, Capital Improvement Plan, ordinances, policies, and applicable City Code of the City of Edgerton, and the general safety, health, comfort and general welfare of the community. The Future Land Use Map (attached) within the Comprehensive Plan designates the subject property for industrial development. Staff determination: *Positive*
- n. The recommendation of professional staff. (Ord. 798; 2005) Please see the Recommendations Section, below.

CARGO CONTAINER STORAGE, REPAIR, AND MAINTENANCE FACILITY PERFORMANCE CRITERIA.

All cargo container storage and cargo container repair and maintenance facilities (collectively referred to as "facilities") shall be subject to the following performance provisions:

1. Access: No cargo containers or semi-trailers (either on or off a chassis), or a chassis, may be stored in a manner that impedes access to public rights-of-way, public utility or drainage easements, structures, and buildings. **The site plan needs to be adjusted to accommodate right-of-way dedication, easements and setback requirements.**
2. Exterior Lighting: Facilities shall provide lighting on-site, including at all vehicular entrances and exits. A lighting plan shall be submitted and approved. **No exterior lighting information**

has been provided. Property owner is required to submit a Photometrics plan in conformance with the Photometrics standards included in the L-P District.

3. Minimum Lot Size: Facilities shall have a minimum lot size of twenty (20) acres. **The application complies when adjacent right-of-way is included.**
4. Noise: Noise from businesses and facilities shall not exceed 60 dB(A) in any adjacent residential district or 70 dB(A) in any adjacent commercial or industrial district or property. **Noise issues are not addressed in the applicant's proposal; however, the use must continuously comply with these noise maximums in the conduct of the business.**
5. Paving: All interior driveways, parking, loading, and storage areas shall be paved and dust-free. For purposes of this stipulation:
 - i. Paving shall mean concrete or asphalt: and
 - ii. Dust-free shall mean that all interior driveways and storage area surfaces shall be kept free of dust, dirt or other materials to prevent the migration of dust off-site.

Site Plan Sheet C3 indicates parking area will have temporary gravel surface installed. Permanent hard surface shall be installed no later than July 1, 2013. Permanent parking area material has not been specified. As part of the Site Plan Approval, permanent surface must be asphalt or concrete.

6. Parking: Facilities shall comply with the Article 5.2 L-P District Off Street Parking and Loading regulations. No portion of any required off-street parking or loading/unloading areas shall be used for the storage of cargo containers, semi-trailers (either on or off a chassis), chassis or similar storage devices. **Site Plan complies.**
7. Cargo Container Stacking: Cargo containers shall not be stacked more than five (5) in number. **The proposed use must continually comply and not exceed the maximum stacking height.**
8. Chassis Stacking/Racking: Empty chassis may be stored on end (racking), or may be stacked. When stacked, chassis shall not be more than five (5) in number. **The proposed use must continually comply and not exceed the maximum stacking height.**
9. Screening and Landscaping: Screening may be required on the perimeter of the property. Screening shall be a combination of fencing and landscaping or berming and landscaping. Screening shall comply with requirements Article 5.2 L-P District Landscape Standards. **The Site Plan shows new landscaping/screening on the east, south and a portion of the north property line. The new landscaping satisfies the screening requirement. Existing trees are intended to satisfy required screening on the remainder of the site. When the project is complete, new trees shall be added to fill the gaps in the existing trees to fulfill the screening requirements. Plant material must be continuously maintained and replaced when dead.**
10. Setbacks and Separation Distance: All buildings, structures, parking and other uses on the property, shall be subject to the setback requirements in Article 5.2 L-P District Setback, Yard, Area Regulations, except, however, the parking or storage of cargo containers or semi-trailers (either on or off a chassis), and chassis (racked or stacked) shall be subject to the following setback standards that may vary depending upon the different scenarios set forth below:
 - i. When abutting (touching), or across the street from non-residentially zoned property, such parking or storage shall be setback from any exterior property line of the subject property a distance equal to the height of the cargo container or semi-trailer (either on or off a chassis), and chassis

- (racked and stacked). **The proposed use must continually comply and not exceed the maximum height requirement.**
- ii. When abutting (touching) public right-of-way, such parking or storage shall be setback from any exterior property line of the subject property a distance equal to the height of the cargo containers or semi-trailers (either on or off a chassis), and chassis (racked or stacked). See Item i., above.
 - iii. When abutting (touching), or across the street from, residentially zoned property, such parking and storage shall be setback a minimum of 250 feet from the nearest property line of the residentially zoned property. There is residentially zoned property abutting and across the street from the subject property. The application can comply with the requirement by not utilizing the Phase II area of the property and foregoing the use of the southern-most row of trailer parking in Phase 1. This condition shall be continually met until the residentially zoned property is changed to a nonresidential use.
 - iv. When abutting (touching), or across the street from, a habitable dwelling, such parking and storage shall be setback a minimum of 300 feet from the nearest dwelling. The nearest home is about 300 feet from the Phase 1 portion and 100 ft. from the phase 2 portion. The proposed use must continually comply.
11. Signage: Business signs shall be allowed according to Article 5.2 L-P District Signage regulations. No signage, other than shipping company identification logos and placards, shall be allowed on any cargo container, semi-trailer or chassis. No signage was submitted with the application. Signage proposed later shall receive separate approval according to the provisions of the UDC.
12. Site Plan: A site plan shall be submitted with the application. The site plan shall be prepared in accordance with the requirements of Article 9 (B) (3) of these regulations. The proposed Site Plan complies, subject to revisions required by the stipulations in the Site Plan staff report and this staff report.
13. Other Rules and Regulations. All facilities shall abide by any and all governmental rules, regulations, codes and specifications now in effect or hereafter adopted that would be applicable to this permit or the use of the property by the applicant/landowner. The proposed use must comply with these requirements.

Other Comments

The original site plan for Phase I did not indicate that the two (2) buildings in the northwest corner of the property would be salvaged and used for operation of the business. Based on this request, the applicant has added a note to the site plan that "Existing building exteriors will be modified in accordance with the City of Edgerton Construction Standards." This comment should be modified to read "...in accordance with City of Edgerton Unified Development Code."

Logistics Park (L-P) District Zoning requires specific types of building materials for construction. The applicant will need to bring both existing buildings into compliance with these standards. This may include activities such as facing the building with different material, additional landscaping, etc.

Additionally, the applicant will need to provide documentation to be reviewed and approved by the City for service of utilities and compliance with ADA requirements for the uses of these existing buildings.

RECOMMENDATIONS

Based on the above staff analysis, city staff recommends **approval** of the conditional use permit, with the following stipulations:

1. The property owner shall continuously comply with all performance criteria in Article 7 pertaining to Cargo Container Storage Facilities and Cargo Repair and Maintenance Facilities, including, but not limited to, noise maximums and cargo container and chassis stacking height requirements. There is residentially zoned property abutting and across the street from the subject property. The application can comply with the requirement by not utilizing the Phase II area of the property and foregoing the use of the southern-most row of trailer parking in Phase 1. This condition shall be continually met until the residentially zoned property is changed to a nonresidential use.
2. The property shall be developed in accordance with the *amended* Site Plan, as approved by the City, prior to commencement of the cargo container storage use. Plant material shall be continuously maintained and replaced when dead. When the project is complete, new trees shall be added to fill the gaps in the existing trees (on the north and west property lines) to fulfill the screening requirements.
3. All existing building exteriors shall modified in accordance with the City of Edgerton Unified Development Code. Applicant shall provide documentation for review and approval by City for service of utilities and compliance with ADA standards for all existing buildings to remain.
4. Cargo containers and chassis may be stored only in the designated, stripped areas shown on the Site Plan.
5. No other outside storage of equipment or materials shall be allowed on the property.
6. Any future phases or additional areas used for cargo container maintenance and repair uses shall not commence until a Site Plan is submitted and approved by the City for that phase, including photometric and landscaping plans.
7. This Conditional Use Permit shall be valid for ten years from approval by the City of Edgerton.

Attachments:

Conditional Use Permit Application CU-09-16-2013

CITY OF EDGERTON, KANSAS
APPLICATION FOR CONDITIONAL USE PERMIT

Please print or type

REQUESTING CONDITIONAL USE PERMIT FOR: TRAILER STORAGE LOT
LOCATION OR ADDRESS OF SUBJECT PROPERTY: SW CORNER OF 191ST & WAVERLY
LEGAL DESCRIPTION: ATTACHED
ZONING ON SUBJECT PROPERTY: L-P CURRENT LAND USE: RESIDENTIAL/A6

PROPERTY OWNER'S NAME(S): TOM HASTINGS PHONE: 402.895.6692
COMPANY: TSL COMPANIES FAX: 402.895.6495
MAILING ADDRESS: 10001 S. 152ND ST. OMAHA NE 68138-3801
STREET CITY STATE ZIP
APPLICANT/AGENT'S NAME(S): SAME PHONE: _____
COMPANY: _____ FAX: _____
MAILING ADDRESS: _____
STREET CITY STATE ZIP
ENGINEER/ARCHITECT'S NAME(S): DAN COOK PHONE: 913.961.3160
COMPANY: R-I-C FAX: 913.317.9501
MAILING ADDRESS: 11490 STRANG LINE GENEVA KS 66215
STREET CITY STATE ZIP
TRANSPOR by Leasing, Inc
SIGNATURE OF OWNER OR AGENT: To V Pres

If not signed by owner, authorization of agent must accompany this application.

FOR OFFICE USE ONLY

Case No.: CU-_____ Amount of Fee Paid: \$_____ Date Fee Paid: _____
Received By: _____ Date of Hearing: _____

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Ordinance No. 963 Adopting The Planning Commission's Recommendation to Approve a Conditional Use Permit to Allow Use of Land, in the L-P, City Of Edgerton Logistics Park Zoning District Located at The Southeast Corner Of 191st Street And Homestead Lane, For "Cargo Storage, Maintenance, And Repair Facilities"

Department: Administration

Background/Description of Item: The City has received application CU-11-15-2013 requesting a conditional use permit for operation of a cargo container storage, maintenance, and repair facilities at the southeast corner of 191st and Homestead Road from Applicant/Agent: International Transload Logistics (Property Owners: Omar and India Holtgraver).

Johnson County Planning staff, on behalf of the City of Edgerton, reviewed this conditional use permit application with respect to the City of Edgerton Unified Development Code (UDC). Please find enclosed with this packet the Staff Report prepared for the Planning Commission meeting on December 10, 2013.

In order to recommend approval or disapproval of a proposed conditional use permit (CUP), the Planning Commission and Governing Body shall determine whether the proposed use is found to be generally compatible with surrounding development and is in the best interest of the City. In making such determination, Section 7.1 (C) of Article 7 of the UDC states that the Planning Commission and Governing Body may consider all factors they deem relevant to the questions of compatibility and the best interest of the City. In addition, Section 7.2 (D) of the UDC details requirements to be considered for a conditional use permit for cargo container storage, repair and maintenance facilities. The analysis of these factors is detailed in the attached staff report.

The Planning Commission held a public hearing on December 10, 2013 regarding this conditional use permit application. The Planning Commission recommended approval of the conditional use permit application with the following stipulations:

1. The property owner shall continuously comply with all performance criteria in Article 7 pertaining to Cargo Container Storage Facilities and Cargo Repair and Maintenance Facilities, including, but not limited to, noise maximums and cargo container and chassis stacking height requirements, paving requirements, etc.
2. The property shall be developed in accordance with the Site Plan, Landscaping Plan, and Photometric Plan as revised, as approved by the City, prior to commencement of the cargo container storage use. Plant material shall be continuously maintained and replaced when dead.
3. All existing building exteriors shall modified in accordance with the City of Edgerton Unified Development Code. Applicant shall provide documentation for review and approval by City for service of utilities and compliance with ADA standards for all existing buildings to remain.
4. Cargo containers and chassis may be stored only in the designated, striped areas shown on the Site Plan.
5. No other outside storage of equipment or materials shall be allowed on the property.
6. Any future phases or additional areas used for cargo container maintenance and repair uses shall not commence until a Site Plan is submitted and approved by the City for that phase, including photometric and landscaping plans.
7. This Conditional Use Permit shall be valid for ten years from approval by the City of Edgerton.

Enclosure: Draft Ordinance No. 963

Staff Report from December 10, 2013 Planning Commission
Application

Related Ordinance(s) or Statute(s):

Recommendation: Approve Ordinance No. 963 Adopting The Planning Commission's Recommendation to Approve a Conditional Use Permit to Allow Use of Land, in the L-P, City Of Edgerton Logistics Park Zoning District Located at The Southeast Corner Of 191st Street And Homestead Lane, For "Cargo Storage, Maintenance, And Repair Facilities"

Funding Source: N/A

Prepared by: Beth Linn, City Administrator
Date: January 6, 2014

ORDINANCE NO. 963

AN ORDINANCE ADOPTING THE PLANNING COMMISSION'S RECOMMENDATION TO APPROVE A CONDITIONAL USE PERMIT TO ALLOW USE OF LAND, IN THE L-P, CITY OF EDGERTON LOGISTICS PARK ZONING DISTRICT LOCATED AT THE SOUTHEAST CORNER OF 191ST STREET AND HOMESTEAD LANE, FOR "CARGO STORAGE, MAINTENANCE, AND REPAIR FACILITIES"

WHEREAS, the Edgerton Planning Commission did hold a public hearing on the requested Conditional Use Permit in accordance with the requirements as set forth in the Edgerton Zoning Regulations; and

WHEREAS, the Edgerton Planning Commission voted to approve the Conditional Use Permit for use of land for "Cargo Storage, Maintenance, and Repair Facilities" but such vote was conditioned on the following being adhered to by the Applicant:

1. The property owner shall continuously comply with all performance criteria in Article 7 pertaining to Cargo Container Storage Facilities and Cargo Repair and Maintenance Facilities, including, but not limited to, noise maximums and cargo container and chassis stacking height requirements, paving requirements, etc.
2. The property shall be developed in accordance with the Site Plan, Landscaping Plan, and Photometric Plan as revised, as approved by the City, prior to commencement of the cargo container storage use. Plant material shall be continuously maintained and replaced when dead.
3. All existing building exteriors shall modified in accordance with the City of Edgerton Unified Development Code. Applicant shall provide documentation for review and approval by City for service of utilities and compliance with ADA standards for all existing buildings to remain.
4. Cargo containers and chassis may be stored only in the designated, striped areas shown on the Site Plan.
5. No other outside storage of equipment or materials shall be allowed on the property.
6. Any future phases or additional areas used for cargo container maintenance and repair uses shall not commence until a Site Plan is submitted and approved by the City for that phase, including photometric and landscaping plans.
7. This Conditional Use Permit shall be valid for ten years from approval by the City of Edgerton.

WHEREAS, the City Governing Body, after reviewing the Conditional Use Permit and considering the criteria set forth in Article 7 of the City Zoning Regulations and the recommendations of the Planning Commission, finds the Conditional Use Permit should be approved.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS:

Section 1. The proposed Conditional Use Permit for use of the following land [located at at the southeast corner of 191st Street and Homestead Lane], for “Cargo storage, Maintenance, and Repair Facilities” is hereby approved:

All that part of the Northwest 1/4 of Section 3, Township 15, Range 22, and a part of Tract A and Tract B according to the survey recorded in Book 201207, Page 000700 in the Register of Deeds Office Johnson County, Kansas, in the City of Edgerton, Johnson County, Kansas, more particularly described as follows;

Commencing at the Southwest corner of the Northwest 1/4, of said Section 3; thence N 88° 26' 09" E, along the South line of the Northwest 1/4 of said Section 3, a distance of 771.32 feet, to the true Point of Beginning of subject tract; thence N 1° 31' 15" W, parallel with the East line of said Tracts A and B, a distance of 2653.33 feet, to a point on the North line of the Northwest 1/4 of said Section 3; thence N 88° 10' 27" E, along the North line of the Northwest 1/4 of said Section 3, a distance of 539.88 feet; thence S 1° 49' 35" E, along the East line of a tract of land described in Book 3047, Page 6 as filed in said register of deeds office, a distance of 355.00 feet, to the Southeast corner of said tract of land; thence S 88° 10' 27" W, along the South line of said tract of land, a distance of 21.73 feet, to a point on the East line of said Tract A; thence S 1° 31' 15" E, along the East line of said Tracts A and B, a distance of 2300.70 feet, to a point on the South line of the Northwest 1/4 of said Section 3; thence S 88° 26' 09" W, along the South line of the Northwest 1/4 of said Section 3, a distance of 520.03 feet, to the point of beginning.**Section 2.** The Conditional Use Permit approved by this Ordinance is expressly conditioned on the Applicant’s strict compliance with the seven Conditions set forth above, which were recommended by the Edgerton Planning Commission.

Section 3. The effectiveness of this Conditional Use Permit is conditioned upon the strict compliance by the applicant with the provisions contained herein and in the City of Edgerton Zoning Regulations. Should applicant fail to comply with any term or provision thereof and shall such failure continue following notice from City to applicant specifying the breach and actions to be taken to cure the same, then, at the direction of the City Administrator, applicant will be notified that this Conditional Use Permit is revoked and all uses permitted herein on the Property must immediately cease. Reinstatement following default may only be effected by action of the Governing Body. Wholly separate and apart from the specific conditions of the City’s Zoning Regulations are the City’s interest and duties to protect the public health, safety and welfare. Applicant agrees that this Ordinance shall not operate or be construed to impede or impair the lawful function of City government operation in this area.

Section 4. This ordinance shall take effect and be enforced from and after its publication once in the official city newspaper. All Zoning and Regulations of Edgerton, Kansas, affecting the use of the real property heretofore described which are inconsistent with this ordinance are hereby made inapplicable to said property until the Conditional Use Permit is vacated or is declared null and void.

PASSED by the Governing Body of the City of Edgerton, Kansas, and approved by the Mayor on the 9th day of January, 2014.

Donald Roberts, Mayor

(Seal)

ATTEST:

Janeice Rawles, City Clerk

APPROVED AS TO FORM:

Patrick G. Reavey, City Attorney

STAFF REPORT

December 10, 2013

To: Edgerton Planning Commission

Fr: Beth Linn, City Administrator

Mike Mabrey, Zoning Administrator

Re: Application CU-11-15-2013 for Conditional Use Permit for for a Cargo Container Storage, Maintenance and Repair Facility on International Transload Logistics, Lot 1 at the southeast corner of 191st Street and Homestead Lane

APPLICATION INFORMATION

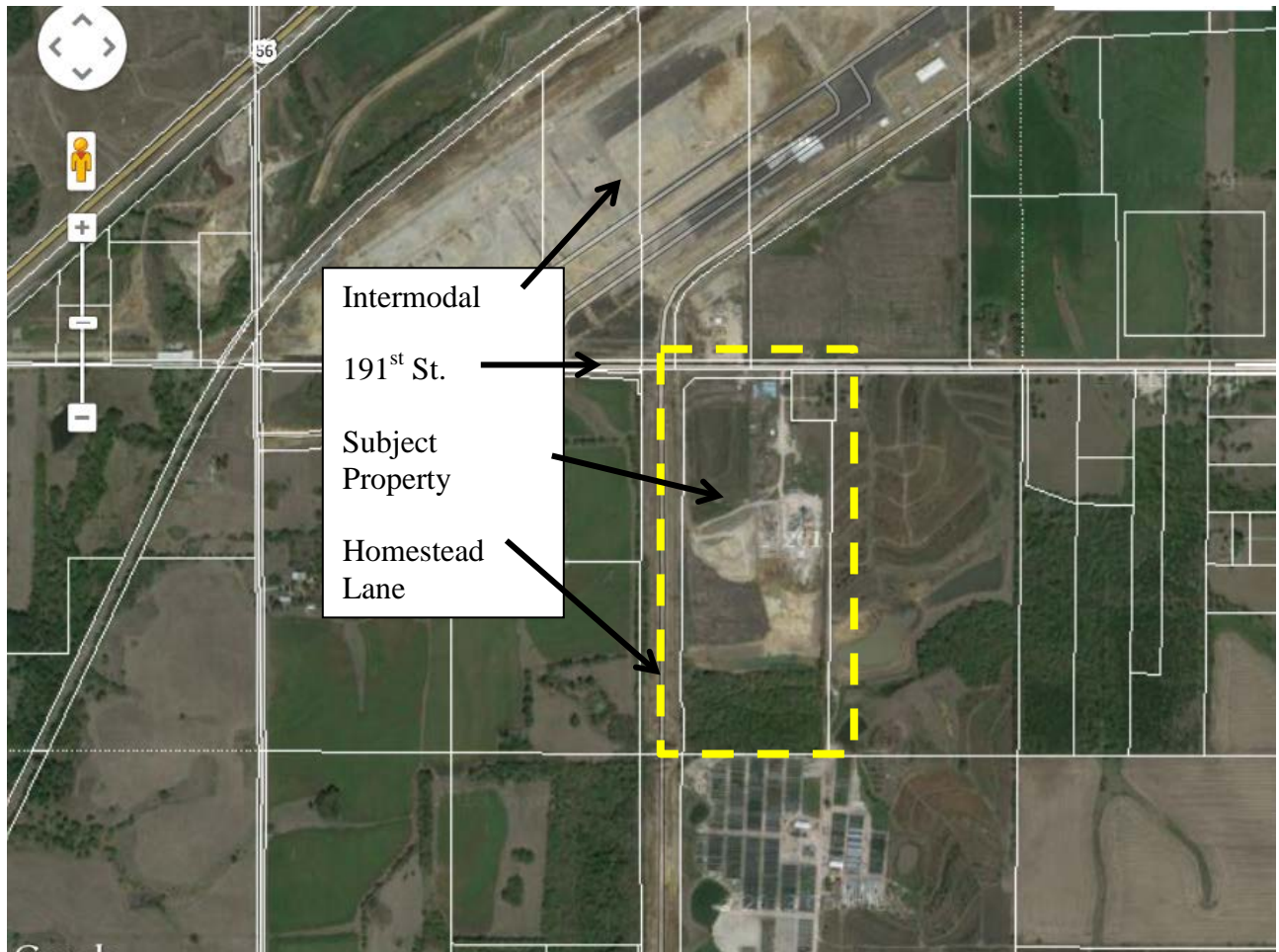
Applicant/Property Owner:	Owners: Omar and India Holtgraver; Applicant/Agent: International Transload Logistics
Requested Action:	Conditional Use Permit for International Transload Logistics Lot 1 for a Cargo Container Storage, Maintenance and Repair Facility
Legal Description:	Part of Section 3, Township 15, Range 22
Site Address/Location:	Approximately 31 acres at the southeast corner of 191st Street and Homestead Lane
Existing Zoning and Land Uses:	One residence and out buildings
Surrounding Zoning and Uses:	BNSF Intermodal Facility and L-P zoned land for warehouse development to the north in the City of Edgerton; a house in the unincorporated County to the east; a wholesale tree nursery to the south in unincorporated Johnson County; and vacant land to the west in the City of Edgerton.
Existing Improvements:	Single family home with out-buildings
Site Size:	Approximately 31 acres

PROJECT DESCRIPTION AND BACKGROUND: This land was annexed into the City of Edgerton in 2013. The property owner/application have submitted a final site plan application with the intention to operate a cargo container storage facility on Lot 1. Logistics Park Kansas City is located across 191st to the north. Demand for businesses to store and maintain cargo containers and chassis, such as the facility proposed here, is a by-product of the activity on

and around the intermodal facility. The logistics park and intermodal's primary function is to transport and redistribute containers and the products they contain. Since they are not in the business of storing containers for an extended period of time, there is a need for companies, like the applicant's, that specialize in storage and maintenance.

Figure 1: Subject Property and Immediate Vicinity

The subject property is located on the southeast corner of 191st Street and Homestead Lane, with about 500 feet of frontage along 191st.

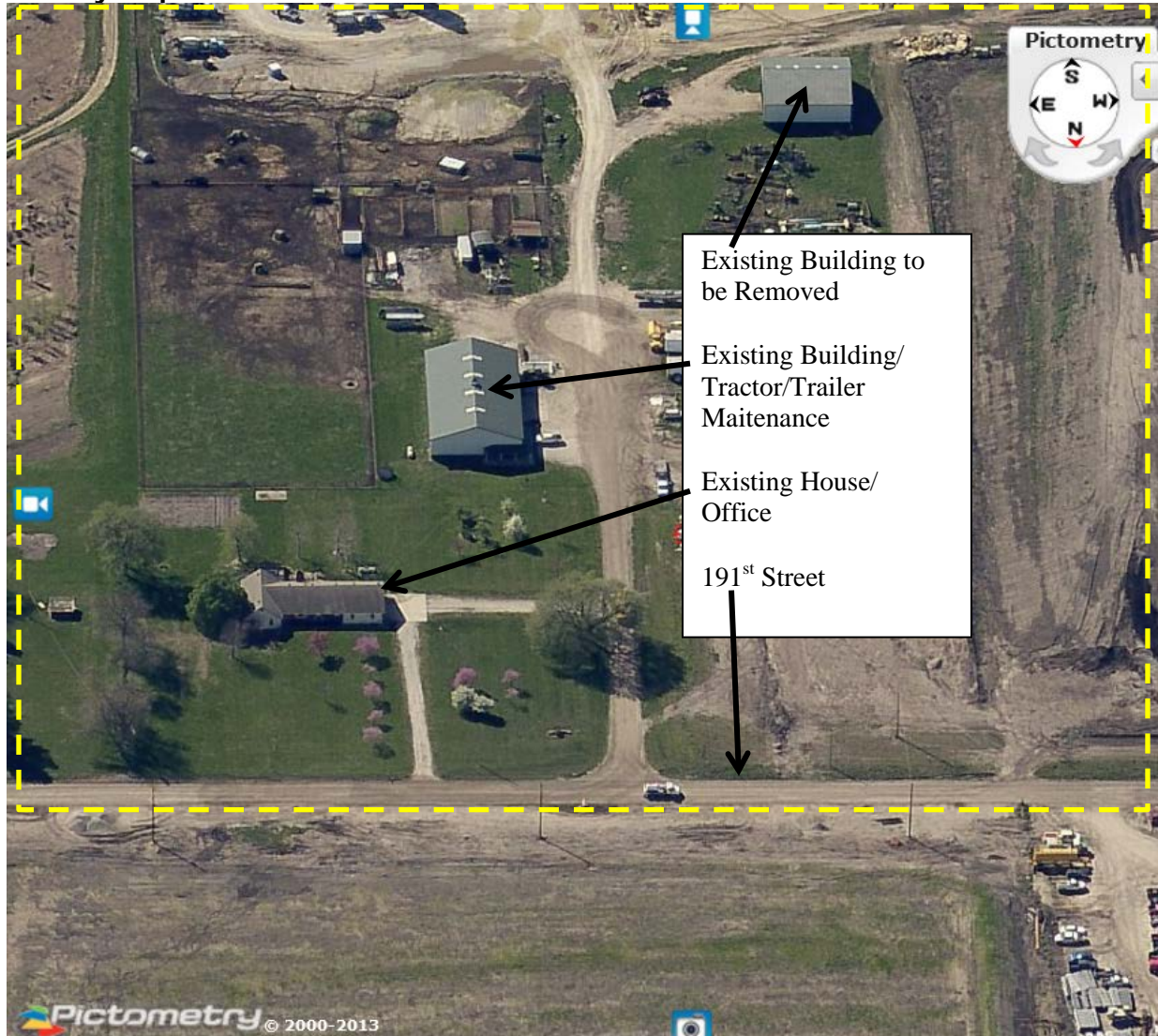


Infrastructure and Services:

- a. Homestead Lane and 191st Street are paved and designed to accommodate intermodal and logistic park truck traffic. Driveway and street connections will need to comply with city requirements regarding location and design.
- b. The property is located within the Big Bull Creek watershed, which flows south from 167th Street to the southern edge of the county at Homestead Lane.
- c. About four acres of the south part of the property is located within the flood plain of a tributary of Bull Creek. The site plan will need to avoid development within the floodplain. The floodplain area is ideal for a streamway corridor/park/public access use area.
- d. The property has sanitary sewer service via the Homestead Lane lift station located on Lot 2.

- e. The property is located within the service area of Rural Water District No. 7. A 12-inch water main is located along the 191st Street property frontage.
- f. Police protection is provided by the Johnson County Sheriff's Department under contract with the City of Edgerton. Fire protection is provided by Johnson County Rural Fire District No. 1. A fire station is located in the City of Edgerton, approximately 3 miles to the southwest.

Vicinity Map



STAFF ANALYSIS

The UDC allows cargo container storage, maintenance, and repair facilities in the L-P Zoning District if a Conditional Use Permit is first approved. The Planning Commission, in accordance with the procedures and standards of the UDC, may authorize buildings, structures, and uses as conditional uses in the specific instances and particular districts set forth provided that the location is appropriate, consistent with the Comprehensive Plan, that the public health, safety, morals, and general welfare will not be adversely affected, and that necessary safeguards will be provided surrounding property, persons, and neighborhood values, and further provided

that the additional standards of this Article specified as a condition of approval. No conditional use shall be authorized unless the Planning Commission finds that the establishment, maintenance, or operation of the Conditional Use meets the standards set forth in the UDC. The burden of proof is on the applicant to bring forth the evidence and the burden of persuasion on all questions of fact that are determined by the Planning Commission.

GENERAL CRITERIA

- a. The extent to which there is a need in the community for the proposed use. Demand for businesses to store and maintain cargo containers and chassis, such as the facility proposed here, is a by-product of the activity on and around the intermodal facility. The logistics park and intermodal's primary function is to transport and redistribute containers and the products they contain. Since they are not in the business of storing containers for an extended period of time, there is a need for companies, like the applicant's, that specialize in storage and maintenance. Placing these container storage facilities adjacent to the rail yard and the logistics park reduces the distance of travel, which equates to less pollution, wear on streets, cuts transportation costs, and centralizes perceived negative impacts from these facilities on the surrounding community. Staff determination: *Positive*
- b. The character of the neighborhood, including but not limited to: zoning, existing and approved land use, platting, density (residential), natural features, and open space. The BNSF Intermodal Facility is across 191st to the north. 192 acres of land, zoned L-P District in 2012, lies across 191st to the north. There is one residence located just to the east on 191st. There are a few homes on rural acreage further to the east at 191st Street and Waverly Road intersection (see item number 3, above). Farming and vacant land lie to both the east and south.

With rapidly progressing intermodal development, new road improvements, and the new I-35 interchange nearby, the character of the area is changing significantly from rural to industrial. The regional parks and floodplain areas will generally remain undeveloped, acting as open space, which will help to retain some of the existing rural character of the area. Staff determination: *Positive*

- c. The nature and intensity of the proposed use and its compatibility with the zoning and uses of nearby properties. Such determination should include the location, nature, and height of structures, walls, fences, and other improvements connected with the proposed use, their relation to adjacent property and uses, and the need for buffering and screening. Facilities such as the one proposed here provide for the storage, staging, and maintenance of cargo containers, semi-trailers, and chassis. The conditional use permit performance criteria require that this activity be conducted in a manner that minimizes the noise, dust, traffic congestion, aesthetic blight and other adverse environmental impacts of such a use on surrounding property. To ensure that the cargo container, semi-trailers, and maintenance facilities are operated in a safe manner, the permitted height of stacking of such containers, the cargo within the containers, the location and surface used, methods of securing the containers so as to prevent safety hazards, and accessibility for emergency and maintenance equipment are all factors addressed by the regulations. Adequate visual screening and landscaping of cargo containers from the public right-of-ways and adjacent properties is also required. The site must also be of sufficient size to

accommodate the clean, safe and orderly storage and maintenance of cargo containers, semi-trailers, and chassis with adequate lighting and signage.

The foregoing factors are addressed in the specific performance criteria, below. Staff determination: ***Positive***

- d. Suitability of the uses of the property without the proposed conditional use permit. The property is no longer in agricultural use. With the construction of the intermodal freight terminal and the logistics park adjacent to the north, the best use of this property has become industrial. Staff determination: ***Positive***
- e. Length of time the subject property has remained vacant without the proposed conditional use permit. Before annexation, the property was in agricultural use in unincorporated Johnson County for at least the previous 60-plus years for which information (aerial photography) is available. Staff determination: ***Positive***
- f. The extent to which the proposed use may detrimentally affect nearby property. The properties that will likely be most affected by this proposed zoning are the few parcels in residential use to the east. The nearest proposed trailer storage pad is about 300 feet from the nearest home. As the area transitions to industrial uses, the residential uses are short term in nature. No long term detrimental effects are expected. The stream and floodplain areas on the south end of the property will be undeveloped and as such, provide buffering and open space. Staff determination: ***Positive***
- g. The adequacy of ingress and egress to and within the site of the proposed use, traffic flow and control, the adequacy of off-street parking and loading areas, the adequacy of required yard and open space requirements and sign provisions. As noted in the Site Plan review, adequate ingress, egress, parking, and loading has been provided after suggested modifications. The stream and floodplain areas will be undeveloped and as such, they provide adequate open space. No signage is proposed. Staff determination: ***Positive***
- h. The availability and adequacy of required utilities and services to serve the proposed use. These utilities and services include, but are not limited to, sanitary and storm sewers, water, electrical and gas service, police and fire protection, schools, parks and recreation facilities and services, and other similar public facilities and services. Please also see the Infrastructure and Services review on page 2, above.
- i. The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the proposed use, or present parking problems in the vicinity of the property. 191st Street and Homestead Lane are improved to a standard that can accommodate industrial/truck traffic in the area. On-street parking will not be allowed and adequate parking is provided for this project. Staff determination: ***Positive***
- j. The environmental impacts that the proposed use would create (if any) including, but not limited to, excessive storm water runoff, water pollution, air pollution, noise pollution, excessive nighttime lighting or other environmental harm. The City will follow NPDES (stormwater management requirements) guidelines that require the developer to address runoff and water pollution mitigation measures as part of the development of the property. Mitigation of pollution in the form of light, off-site, should be addressed by the photometric

plan. Staff determination: ***Positive***

- k. The economic impact of the proposed use on the community. Prior to the development of the BNSF intermodal and logistics park, there have been few commercial and industrial uses within the City. Warehousing and related uses in the L-P District, if built, have the potential to benefit the residents and community in a positive way by providing needed jobs and tax revenues. Staff determination: ***Positive***
- l. The relative gain (if any) to the public health, safety, and welfare from a denial of the application for conditional use permit as compared to the hardship imposed upon the conditional use applicant from such denial. There would be little gain to the public health, safety and welfare of the City of Edgerton and the property owner would be denied a use compatible with the intermodal facility if the zoning is denied. The City would be adversely impacted due to the lost opportunity for jobs and tax revenue if anticipated logistics park uses were to locate in another nearby community. There is substantial floodplain on the south end of the property. This area is designated as a streaway corridor on the recently completed Southwest Johnson County Area Plan. Consideration should be given to dedication of an easement to allow a public use trail along the streamway in the future. Staff determination: ***Positive***
- m. Consistency with the Comprehensive Plan, Capital Improvement Plan, ordinances, policies, and applicable City Code of the City of Edgerton, and the general safety, health, comfort and general welfare of the community. The Future Land Use Map (attached) within the Comprehensive Plan designates the subject property for industrial development. Staff determination: ***Positive***
- n. The recommendation of professional staff. (Ord. 798; 2005) Please see the Recommendations Section, below.

CARGO CONTAINER STORAGE, REPAIR, AND MAINTENANCE FACILITY PERFORMANCE CRITERIA.

All cargo container storage and cargo container repair and maintenance facilities (collectively referred to as "facilities") shall be subject to the following performance provisions:

- 1. Access: No cargo containers or semi-trailers (either on or off a chassis), or a chassis, may be stored in a manner that impedes access to public rights-of-way, public utility or drainage easements, structures, and buildings. ***Final site plan complies.***
- 2. Exterior Lighting: Facilities shall provide lighting on-site, including at all vehicular entrances and exits. A lighting plan shall be submitted and approved. ***Property owner required to submit a Photometrics plan in conformance with the Photometrics standards included in the L-P District***
- 3. Minimum Lot Size: Facilities shall have a minimum lot size of twenty (20) acres. ***Property complies with 30 acres.***
- 4. Noise: Noise from businesses and facilities shall not exceed 60 dB(A) in any adjacent residential district or 70 dB(A) in any adjacent commercial or industrial district or property.

Noise issues are not addressed in the applicant's proposal; however, the use must continuously comply with these noise maximums in the conduct of the business.

5. Paving: All interior driveways, parking, loading, and storage areas shall be paved and dust-free. For purposes of this stipulation:
 - i. Paving shall mean concrete or asphalt: and
 - ii. Dust-free shall mean that all interior driveways and storage area surfaces shall be kept free of dust, dirt or other materials to prevent the migration of dust off-site. *Permanent parking area material has not been specified. Permanent surface must be asphalt or concrete.*
6. Parking: Facilities shall comply with the Article 5.2 L-P District Off Street Parking and Loading regulations. No portion of any required off-street parking or loading/unloading areas shall be used for the storage of cargo containers, semi-trailers (either on or off a chassis), chassis or similar storage devices. *The proposed use shall continuously comply.*
7. Cargo Container Stacking: Cargo containers shall not be stacked more than five (5) in number. *The proposed use must continually comply and not exceed the maximum stacking height.*
8. Chassis Stacking/Racking: Empty chassis may be stored on end (racking), or may be stacked. When stacked, chassis shall not be more than five (5) in number. *The proposed use must continually comply and not exceed the maximum stacking height.*
9. Screening and Landscaping: Screening may be required on the perimeter of the property. Screening shall be a combination of fencing and landscaping or berming and landscaping. Screening shall comply with requirements Article 5.2 L-P District Landscape Standards. A Type 4 Perimeter Buffer is required on the east property line due to the residential adjacent use to the front face of the buildings. A Type 2 Perimeter Buffer is required on the Lot 1 west property line to the back of Transfer Dock building. Specific requirements for type of plant, spacing, percentage of single species, etc. must comply with Edgerton Unified Development Code. The type 2 buffer requires trees at 50' spacing and bushes at 48" spacing. All landscaping shall be included on Lot 1. Plant material must be continuously maintained and replaced when dead. No fence has been noted on the site plan. Any fence must be submitted to City for review and approval. Fence placement and material must meet Edgerton UDC requirements for L-P District.
10. Setbacks and Separation Distance: All buildings, structures, parking and other uses on the property, shall be subject to the setback requirements in Article 5.2 L-P District Setback, Yard, Area Regulations, except, however, the parking or storage of cargo containers or semi-trailers (either on or off a chassis), and chassis (racked or stacked) shall be subject to the following setback standards that may vary depending upon the difference scenarios set forth below:

- i. When abutting (touching), or across the street from non-residentially zoned property, such parking or storage shall be setback from any exterior property line of the subject property a distance equal to the height of the cargo container or semi-trailer (either on or off a chassis), and chassis (racked and stacked).
- ii. When abutting (touching) public right-of-way, such parking or storage shall be setback from any exterior property line of the subject property a distance equal to the height of the cargo containers or semi-trailers (either on or off a chassis), and chassis (racked or stacked).
- iii. When abutting (touching), or across the street from, residentially zoned property, such parking and storage shall be setback a minimum of 250 feet from the nearest property line of the residentially zoned property. There is County Rural (residential) zoned property abutting to the east and south of the subject property. *The application does not meet this performance requirement. The City may consider allowing a deviation according to the specific requirements of Article 7.2 D 14.*

Deviations: In the event that an applicant desires to deviate from the above performance standards and provisions for certain Conditional Uses, the applicant shall submit written information to the Governing Body indicating the circumstances which are believed to necessitate the need for a deviation(s), and the applicant shall provide a list of alternative materials, designs or methods that are equivalent to these performance standards and provisions. The application may only be approved if findings are made by the Governing Body that a) due to the circumstances of the application, it would be unnecessary to impose the standard(s) and equivalent alternatives should be allowed, b) that the spirit and intent of the Regulations are being met, c) that granting the deviation shall not adversely affect adjacent or nearby property, and d) the application shall otherwise comply with all building code(s) and safety requirements.

- iv. When abutting (touching), or across the street from, a habitable dwelling, such parking and storage shall be setback a minimum of 300 feet from the nearest dwelling. *The nearest home is about 300 feet from the storage area. The proposed Site Plan complies.*
11. Signage: Business signs shall be allowed according to Article 5.2 L-P District Signage regulations. No signage, other than shipping company identification logos and placards, shall be allowed on any cargo container, semi-trailer or chassis. *No signage is proposed with this application. Signage proposed later shall receive separate approval according to the provisions of the UDC.*
12. Site Plan: A site plan shall be submitted with the application. The site plan shall be prepared in accordance with the requirements of Article 9 (B) (3) of these regulations. *Final Site Plan shall be revised to comply with all stipulations of Final Site Plan and Conditional Use Permit review.*

13. Other Rules and Regulations. All facilities shall abide by any and all governmental rules, regulations, codes and specifications now in effect or hereafter adopted that would be applicable to this permit or the use of the property by the applicant/landowner. *The proposed use must comply with these requirements.*

RECOMMENDATIONS

City staff recommends **approval** of the Conditional Use Permit for International Transload Logistics, Lot 1 subject to compliance with the following stipulations:

1. The property owner shall continuously comply with all performance criteria in Article 7 pertaining to Cargo Container Storage Facilities and Cargo Repair and Maintenance Facilities, including, but not limited to, noise maximums and cargo container and chassis stacking height requirements, paving requirements, etc.
2. The property shall be developed in accordance with the Site Plan, Landscaping Plan, and Photometric Plan as revised, as approved by the City, prior to commencement of the cargo container storage use. Plant material shall be continuously maintained and replaced when dead.
3. All existing building exteriors shall modified in accordance with the City of Edgerton Unified Development Code. Applicant shall provide documentation for review and approval by City for service of utilities and compliance with ADA standards for all existing buildings to remain.
4. Cargo containers and chassis may be stored only in the designated, stripped areas shown on the Site Plan.
5. No other outside storage of equipment or materials shall be allowed on the property.
6. Any future phases or additional areas used for cargo container maintenance and repair uses shall not commence until a Site Plan is submitted and approved by the City for that phase, including photometric and landscaping plans.
7. This Conditional Use Permit shall be valid for ____ years from approval by the City of Edgerton.

ATTACHMENTS

Conditional Use Permit Application CU-11-15-2013 for International Transload Logistics, Lot 1

CITY OF EDGERTON, KANSAS
APPLICATION FOR CONDITIONAL USE PERMIT

Please print or type

REQUESTING CONDITIONAL USE PERMIT FOR: Container Storage
LOCATION OR ADDRESS OF SUBJECT PROPERTY: SEC 191st & Homestead

LEGAL DESCRIPTION: See Attached - Lot 1 (ITL)

ZONING ON SUBJECT PROPERTY: AG CURRENT LAND USE: AG
Currently rezoning to LP

PROPERTY OWNER'S NAME(S): Holtgraver PHONE: _____

COMPANY: _____ FAX: _____

MAILING ADDRESS: 32355 W 191st St. Edgerton KS 66021
STREET CITY STATE ZIP

APPLICANT/AGENT'S NAME(S): ITL (Craig Swepe) PHONE: 913 621 2750

COMPANY: ITL FAX: 913 621 2670

MAILING ADDRESS: 701 S 38th St. KC KS 66106
STREET CITY STATE ZIP

ENGINEER/ARCHITECT'S NAME(S): Rob Johnson PHONE: 913 307 2528

COMPANY: SKW FAX: 913 888 7868

MAILING ADDRESS: 11250 Corporate Ave Lenexa KS 66219
STREET CITY STATE ZIP

SIGNATURE OF OWNER OR AGENT: [Signature]
If not signed by owner, authorization of agent must accompany this application.

END 4:08PM

FOR OFFICE USE ONLY

Case No.: CU- 11-15-2013 Amount of Fee Paid: \$ 250⁰⁰ Date Fee Paid: 11-15-13

Received By: Delora Skragg Date of Hearing: 12/10/13

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Ordinance No. 964 Ordinance Adopting a Recommendation by the City Planning Commission to Approve Rezoning of Approximately 20 Acres of Land [Located At Approximately 30700 West 191st Street] in Edgerton, Kansas from Johnson County RUR, Rural Zoning To City Of Edgerton L-P Logistics Park Zoning District

Department: Administration

Background/Description of Item: The City of Edgerton received an application RZ-11-18-2013 for rezoning from William E. Dailey and Lucy E. Dailey (Owner)/Lynn Boyd, JB Hunt (Applicant), requesting to rezone 30700 West 191st Street from Johnson County RUR to City of Edgerton Logistics Park (L-P) zoning. The property requested to be rezoned was annexed into the City of Edgerton on December 3, 2013. The parcel contains approximately 20 acres. JB Hunt has requested to rezone the parcel to accommodate a cargo container storage and maintenance facility to support Logistics Park Kansas City.

Johnson County Planning staff, on behalf of the City of Edgerton, reviewed this rezoning application with respect to the Edgerton Comprehensive Plan, Zoning and Subdivision Regulations, and the laws in Kansas, in particular the "Golden Criteria" as established by the Supreme Court of Kansas in 1978. Attached is the staff report including the review of this rezoning based on the Golden Criteria. The Planning Commission held a public hearing on December 10, 2013, 2013 regarding this rezoning. The Planning Commission recommended approval of the application with the following stipulations:

1. All Site Plan application requirements of the City shall be met.
2. All infrastructure requirements of the City shall be met.
3. Prior to any grading on the subject property, a Land Disturbance Permit and a Stormwater Water Quality Management Plan shall be submitted and approved by the City.
4. Prior to issuance of building permits, the property shall be developed in accordance with a Site Plan reviewed and approved by the City.

Enclosure: Draft Ordinance No. 964
Staff Report from December 10, 2013 Planning Commission
Application

Related Ordinance(s) or Statute(s):

Recommendation: Approve Ordinance No. 964 Ordinance Adopting a Recommendation by the City Planning Commission to Approve Rezoning of Approximately 20 Acres of Land [Located At Approximately 30700 West 191st Street] in Edgerton, Kansas from Johnson County RUR, Rural Zoning To City Of Edgerton L-P Logistics Park Zoning District

Funding Source: N/A

Prepared by: Beth Linn, City Administrator
Date: January 6, 2014

ORDINANCE NO. 964

AN ORDINANCE ADOPTING A RECOMMENDATION BY THE CITY PLANNING COMMISSION TO APPROVE REZONING OF APPROXIMATELY 20 ACRES OF LAND [LOCATED AT APPROXIMATELY 30700 WEST 191ST STREET] IN EDGERTON, KANSAS FROM JOHNSON COUNTY RUR, RURAL ZONING TO CITY OF EDGERTON L-P LOGISTICS PARK ZONING DISTRICT

WHEREAS, the Planning Commission has recommended that a rezoning request -- from Johnson County RUR, Rural zoning to City of Edgerton L-P Logistics Park -- be approved for approximately 20 acres of land, approximately located at 30700 West 191st Street, the legal description of which is set forth below; and

WHEREAS, all newspaper and mailed notifications were performed and a public hearing was properly held before the City Planning Commission.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS:

Section 1. That the following legally described property [at approximately 30700 West 191st Street] is hereby rezoned from Johnson County RUR, Rural Zoning to City of Edgerton L-P Logistics Park Zoning District, and City Staff is directed to reflect said rezoning in the City's Official Zoning map and other City records:

35-14-22 N ½ W ½ SE ¼ SW ¼ 10 Acres M/L and 35-14-22 E ¼ SW ¼ SW ¼ 10 Acres M/L, both in Johnson County, Kansas.

Section 2. That the Governing Body, in making its decision on the rezoning, considered City Staff's comments and recommendations. The Governing Body also based its decision on the following criteria:

- a) The character of the neighborhood, including but not limited to: zoning, existing and approved land use, platting, density (residential), natural features, and open space.
- b) Compatibility of the proposed zoning and uses permitted therein with the zoning and uses of nearby properties.
- c) The extent to which the zoning amendment may detrimentally affect nearby property has been addressed.
- d) The relative gain (if any) to the public health, safety, and welfare from a denial of the rezoning application as compared to the hardship imposed upon the rezoning applicant from such denial.

- e) Consistency with the Comprehensive Plan, Utilities and Facilities Plans, Capital Improvement Plan, Area Plans, ordinances, policies, and applicable City Code of the City of Edgerton.

Section 3. This ordinance shall take effect and be enforced from and after its publication once in the official city newspaper.

ADOPTED BY THE GOVERNING BODY AND APPROVED BY THE MAYOR OF THE CITY OF EDGERTON, KANSAS ON THE 9th DAY OF JANUARY, 2014.

CITY OF EDGERTON, KANSAS

By: _____
Donald Roberts, Mayor

ATTEST:

JANEICE RAWLES, City Clerk

APPROVED AS TO FORM:

Patrick G. Reavey, City Attorney

STAFF REPORT

December 7, 2013

To: Edgerton Planning Commission
Fr: Beth Linn, City Administrator
Mike Mabrey, Zoning Administrator
Re: Application RZ 11-18-2013 for Rezoning from Johnson County RUR, Rural zoning to City of Edgerton L-P Logistics Park at approximately 30700 West 191st Street

APPLICATION INFORMATION

Applicant/Property Owner: William E. Dailey and Lucy E. Dailey (Owner)
Lynn Boyd, JB Hunt (Applicant)

Requested Action: Rezoning from County RUR, Rural zoning to L-P, City of Edgerton Logistics Park Zoning District

Legal Description: Part of Section 35, Township 14, Range 22

Site Address/Location: Approximately 30700 West 191st Street

Existing Zoning and Land Uses: Agriculture

Surrounding Zoning and Uses: L-P zoned land for cargo container storage and warehouse development to the west in the City of Edgerton; a farmstead in the unincorporated County to the south; farmland in unincorporated Johnson County to the north and to the east.

Existing Improvements: None

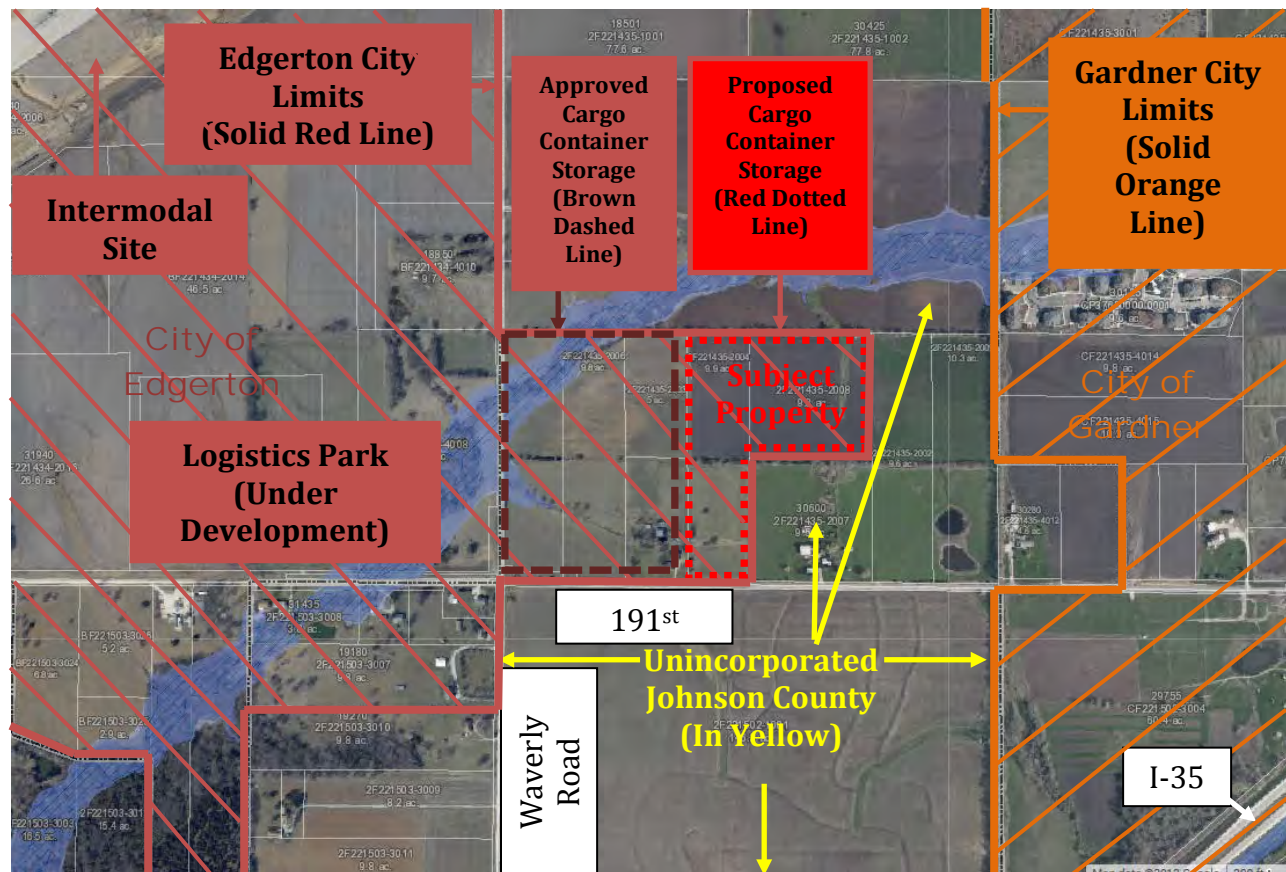
Site Size: About 20 acres

PROJECT BACKGROUND AND DESCRIPTION: This land was annexed into the City of Edgerton on December 3, 2013. The subject property has been in farm use since at least the 1940s, the earliest date for which aerial photography is available, and probably much longer. There are no structures on the property. It has about 330 feet of frontage along 191st Street.

The rezoning is requested to facilitate the development of the property for a cargo container and truck storage facility. The BNSF intermodal facility is located to the northwest across Waverly Road and the warehouse industrial (logistics) park is across Waverly Road directly to the west. Demand for businesses to store and maintain cargo containers and chassis, such as the facility proposed here, is a by-product of the activity on and around the intermodal facility.

The logistics park and intermodal's primary function is to transport and redistribute containers and the products they contain. Since they are not in the business of storing containers for an extended period of time, there is a need for companies, like the applicant's, that specialize in storage and maintenance.

Figure 1: Subject Property



Infrastructure and Services:

- Access is provided by 191st Street, which is 26 feet wide with no shoulders, but is planned for future improvement to pavement that will support intermodal and logistic park traffic. Proceeding west on 191st Street and the newly constructed Homestead Road to the south provides access to Interstate 35.
- The property is located within the Big Bull Creek watershed, which flows south from 167th Street to the southern edge of the county at Homestead Lane. A stormwater plan has been submitted, but it has not yet been approved by the City Engineer.
- The property does not have any areas within the flood plain.
- The property shows a connection to the Gardner sewer to the north. A sanitary sewer main is planned to be extended through the Nickell parcel (adjacent on the west) to this parcel. The sewer line should also be extended through this parcel to allow the property to the east to connect.
- The property is within the Water District 7 service area, but the nearest water main is over 1,000 feet to the west at the Waverly Road intersection. A new main will need to be extended to this property.

- f. Police protection is provided by the Johnson County Sheriff's Department under contract with the City of Edgerton. Fire protection is provided by Johnson County Rural Fire District No. 1. A fire station is located in the City of Edgerton, to the southwest.

Vicinity Map

STAFF ANALYSIS

The requested zoning is L-P, Logistics Park. Permitted uses include rail yards, distribution, warehousing, and related uses. The City's Unified Development Code (UDC) defines this district as a limited multimodal industrial zone created to support activities related to trade, rail and other transport services.

The purpose of the BNSF Intermodal site, located to the northwest across Waverly Road, is to transfer cargo containers between trains and trucks. The logistics park, which is the area developing around the intermodal facility located adjacent to the west, contains warehouses and related facilities to prepare incoming goods from trains for truck distribution to consumers, and to prepare outgoing goods for transfer from trucks to trains.

A site plan is included with this application for rezoning.

Staff has reviewed this rezoning application with respect to the Edgerton Unified Development Code, the laws in Kansas, and the "Golden Criteria" as established by the Supreme Court of Kansas in 1978. The following is staff's review.

1. Need for the Proposed Change. The subject property has County zoning. Given the property's location next to the logistics park, the anticipated uses of the property are intermodal facility and logistics park related uses such as the proposed container storage facility. The L-P Zoning District is the most compatible designation for these uses.
2. Magnitude of the Change. The existing County zoning is considered a holding designation due to the property's location next to the intermodal facility. The property has been in farm use. The magnitude of change is not considered extreme or rare when property is being developed for its planned end use, industrial development, as shown on Edgerton's Future Land Use Map within the Comprehensive Plan (*attached*).
3. Whether or not the change will bring harm to established property rights. The properties potentially negatively affected by this proposed zoning are the parcels in residential use to the east and north. With the landscaping, berm, and 150 foot setbacks proposed to the east and south, those parcels can be protected. The site plan only shows 50 foot setbacks along property to the property to the north, however, and other mitigation matters should be discussed. The property to the west has already been approved for a use similar to the applicant's and will not likely suffer any harm.
4. Effective use of Land. Logistics Park related development at this location is an effective and efficient use since the property is adjacent to the intermodal facility and the developing logistics park. Warehousing and related uses will buffer rail yard noise and encourage related activity around it, concentrating industrial development rather than dispersing it throughout the community.

5. The extent to which there is a need in the community for the uses allowed in the proposed zoning. Placing warehousing and related facilities, such as container storage, adjacent to the intermodal rail yard puts an intermediate destination for some of the goods in transit and empty containers in transition in close proximity to their rail origin, reducing truck traffic in the surrounding area and allowing for more efficient goods distribution.
6. The character of the neighborhood, including but not limited to: zoning, existing and approved land use, platting, density (residential), natural features, and open space. The recently opened BNSF Intermodal Facility is located to the northwest. There is City of Edgerton zoned L-P District land adjacent to the west and beyond, across Waverly Road. There is one farmstead with a home located adjacent to the south and there are parcels in farm use and vacant to both the north and east. The City of Gardner is 700 feet to the east.

With rapidly progressing intermodal development, extensive, recently completed road improvements in the area, and the new I-35 interchange nearby, the character of the area is changing significantly from rural to industrial. The regional parks and floodplain areas nearby will generally remain undeveloped, providing open space, wildlife corridors, streamway buffers, and hiking, biking, and pedestrian corridors.

7. Compatibility of the proposed zoning and uses permitted therein with the zoning and uses of nearby properties. The proposed zoning is compatible with the planned future uses of property to the west. Nearby residential land uses are likely short-term in nature. So, too, is the rural character of the area.
8. Suitability of the uses to which the property has been restricted under its existing zoning. The existing County zoning is a holding designation for this property. The property is no longer viable for agricultural use. With the construction of the intermodal freight terminal and the logistics park to the west, the best use of this property has become industrial.
9. Length of time the subject property has remained vacant under the current zoning designation. Before annexation, the property was in agricultural use in unincorporated Johnson County for at least the previous 60-plus years for which information (aerial photography) is available.
10. The extent to which the zoning amendment may detrimentally affect nearby property. As noted, the nearby residential and rural uses are likely short-term in nature.
11. Consideration of rezoning applications requesting Planned Development Districts (PUD) for multifamily and non-residential uses should include architectural style, building materials, height, structural mass, siting, and lot coverage. This is not a request for a PUD.
12. The availability and adequacy of required utilities and services to serve the uses allowed in the proposed zoning. These utilities and services include, but are not limited to, sanitary and storm sewers, water, electrical and gas service, police and fire protection, schools, parks and recreation facilities and services, and other similar public facilities and services. Utilities will be provided by the developer or the City in conjunction with development of the property.

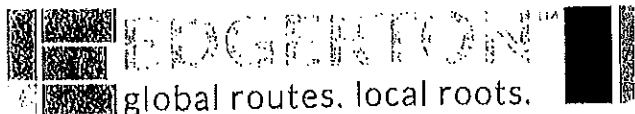
13. The extent to which the uses allowed in the proposed zoning would adversely affect the capacity or safety of that portion of the road network influenced by the uses, or present parking problems in the vicinity of the property. 191st Street, which is 26 feet wide with no shoulders, is planned for future improvement to pavement that will support intermodal and logistic park traffic. On-street parking will not be allowed and adequate parking must be provided for the project.
14. The environmental impacts that the uses allowed in the proposed zoning would create (if any) including, but not limited to, excessive storm water runoff, water pollution, air pollution, noise pollution, excessive nighttime lighting or other environmental harm. The City will follow NPDES (stormwater management requirements) guidelines that require the developer to address runoff and water pollution mitigation measures as part of the development of the property. Mitigation of pollution in the form of light is addressed as part of the site plan.
15. The economic impact on the community from the uses allowed in the proposed zoning. Prior to the development of the BNSF intermodal and logistics park, there have been few commercial and industrial uses within the City. Warehousing and related uses allowed in the L-P District, if built, have the potential to benefit the residents and community in a positive way by providing needed jobs and tax revenues.
16. The relative gain (if any) to the public health, safety, and welfare from a denial of the rezoning application as compared to the hardship imposed upon the rezoning applicant from such denial. There would be little gain to the public health, safety and welfare of the City of Edgerton and the property owner would be denied a use compatible with the intermodal facility if the zoning is denied. The City would be adversely impacted due to the lost opportunity for jobs and tax revenue if anticipated logistics park uses were to locate in another nearby community.
17. Consistency with the Comprehensive Plan, Capital Improvement Plan, ordinances, policies, and applicable City Code of the City of Edgerton. The Future Land Use Map within the Comprehensive Plan designates the subject property for industrial (western-most 10 acres) and commercial (eastern-most 10 acres) development.
18. The recommendation of professional staff. See Recommendations Section, below.

RECOMMENDATION

Based on the above staff analysis, city staff recommends **approval** of the proposed rezoning of the subject property from County RUR, Rural zoning to L-P, City of Edgerton Logistics Park Zoning District, with the following stipulations:

1. All Site Plan application requirements of the City shall be met.
2. All infrastructure requirements of the City shall be met.
3. Prior to any grading on the subject property, a Land Disturbance Permit and a Stormwater Water Quality Management Plan shall be submitted and approved by the City.
4. Prior to issuance of building permits, the property shall be developed in accordance with a Site Plan reviewed and approved by the City.

Attachment:
Rezoning Application RZ11-18-2013
City of Edgerton Future Land Use Map



LOCATION OR ADDRESS OF SUBJECT PROPERTY: +/- 30700 West 191st Street

PURPOSE FOR REZONING: To allow for development of container storage facility

REQUESTED REZONING CHANGE: FROM Residential TO L-P Logistics Park District
(Current Zoning) (Proposed Zoning)

LEGAL DESCRIPTION: See Attached

CURRENT LAND USE: Agricultural

PROPERTY OWNER'S NAME(S): William and Lucy Dailey PHONE: N/A

COMPANY: N/A FAX: N/A

MAILING ADDRESS: 8535 Hayes Street Overland Park KS 66212
Street City State Zip

APPLICANT/AGENTS NAME(S): Lynn Boyd PHONE: (479) 659-6970

COMPANY: J.B. Hunt FAX: (479) 820-5282

MAILING ADDRESS: 705B North Bloomington Lowell AR 72745
Street City State Zip

ENGINEER/ARCHITECT'S NAME(S): Michael R. Osbourn PHONE: (913) 894-5150

COMPANY: Kaw Valley Engineering, Inc. FAX: (913) 894-5977

MAILING ADDRESS: 14700 West 114th Terrace Lenexa KS 66215
Street City State Zip

SIGNATURE OF OWNER OR AGENT: Ed & Lucy Dailey
If not signed by owner, authorization of agent must accompany this application.

FOR OFFICE USE ONLY

Case No.: RZ- 11-18-2013 Amount of Fee Paid: \$ 250⁰⁰ Date Fee Paid: 11/20/13

Received By: Debra S. Dragg Date of Hearing: 12/10/13

CERTIFIED LETTERS: The applicant will be responsible for mailing notices (see attached Property Owner Notification Letter) of the public hearing for the requested rezoning by certified mail, return receipt requested, to all owners of land within the notification area: two hundred (200) feet within the city limit, one thousand (1,000) feet in the unincorporated area of the subject property. These notices must be sent a minimum of twenty (20) days prior to the public hearing. Information regarding ownership

vs. 9-9-11

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Ordinance No. 965 Adopting the Planning Commission's Recommendation to Approve a Conditional Use Permit to Allow Use of Land, in the L-P, City of Edgerton Logistics Park Zoning District Generally Located at 30700 West 191st Street, For "Cargo Storage, Maintenance, and Repair Facilities"

Department: Administration

Background/Description of Item: The City has received application CU-11-18-2013 requesting a conditional use permit for operation of a cargo container storage, maintenance, and repair facilities at the 30700 West 191st Street from William E. Dailey and Lucy E. Dailey (Owner) and Lynn Boyd, JB Hunt (Applicant).

Johnson County Planning staff, on behalf of the City of Edgerton, reviewed this conditional use permit application with respect to the City of Edgerton Unified Development Code (UDC). Please find enclosed with this packet the Staff Report prepared for the Planning Commission meeting on December 10, 2013.

In order to recommend approval or disapproval of a proposed conditional use permit (CUP), the Planning Commission and Governing Body shall determine whether the proposed use is found to be generally compatible with surrounding development and is in the best interest of the City. In making such determination, Section 7.1 (C) of Article 7 of the UDC states that the Planning Commission and Governing Body may consider all factors they deem relevant to the questions of compatibility and the best interest of the City. In addition, Section 7.2 (D) of the UDC details requirements to be considered for a conditional use permit for cargo container storage, repair and maintenance facilities. The analysis of these factors is detailed in the attached staff report.

In 2012, the City of Edgerton adopted performance standards for all businesses requesting a conditional use permit for the operation of a cargo container storage, maintenance and repair facility. These standards provided additional criteria specific to the operation of these types of businesses and the interaction of these businesses with the surrounding properties, particularly for those that locate adjacent to residential properties.

The Edgerton Unified Development Code (UDC) allows for an applicant to request a deviation from these standards. In the event that an applicant desires to deviate from the performance standards and provisions for certain Conditional Uses, the applicant shall submit written information to the Governing Body indicating the circumstances which are believed to necessitate the need for a deviation(s), and the applicant shall provide a list of alternative materials, designs or methods that are equivalent to the performance standards and provisions for the L-P Zoning District, Section 5.4, Sections G through Q in the regulations. The application may only be approved if findings are made by the Governing Body that 1) due to the circumstances of the application, it would be unnecessary to impose the standards(s) and equivalent alternatives should be allowed, b) that the spirit and intent of the regulations are being met, c) that granting the deviation shall not adversely affect adjacent or nearby property, and d) the application shall otherwise comply with all building code(w) and safety requirements.

The applicant has requested two deviations from the performance standards.

1. *Reduce the 250 foot setback required when abutting (touching), or across the street from, residentially zoned property for property directly to the East.* There is County Rural (residential) zoned property abutting to the east. This parcel is zoned residential and contains a single family residence. The proposed site plan includes a 150 foot setback and significant landscaping berm to protect this

parcel. Planning Commission extended the berm to the south to shield trucks turning into the facility from shining in residence to east. Extending berm would also provide some mitigation of noise of trucks as they turn onto 191st Street. Plantings shall be placed on berm as required Code to provide natural looking buffer to residence to east.

2. *Reduce the 250 foot setback required when abutting (touching), or across the street from, residentially zoned property for property directly to the North and South.* The property to the north does not currently have a residential structure but would be eligible for a structure as it is zoned Rural Residential. The area of the property directly adjacent to the subject property is mostly floodplain and would be difficult to develop in the future. There is a residence on an associated property approximately 770 away adjacent to Waverly Road. The proposed site plan shows a 50 foot setback with landscaping. In addition, as one of the stipulations to the conditional use permit, the applicant agreed to limit container stacking to two units high adjacent as an additional consideration. The property directly to the South is zoned Rural Residential and eligible for a residence; however, it is owned by Edgerton Land Holding Company. Staff anticipates future development on that property would be industrial warehousing.

The Planning Commission held a public hearing on December 10, 2013 regarding this conditional use permit application. The Planning Commission recommended approval of the conditional use permit application including the deviations with the following stipulations:

1. Additional mitigation measures are submitted by the applicant with regard to the setback along the north property line.
2. Revised landscaping plan shall be submitted and approved. The revised plans shall include modification of the berm closed to the southeast property line as additional mitigation measure for the property to the east. Additional mitigating measures along north property line shall be submitted and approved.
3. The property owner shall continuously comply with all performance criteria in Article 7 pertaining to Cargo Container Storage Facilities and Cargo Repair and Maintenance Facilities, including, but not limited to, noise maximums and cargo container and chassis stacking height requirements, paving requirements, etc.
4. The property shall be developed in accordance with the Site Plan, Landscaping Plan, and Photometric Plan as revised, as approved by the City, prior to commencement of the cargo container storage use. Plant material shall be continuously maintained and replaced when dead.
5. Detailed building construction plans shall be submitted as required for building permit review. All new building exteriors shall comply with the City of Edgerton Unified Development Code. Applicant shall provide documentation for review and approval by City for service of utilities and compliance with ADA standards for all existing buildings to remain.
6. Cargo containers and chassis may be stored only in the designated, striped areas shown on the Site Plan.
7. No other outside storage of equipment or materials shall be allowed on the property.
8. This Conditional Use Permit shall be valid for ten years from approval by the City of Edgerton.
9. Cargo containers stacked only two (2) high along the north row as long as the adjacent property remains residential.

Following the Planning Commission meeting, a Protest Petition was submitted from the property owners of 2F221435-2010 and 2F221435-2011, commonly known as 18845 Waverly Road. The property owners protest the conditional use permit application for the following reasons:

1. Non-compliance with applicable zoning regulations;
2. Non-compliance with notice requirements;
3. Non-compliance with Article 7 of the Edgerton, Kansas Unified Development Code;
4. Non-compliance with Article 7.I.C.a.-n., inclusive, of the Edgerton, Kansas Unified Development Code;

5. The Planning Commission and Governing Body failed to comply with and/or failed to consider all factors relevant to the questions of compatibility and the best interest of the City, as required by Article 7. I.C.a.-n., inclusive, of the Edgerton, Kansas Unified Development Code;
6. The conditional use is incompatible with the zoning and uses of nearby properties, including but not limited to their need for buffering and screening;
7. The conditional use may detrimentally affect nearby property;
8. The conditional use fails to provide adequate traffic flow;
9. The Planning Commission and Governing Body failed to consider that the detrimental environmental impacts that the conditional use will create including, excessive storm water runoff, water pollution, air pollution, noise pollution, excessive nighttime lighting, and other environmental harm.
10. Incompatible and/or inconsistent with the Comprehensive Plan, Capital Improvement Plan, ordinances, policies, and applicable City Code of the City of Edgerton, Kansas, and the general safety, health, comfort and general welfare of the community;
11. Non-compliance with the applicable City Code of the City of Edgerton, Kansas; and
12. The Edgerton Planning Commission had no authority at the Edgerton Planning Commission Meeting December 10, 2013, to approve the Amended Application.

Section 8.2 G(4) of the Edgerton Unified Development Code states that if a protest against a zoning amendment or conditional use permit is filed in the office of the City Clerk within fourteen (14) days after the conclusion of the hearing pursuant to said publication notice, duly signed and acknowledged by twenty percent (20%) of the total area, excepting public streets or ways, located within or without the corporate limits of the city and located within two hundred (200) feet of the boundaries of the property proposed to be rezoned, such amendment shall not be passed except by at least three fourths (3/4) vote of all the members of the Governing Body.

City Attorney is reviewing the protest petition to verify its validity. This analysis will be presented to City Council on January 9th. If the protest petition does not meet the requirement for 20% of the total area, a ¾ vote of all members of the Governing Body would not be required.

Enclosure: Draft Ordinance No. 965
Staff Report from December 10, 2013 Planning Commission
Application
Protest Petition

Related Ordinance(s) or Statute(s):

Recommendation: Approve Ordinance No. 965 Adopting the Planning Commission's Recommendation to Approve a Conditional Use Permit to Allow Use of Land, in the L-P, City of Edgerton Logistics Park Zoning District Generally Located at 30700 West 191st Street, For "Cargo Storage, Maintenance, and Repair Facilities"

Funding Source: N/A

Prepared by: Beth Linn, City Administrator
Date: January 6, 2014

ORDINANCE NO. 965

AN ORDINANCE ADOPTING THE PLANNING COMMISSION'S RECOMMENDATION TO APPROVE A CONDITIONAL USE PERMIT TO ALLOW USE OF LAND, IN THE L-P, CITY OF EDGERTON LOGISTICS PARK ZONING DISTRICT GENERALLY LOCATED AT 30700 WEST 191ST STREET, FOR "CARGO STORAGE, MAINTENANCE, AND REPAIR FACILITIES"

WHEREAS, the Edgerton Planning Commission did hold a public hearing on the requested Conditional Use Permit in accordance with the requirements as set forth in the Edgerton Zoning Regulations; and

WHEREAS, the Edgerton Planning Commission voted to approve the Conditional Use Permit for use of land for "Cargo Storage, Maintenance, and Repair Facilities" but such vote was conditioned on the following being adhered to by the Applicant:

1. Additional mitigation measures are submitted by the applicant with regard to the setback along the north property line.
2. Revised landscaping plan shall be submitted and approved. The revised plans shall include modification of the berm closed to the southeast property line as additional mitigation measure for the property to the east. Additional mitigating measures along north property line shall be submitted and approved.
3. The property owner shall continuously comply with all performance criteria in Article 7 pertaining to Cargo Container Storage Facilities and Cargo Repair and Maintenance Facilities, including, but not limited to, noise maximums and cargo container and chassis stacking height requirements, paving requirements, etc.
4. The property shall be developed in accordance with the Site Plan, Landscaping Plan, and Photometric Plan as revised, as approved by the City, prior to commencement of the cargo container storage use. Plant material shall be continuously maintained and replaced when dead.
5. Detailed building construction plans shall be submitted as required for building permit review. All new building exteriors shall comply with the City of Edgerton Unified Development Code. Applicant shall provide documentation for review and approval by City for service of utilities and compliance with ADA standards for all existing buildings to remain.
6. Cargo containers and chassis may be stored only in the designated, striped areas shown on the Site Plan.
7. No other outside storage of equipment or materials shall be allowed on the property.
8. This Conditional Use Permit shall be valid for ten years from approval by the City of Edgerton.
9. Cargo containers stacked only two (2) high along the north row as long as the adjacent property remains residential.

WHEREAS, the City Governing Body, after reviewing the Conditional Use Permit and considering the criteria set forth in Article 7 of the City Zoning Regulations and the recommendations of the Planning Commission, finds the Conditional Use Permit should be approved.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS:

Section 1. The proposed Conditional Use Permit for use of the following land [located at approximately 30700 West 191st Street] for “Cargo storage, Maintenance, and Repair Facilities” is hereby approved:

35-14-22 N ½ W ½ SE ¼ SW ¼ 10 Acres M/L and 35-14-22 E ¼ SW ¼ SW ¼ 10 Acres M/L, both in Johnson County, Kansas.

Section 2. The Conditional Use Permit approved by this Ordinance is expressly conditioned on the Applicant’s strict compliance with the eight Conditions set forth above, which were recommended by the Edgerton Planning Commission.

Section 3. The effectiveness of this Conditional Use Permit is conditioned upon the strict compliance by the applicant with the provisions contained herein and in the City of Edgerton Zoning Regulations. Should applicant fail to comply with any term or provision thereof and shall such failure continue following notice from City to applicant specifying the breach and actions to be taken to cure the same, then, at the direction of the City Administrator, applicant will be notified that this Conditional Use Permit is revoked and all uses permitted herein on the Property must immediately cease. Reinstatement following default may only be effected by action of the Governing Body. Wholly separate and apart from the specific conditions of the City’s Zoning Regulations are the City’s interest and duties to protect the public health, safety and welfare. Applicant agrees that this Ordinance shall not operate or be construed to impede or impair the lawful function of City government operation in this area.

Section 4. This ordinance shall take effect and be enforced from and after its publication once in the official city newspaper. All Zoning and Regulations of Edgerton, Kansas, affecting the use of the real property heretofore described which are inconsistent with this ordinance are hereby made inapplicable to said property until the Conditional Use Permit is vacated or is declared null and void.

PASSED by the Governing Body of the City of Edgerton, Kansas, and approved by the Mayor on the 9th day of January, 2014.

Donald Roberts, Mayor

(Seal)

ATTEST:

Janeice Rawles, City Clerk

APPROVED AS TO FORM:

Patrick G. Reavey, City Attorney

STAFF REPORT

December 9, 2013

To: Edgerton Planning Commission
Fr: Beth Linn, City Administrator
Mike Mabrey, Zoning Administrator
Re: Application CU-11-18-2013 for Conditional Use Permit for a Cargo Container Storage, Maintenance and Repair Facility for JB Hunt Facility at approximately 30700 West 191st Street

APPLICATION INFORMATION

Applicant/Property Owner: William E. Dailey and Lucy E. Dailey (Owner)
Lynn Boyd, JB Hunt (Applicant)

Requested Action: Conditional Use Permit for a Cargo Container Storage, Maintenance and Repair Facility for JB Hunt Facility

Legal Description: Part of Section 35, Township 14, Range 22

Site Address/Location: Approximately 30700 West 191st Street

Existing Zoning and Land Uses: Agriculture

Surrounding Zoning and Uses: L-P zoned land for cargo container storage and warehouse development to the west in the City of Edgerton; a farmstead in the unincorporated County to the south; farmland in unincorporated Johnson County to the north and to the east.

Existing Improvements: None

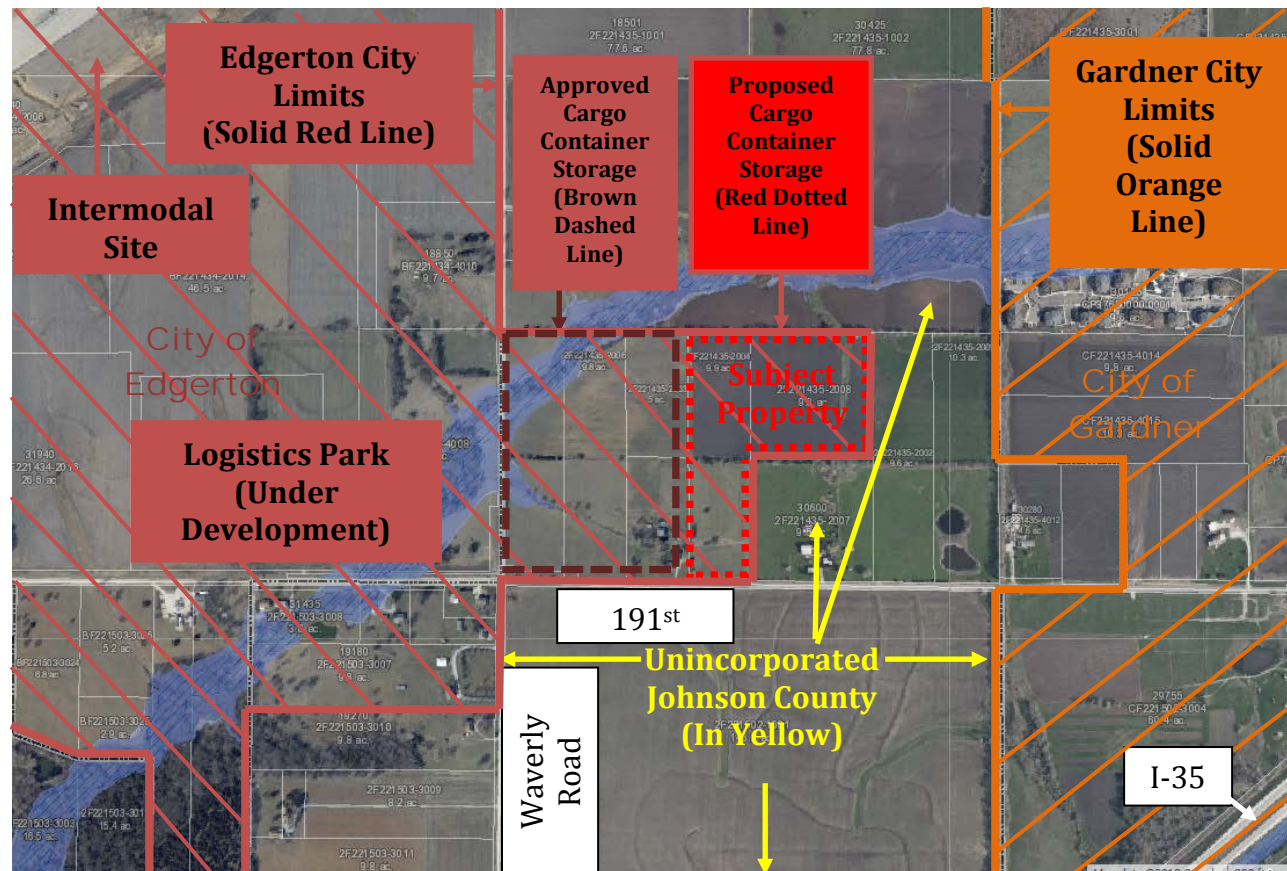
Site Size: About 20 acres

PROJECT BACKGROUND AND DESCRIPTION: This land was annexed into the City of Edgerton on December 3, 2013. The subject property has been in farm use since at least the 1940s, the earliest date for which aerial photography is available, and probably much longer. There are no structures on the property. It has about 330 feet of frontage along 191st Street.

The rezoning is requested to facilitate the development of the property for a cargo container and truck storage facility. The BNSF intermodal facility is located to the northwest across Waverly Road and the warehouse industrial (logistics) park is across Waverly Road directly to the west. Demand for businesses to store and maintain cargo containers and chassis, such as

the facility proposed here, is a by-product of the activity on and around the intermodal facility. The logistics park and intermodal's primary function is to transport and redistribute containers and the products they contain. Since they are not in the business of storing containers for an extended period of time, there is a need for companies, like the applicant's, that specialize in storage and maintenance.

Figure 1: Subject Property

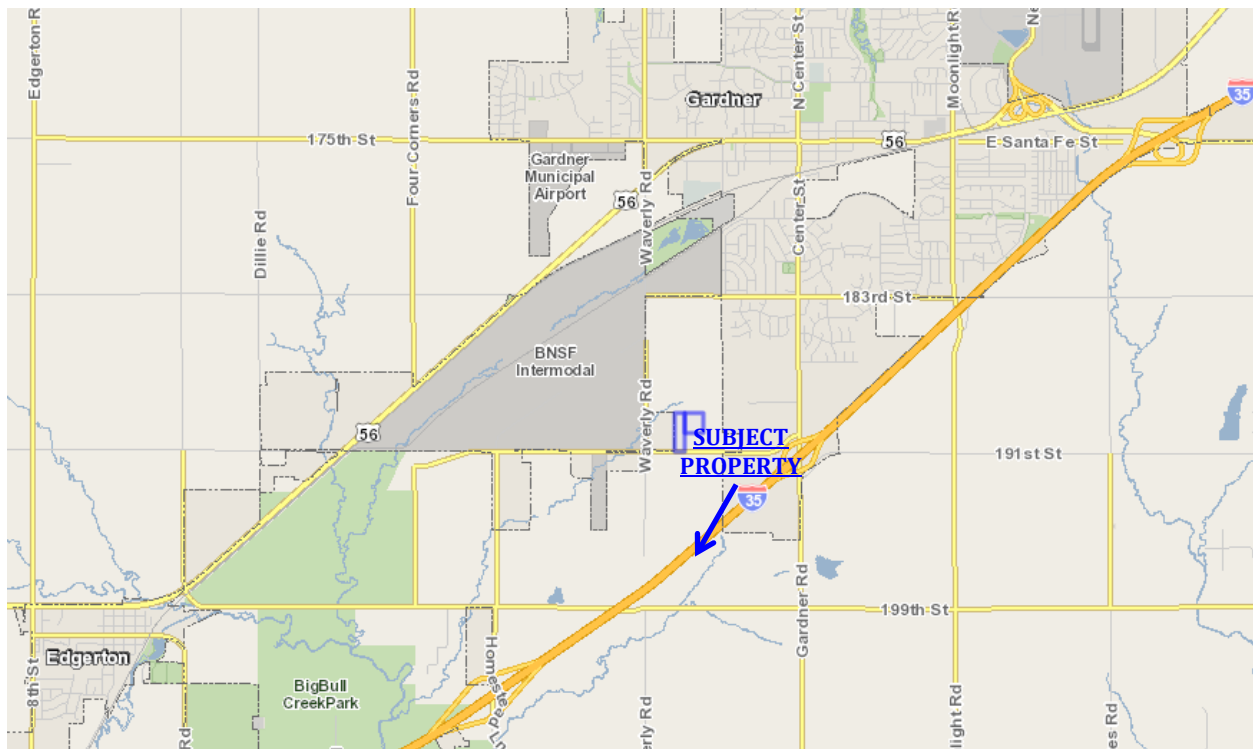


Infrastructure and Services:

- Access is provided by 191st Street, which is 26 feet wide with no shoulders, but is planned for future improvement to pavement that will support intermodal and logistic park traffic. Proceeding west on 191st Street and the newly constructed Homestead Road to the south provides access to Interstate 35.
- The property is located within the Big Bull Creek watershed, which flows south from 167th Street to the southern edge of the county at Homestead Lane. A stormwater plan has been submitted, but it has not yet been approved by the City Engineer.
- The property does not have any areas within the flood plain.
- The property shows a connection to the Gardner sewer to the north. A sanitary sewer main is planned to be extended through the Nickell parcel (adjacent on the west) to this parcel. The sewer line should also be extended through this parcel to allow the property to the east to connect.

- e. The property is within the Water District 7 service area, but the nearest water main is over 1,000 feet to the west at the Waverly Road intersection. A new main will need to be extended to this property.
- f. Police protection is provided by the Johnson County Sheriff's Department under contract with the City of Edgerton. Fire protection is provided by Johnson County Rural Fire District No. 1. A fire station is located in the City of Edgerton, to the southwest.

Vicinity Map



STAFF ANALYSIS

The UDC allows cargo container storage, maintenance, and repair facilities in the L-P Zoning District if a Conditional Use Permit is first approved. The Planning Commission, in accordance with the procedures and standards of the UDC, may authorize buildings, structures, and uses as conditional uses in the specific instances and particular districts set forth provided that the location is appropriate, consistent with the Comprehensive Plan, that the public health, safety, morals, and general welfare will not be adversely affected, and that necessary safeguards will be provided surrounding property, persons, and neighborhood values, and further provided that the additional standards of this Article specified as a condition of approval. No conditional use shall be authorized unless the Planning Commission finds that the establishment, maintenance, or operation of the Conditional Use meets the standards set forth in the UDC. The burden of proof is on the applicant to bring forth the evidence and the burden of persuasion on all questions of fact that are determined by the Planning Commission.

GENERAL CRITERIA

- a. The extent to which there is a need in the community for the proposed use. Demand for businesses to store and maintain cargo containers and chassis, such as the facility proposed here, is a by-product of the activity on and around the intermodal facility. The logistics park

and intermodal's primary function is to transport and redistribute containers and the products they contain. Since they are not in the business of storing containers for an extended period of time, there is a need for companies, like the applicant's, that specialize in storage and maintenance. Placing these container storage facilities adjacent to the rail yard and the logistics park reduces the distance of travel, which equates to less pollution, wear on streets, cuts transportation costs, and centralizes perceived negative impacts from these facilities on the surrounding community. Staff determination: ***Positive***

- b. The character of the neighborhood, including but not limited to: zoning, existing and approved land use, platting, density (residential), natural features, and open space. There is City of Edgerton zoned L-P District land adjacent to the west and beyond, across Waverly Road. There is one farmstead with a home located adjacent to the south and there are parcels in farm use and vacant to both the north and east. The City of Gardner is 700 feet to the east.

With rapidly progressing intermodal development, extensive road improvements, and the new I-35 interchange nearby, the character of the area is changing significantly from rural to industrial. The regional parks and floodplain areas nearby will generally remain undeveloped, providing open space, wildlife corridors, streamway buffers, and hiking, biking, and pedestrian corridors. Staff determination: ***Positive***

- c. The nature and intensity of the proposed use and its compatibility with the zoning and uses of nearby properties. Such determination should include the location, nature, and height of structures, walls, fences, and other improvements connected with the proposed use, their relation to adjacent property and uses, and the need for buffering and screening. Facilities such as the one proposed here provide for the storage, staging, and maintenance of cargo containers and trucks. The conditional use permit performance criteria require that this activity be conducted in a manner that minimizes the noise, dust, traffic congestion, aesthetic blight and other adverse environmental impacts of such a use on surrounding property. To ensure that the cargo container and truck storage, repair, and maintenance facilities are operated in a safe manner, the permitted height of stacking of such containers, the cargo within the containers, the location and surface used, methods of securing the containers so as to prevent safety hazards, and accessibility for emergency and maintenance equipment are all factors addressed by the regulations. Adequate visual screening and landscaping of cargo containers from the public right-of-ways and adjacent properties is also required. The site must also be of sufficient size to accommodate the clean, safe and orderly storage and maintenance of cargo containers, semi-trailers, and chassis with adequate lighting and signage. The foregoing factors are addressed in the specific performance criteria, below. Staff determination: ***Neutral***
- d. Suitability of the uses of the property without the proposed conditional use permit. The property is in agricultural use. With the construction of the intermodal freight terminal, the logistics park, and another container storage facility adjacent to the west, the best use of this property has become industrial. Staff determination: ***Positive***
- e. Length of time the subject property has remained vacant without the proposed conditional use permit. Before annexation, the property was in agricultural use in unincorporated Johnson County for at least the previous 60-plus years for which information (aerial photography) is available. Staff determination: ***Positive***

- f. The extent to which the proposed use may detrimentally affect nearby property. The properties potentially negatively affected by this proposed zoning are the parcel in residential use to the south and the parcels with possible residential uses to the east and north. With the landscaping, berm, and 150 foot setbacks proposed to the east and south, as modified by staff's suggestions below, those parcels can be protected. However, with regard to the property to the north, a deviation from the Performance Criteria for setbacks must be processed by the City in lieu of the required 250 foot setback. The site plan only shows 50 foot setbacks along property to the property to the north, however, and other mitigation matters should be discussed prior to granting a deviation for the north side setbacks. For additional discussion, see the Screening and Landscaping and the Setbacks and Separation sections in the Performance Criteria Section, below. The property to the west has already been approved for a use similar to the applicant's and will not likely suffer any harm. Staff determination: **Negative**
- g. The adequacy of ingress and egress to and within the site of the proposed use, traffic flow and control, the adequacy of off-street parking and loading areas, the adequacy of required yard and open space requirements and sign provisions. As noted in the Site Plan review, above, adequate ingress, egress, and parking, is provided. A loading space should be provided and is suggested in the stipulations. The 150 foot setback areas to the east and south, containing the berm and landscaping, provide minimal open space on the site. The monument sign shown meets requirements. Staff determination: **Positive**
- h. The availability and adequacy of required utilities and services to serve the proposed use. These utilities and services include, but are not limited to, sanitary and storm sewers, water, electrical and gas service, police and fire protection, schools, parks and recreation facilities and services, and other similar public facilities and services. Utility connections for all buildings need to be revised on final site plan as discussed in site plan review. Utility are available to site but will required extension of services by developer. Staff determination: **Positive**
- i. The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the proposed use, or present parking problems in the vicinity of the property. 191st Street to the west of Waverly Road is improved to a standard that can accommodate industrial development traffic in the area, but as discussed in previous application, 191st Street to the east of Waverly Road is 26 feet wide without shoulders and not designed to accommodate industrial traffic. Traffic Study shall be completed and approved by City Engineer. Property owner shall execute an Agreement not to Protest a future benefit district for infrastructure improvements along 191st Street. On-street parking will not be allowed and adequate parking is provided for this project. Staff determination: **Positive**
- j. The environmental impacts that the proposed use would create (if any) including, but not limited to, excessive storm water runoff, water pollution, air pollution, noise pollution, excessive nighttime lighting or other environmental harm. The City will follow NPDES (stormwater management requirements) guidelines that require the developer to address runoff and water pollution mitigation measures as part of the development of the property. The applicant is required to submit a photometric plan to address pollution from nighttime lighting. Staff determination: **Positive**

- k. The economic impact of the proposed use on the community. Prior to the development of the BNSF intermodal and logistics park, there have been few commercial and industrial uses within the City. Warehousing and related uses in the L-P District, if built, have the potential to benefit the residents and community in a positive way by providing needed jobs and tax revenues. Staff determination: ***Positive***
- l. The relative gain (if any) to the public health, safety, and welfare from a denial of the application for conditional use permit as compared to the hardship imposed upon the conditional use applicant from such denial. There would be little gain to the public health, safety and welfare of the City of Edgerton and the property owner would be denied a use compatible with the intermodal facility if the zoning is denied. The City would be adversely impacted due to the lost opportunity for jobs and tax revenue if anticipated logistics park uses were to locate in another nearby community. Staff determination: ***Positive***
- m. Consistency with the Comprehensive Plan, Capital Improvement Plan, ordinances, policies, and applicable City Code of the City of Edgerton, and the general safety, health, comfort and general welfare of the community. The Future Land Use Map (attached) within the Comprehensive Plan designates the subject property for industrial development. Staff determination: ***Positive***
- n. The recommendation of professional staff. (Ord. 798; 2005) Please see the Recommendations Section, below.

CARGO CONTAINER STORAGE, REPAIR, AND MAINTENANCE FACILITY PERFORMANCE CRITERIA.

All cargo container storage and cargo container repair and maintenance facilities (collectively referred to as "facilities") shall be subject to the following performance provisions:

- 1. Access: No cargo containers or semi-trailers (either on or off a chassis), or a chassis, may be stored in a manner that impedes access to public rights-of-way, public utility or drainage easements, structures, and buildings. ***The Site Plan needs to be adjusted to show easements and to accommodate setback requirements or provide equivalent accommodations with a Deviation according to the specific requirements of Article 7.2 D 14. Please also see the Setback and Separation Discussion, below.***
- 2. Exterior Lighting: Facilities shall provide lighting on-site, including at all vehicular entrances and exits. A lighting plan shall be submitted and approved. ***As discussed above, a photometric plan must be supplied by the applicant.***
- 3. Minimum Lot Size: Facilities shall have a minimum lot size of twenty (20) acres. ***Property complies with 20 acres.***
- 4. Noise: Noise from businesses and facilities shall not exceed 60 dB(A) in any adjacent residential district or 70 dB(A) in any adjacent commercial or industrial district or property. ***Noise issues are not addressed in the applicant's proposal, however, the use must continuously comply with these noise maximums in the conduct of the business.***

5. Paving: All interior driveways, parking, loading, and storage areas shall be paved and dust-free. For purposes of this stipulation:
 - i. Paving shall mean concrete or asphalt: and
 - ii. Dust-free shall mean that all interior driveways and storage area surfaces shall be kept free of dust, dirt or other materials to prevent the migration of dust off-site. ***The asphalt millings surface proposed for the truck parking area does not comply with this requirement. Surface must be asphalt or concrete.***
6. Parking: Facilities shall comply with the Article 5.2 L-P District Off Street Parking and Loading regulations. No portion of any required off-street parking or loading/unloading areas shall be used for the storage of cargo containers, semi-trailers (either on or off a chassis), chassis or similar storage devices. ***Final Site Plan complies.***
7. Cargo Container Stacking: Cargo containers shall not be stacked more than five (5) in number. ***The proposed use must continually comply and not exceed the maximum stacking height.***
8. Chassis Stacking/Racking: Empty chassis may be stored on end (racking), or may be stacked. When stacked, chassis shall not be more than five (5) in number. ***The proposed use must continually comply and not exceed the maximum stacking height.***
9. Screening and Landscaping: Screening may be required on the perimeter of the property. Screening shall be a combination of fencing and landscaping or berming and landscaping. Screening shall comply with requirements Article 5.2 L-P District Landscape Standards. ***Final Site Plan shall be revised to reflect all landscaping requirements listed in Final Site Plan staff report dated December 9, 2013. Plant material must be continuously maintained and replaced when dead.***
10. Setbacks and Separation Distance: All buildings, structures, parking and other uses on the property, shall be subject to the setback requirements in Article 5.2 L-P District Setback, Yard, Area Regulations, except, however, the parking or storage of cargo containers or semi-trailers (either on or off a chassis), and chassis (racked or stacked) shall be subject to the following setback standards that may vary depending upon the difference scenarios set forth below:
 - i. When abutting (touching), or across the street from non-residentially zoned property, such parking or storage shall be setback from any exterior property line of the subject property a distance equal to the height of the cargo container or semi-trailer (either on or off a chassis), and chassis (racked and stacked). ***The proposed use must continually comply and not exceed the maximum stacking height.***
 - ii. When abutting (touching) public right-of-way, such parking or storage shall be setback from any exterior property line of the subject property a distance equal to the height of the cargo containers or semi-trailers (either on or off a chassis), and chassis (racked or stacked). ***The proposed use must continually comply and not exceed the maximum stacking height.***

- iii. When abutting (touching), or across the street from, residentially zoned property, such parking and storage shall be setback a minimum of 250 feet from the nearest property line of the residentially zoned property. There is County Rural (residential) zoned property abutting to the east and south of the subject property. *Parcels to the north east, and south of the subject property are Rural zoned in the County and as such, they either contain (to the south) or are eligible for residences. The 250 foot setback required is not met by the proposed site plan. The applicant is requesting a deviation. With the landscaping, berm, and 150 foot setbacks proposed to the east and south, those parcels can be protected with modification. The berm shall be extended to the south to shield trucks turning into the facility from shining in residence to east. Extending berm would also provide some mitigation of noise of trucks as they turn onto 191st Street. Plantings shall be placed on berm as required Code to provide natural looking buffer to residence to east. In addition, the submitted site plan only shows 50 foot setbacks along property to the property to the north. To be considered for approval, the applicant shall submit additional other mitigation methods to offset the inability to meet the setback requirement.*
- iv. When abutting (touching), or across the street from, a habitable dwelling, such parking and storage shall be setback a minimum of 300 feet from the nearest dwelling. *The dwelling on the adjacent parcel to the south and east is about 500 feet from the nearest proposed storage area, well in excess of this 300 foot minimum.*
11. Signage: Business signs shall be allowed according to Article 5.2 L-P District Signage regulations. No signage, other than shipping company identification logos and placards, shall be allowed on any cargo container, semi-trailer or chassis. *Applicant included preliminary information regarding a monument sign at entrance driveway. A sign permit and detailed sign plans will need to be submitted and approved according to the provisions of the UDC.*
12. Site Plan: A site plan shall be submitted with the application. The site plan shall be prepared in accordance with the requirements of Article 9 (B) (3) of these regulations. *Final Site Plan shall be revised to comply with all stipulations of Final Site Plan and Conditional Use Permit review.*
13. Other Rules and Regulations. All facilities shall abide by any and all governmental rules, regulations, codes and specifications now in effect or hereafter adopted that would be applicable to this permit or the use of the property by the applicant/landowner. *The proposed use must comply with these requirements.*

RECOMMENDATION

In considering this Conditional Use Application the Planning Commission should consider all the information in the staff report above. In particular, the Planning Commission should consider if the deviations from required setbacks presented by the application meet the provisions of the UDC.

Deviations: In the event that an applicant desires to deviate from the above performance standards and provisions for certain Conditional Uses, the applicant shall

submit written information to the Governing Body indicating the circumstances which are believed to necessitate the need for a deviation(s), and the applicant shall provide a list of alternative materials, designs or methods that are equivalent to the performance standards and provisions for the L-P Zoning District, Section 5.4, Sections G through Q in the regulations. The application may only be approved if findings are made by the Governing Body that 1) due to the circumstances of the application, it would be unnecessary to impose the standards(s) and equivalent alternatives should be allowed, b) that the spirit and intent of the regulations are being met, c) that granting the deviation shall not adversely affect adjacent or nearby property, and d) the application shall otherwise comply with all building code(w) and safety requirements.

Based on the above staff analysis, city staff recommends **approval** of the proposed preliminary plat with the following stipulations:

1. Additional mitigation measures are submitted by the applicant with regard to the setback along the north property line.
2. Revised landscaping plan shall be submitted and approved. The revised plans shall include modification of the berm closed to the southeast property line as additional mitigation measure for the property to the east. Additional mitigating measures along north property line shall be submitted and approved.
3. The property owner shall continuously comply with all performance criteria in Article 7 pertaining to Cargo Container Storage Facilities and Cargo Repair and Maintenance Facilities, including, but not limited to, noise maximums and cargo container and chassis stacking height requirements, paving requirements, etc.
4. The property shall be developed in accordance with the Site Plan, Landscaping Plan, and Photometric Plan as revised, as approved by the City, prior to commencement of the cargo container storage use. Plant material shall be continuously maintained and replaced when dead.
5. Detailed building construction plans shall be submitted as required for building permit review. All new building exteriors shall comply with the City of Edgerton Unified Development Code. Applicant shall provide documentation for review and approval by City for service of utilities and compliance with ADA standards for all existing buildings to remain.
6. Cargo containers and chassis may be stored only in the designated, stripped areas shown on the Site Plan.
7. No other outside storage of equipment or materials shall be allowed on the property.
8. This Conditional Use Permit shall be valid for ____ years from approval by the City of Edgerton.

Attachment:

Conditional Use Permit Application CU-11-18-2013

CITY OF EDGERTON, KANSAS
APPLICATION FOR CONDITIONAL USE PERMIT

Please print or type

REQUESTING CONDITIONAL USE PERMIT FOR: Development of Container Storage Facility

LOCATION OR ADDRESS OF SUBJECT PROPERTY: +/- 30700 West 191st Street

LEGAL DESCRIPTION: See Attached

ZONING ON SUBJECT PROPERTY: R to be LP CURRENT LAND USE: Agricultural

PROPERTY OWNER'S NAME(S): William and Lucy Dailey PHONE: N/A

COMPANY: N/A FAX: N/A

MAILING ADDRESS: 8535 Hayes Street Overland Park KS 66212
STREET CITY STATE ZIP

APPLICANT/AGENT'S NAME(S): Lynn Boyd PHONE: (479) 659-6970

COMPANY: J.B. Hunt FAX: (479) 820-5282

MAILING ADDRESS: 705B North Bloomington Lowell AR 72745
STREET CITY STATE ZIP

ENGINEER/ARCHITECT'S NAME(S): Michael R. Osbourn PHONE: (913) 894-5150

COMPANY: Kaw Valley Engineering, Inc. FAX: (913) 894-5977

MAILING ADDRESS: 14700 West 114th Terrace Lenexa KS 66215
STREET CITY STATE ZIP

SIGNATURE OF OWNER OR AGENT: Ed + Lucy Dailey
If not signed by owner, authorization of agent must accompany this application.

FOR OFFICE USE ONLY

Case No.: CU- 11-18-2013 Amount of Fee Paid: \$ 250⁰⁰ Date Fee Paid: 11/20/13

Received By: Debra Skragg Date of Hearing: 12/10/13

PROTEST PETITION
CONCERNING AMENDED APPLICATION TO CU-09-16-2013 REQUESTING A
CONDITIONAL USE PERMIT FOR "CARGO CONTAINER STORAGE,
MAINTENANCE, AND REPAIR FACILITIES"

WHEREAS, we, the undersigned owners of record of real property, are aware that the Edgerton Planning Commission of the City of Edgerton, Kansas, at its December 10, 2013 meeting, approved the Amended Application to CU-09-16-2013, requesting a conditional use permit to allow use of land, in the L-P, Logistics Park Zoning District, generally located at the southwest corner of 191st Street and Waverly Road, for "Cargo Container Storage, Maintenance, and Repair Facilities." Owner: Tom Hasting, TranSpec Leasing, Inc., hereinafter the "Amended Application"; and

WHEREAS, the Amended Application pertains to real property that abuts (touches) or is across the street from the real property commonly known as 18845 Waverly Road, Gardner, Kansas, 66030, property ID 2F221435-2010 and 2F221435-2011, KS Uniform Parcel numbers 0461373503001001010 and 0461373503001001020, with the following legal descriptions:

35-14-22 PT N ½ SW ¼ BG NW CR E NE CR S TO PT S/L N ½ W TO
W/L N 360.75' E 740' N 263.26' W 740' TO W/L N TO POB EX W 20'
& SUBJ TO PT IN RDS 75.4880 ACS M/L GA 165 1; and

35-14-22 BG 702.01' S NW CR SW ¼ E 740' S 263.26' W 740' N
263.26' TO POB SUBJ TO PT IN RD 4.4721 ACS M/L GA 165 2

WHEREAS, we, the undersigned owners of record, hereby state that, upon information and belief, we constitute ownership of twenty percent (20%) or more of the total land area, except public streets and ways, located within two hundred (200) feet of the boundaries of the real property that is the subject of the Amended Application, and

WHEREAS, we, said undersigned owners of record, protest the approval of said Amended Application for the following reasons:

1. Non-compliance with applicable zoning regulations;
2. Non-compliance with notice requirements;
3. Non-compliance with Article 7 of the Edgerton, Kansas Unified Development Code;
4. Non-compliance with Article 7.1.C.a.-n., inclusive, of the Edgerton, Kansas Unified Development Code;
5. The Planning Commission and Governing Body failed to comply with and/or failed to consider all factors relevant to the questions of compatibility and the best interest of the City, as required by Article 7.1.C.a.-n., inclusive, of the Edgerton, Kansas Unified Development Code;
6. The conditional use is incompatible with the zoning and uses of nearby properties, including but not limited to their need for buffering and screening;
7. The conditional use may detrimentally affect nearby property;
8. The conditional use fails to provide adequate traffic flow;
9. The Planning Commission and Governing Body failed to consider that the detrimental environmental impacts that the conditional use will create including, excessive storm water runoff, water pollution, air pollution, noise pollution, excessive nighttime lighting, and other environmental harm.
10. Incompatible and/or inconsistent with the Comprehensive Plan, Capital Improvement Plan, ordinances, policies, and applicable City Code of the City of

Edgerton, Kansas, and the general safety, health, comfort and general welfare of the community;

11. Non-compliance with the applicable City Code of the City of Edgerton, Kansas; and

12. The Edgerton Planning Commission had no authority at the Edgerton Planning Commission Meeting December 10, 2013, to approve the Amended Application.

NOW, THEREFORE, we, said undersigned owners of record, hereby protest said Amended Application, and further petition the Governing Body of the City of Edgerton, Kansas, to deny said Amended Application and, in any event, require that the resolution adopting such Amended Application, if any, shall not be passed except by a favorable vote of at least $\frac{3}{4}$ of all of the members of the Governing Body of the City of Edgerton, Kansas, pursuant to Kansas law.

IN WITNESS WHEREOF, we, the undersigned owners of record, have signed this petition in protest of said Amended Application.

Fred N. Fralay
Signature *FW*

18845 Waverly Road
Address

Gardner, KS 66030
City, State and Zip Code

Julia N. Fralay *FW*
Signature of Joint Tenant (if any)

Address (if different from other signatory)

City, State and Zip Code

RECEIPT OF PETITION

Received by the City of Edgerton office at 3:58 (a.m./p.m.) on
the 26th day of December, 2013, by
James L. Fawcett City Clerk.

8 DE 3:59 PM

CITY OF EDGERTON, KANSAS

COUNCIL AGENDA ITEM

Council Meeting Date: January 9, 2014

Agenda Item: Public Hearing
Partial Assignment of Resolution of Intent

Subject: Property Tax Abatement for ELHC IV, LLC Project

Hearing Notice Published: December 31, 2013 in the *Gardner News*

Summary:

Edgerton Land Holding Company, LLC has submitted a new logistics park project to the City. ELHC IV desires to construct an approximately 574,111 sq. ft. warehouse and distribution facility to be located at 18905 Kill Creek Road, Edgerton, Kansas. In order for the City to grant property tax abatement, the City must first hold a public hearing, consider the cost-benefit report and then approve a partial assignment of the Master Resolution of Intent.

Public Hearing

A notice of the public hearing has been published at least seven days prior to the date of this meeting. Written notice of the public hearing has also been provided to the County and the School District. The Council should take comments from the public.

Cost-Benefit Report

Columbia Capital Management, LLC has prepared a cost-benefit report for the proposed project. The City Council should consider the cost-benefit report and ask any questions the Council may have about the report.

Partial Assignment of Resolution of Intent

The City previously adopted a Master Resolution of Intent (Resolution No. 07-08-10A) on July 8, 2010 for the benefit of The Allen Group - KC for constructing various projects in the Logistics Park-Kansas City, and provided for the issuance of up to \$500,000,000 in industrial revenue bonds. The Allen Group-KC, with the consent of the City, assigned its interest in the Master Resolution of Intent to Edgerton Land Holding Company, LLC ("Edgerton Land"). The Master Resolution of Intent allows Edgerton Land to assign portions of the Master Resolution of Intent to various companies that locate within the park. The partial assignment of the Master Resolution of Intent assigns \$25,000,000 of the Master Resolution of Intent to ELHC IV for the purpose of constructing this project.

RESOLUTION NO. 01-05-14A

**RESOLUTION CONSENTING TO THE PARTIAL ASSIGNMENT OF A
RESOLUTION OF INTENT FROM EDGERTON LAND HOLDING COMPANY,
LLC TO ELHC IV, LLC, OR ITS SUCCESSORS IN INTEREST**

WHEREAS, the City of Edgerton, Kansas (the “City”), desires to promote, stimulate and develop the general welfare and economic prosperity of the City and its inhabitants and thereby to further promote, stimulate and develop the general welfare and economic prosperity of the State of Kansas; and

WHEREAS, the City is authorized and empowered under the provisions of K.S.A. 12-1740 to 12-1749d, inclusive (the “Act”), to issue industrial revenue bonds to pay the cost of certain facilities (as defined in the Act) for the purposes set forth in the Act and to lease such facilities to private persons, firms or corporations; and

WHEREAS, the City adopted Resolution No. 07-08-10A on July 8, 2010 (the “Resolution of Intent”) determining the intent of the City to issue its industrial revenue bonds in multiple series, the aggregate amount of all series not to exceed \$500,000,000 (the “Bonds”), to finance the costs of acquiring, constructing, reconstructing, improving and equipping the Logistics Park Projects (as defined in the Resolution of Intent) for the benefit of The Allen Group - Kansas City, LLC (“TAG”); and

WHEREAS, TAG, with the consent of the City, assigned its interest in the Resolution of Intent to Edgerton Land Holding Company, LLC (the “Developer”); and

WHEREAS, Section 7 of the Resolution of Intent permits the Developer, with the consent of the City, to assign a portion of its interest in the Resolution of Intent to another entity, thereby conferring on such entity the benefits of the Resolution of Intent and the proceedings related thereto; and

WHEREAS, the Developer desires to assign \$25,000,000 of its interest in the Resolution of Intent to ELHC IV, LLC, a Kansas limited liability company (the “Company”), for the purposes of permitting the Company to acquire, construct and equip a commercial project, consisting of an approximately 574,111 sq. ft. warehouse and distribution facility (the “ELHC Project”), to be located at 18905 Kill Creek Road, Edgerton, Kansas; and

WHEREAS, the City desires to consent to such partial assignment of the Resolution of Intent to the Company.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS, AS FOLLOWS:

Section 1. Partial Assignment of Resolution of Intent. The Governing Body of the City hereby consents to the assignment by the Developer of \$25,000,000 of the Developer’s interest in the Resolution of Intent to the Company for the purposes of completing the ELHC Project, which is a Logistics Park Project. The City agrees that the Company will now be entitled to the benefits of the Resolution of Intent to the same extent and on the same terms as the Developer with respect to the ELHC Project.

Section 2. Authorization to Proceed. The Company is authorized to proceed with the acquiring, constructing and equipping of the ELHC Project, and to advance such funds as may be necessary to

accomplish such purposes, and, to the extent permitted by law, the City will reimburse the Company for all expenditures paid or incurred therefor out of the proceeds of the Bonds.

Section 3. Benefit of Resolution. This Resolution will inure to the benefit of the City and the Company. The Company may, with the prior written consent of the City, assign its interest in this Resolution and the Resolution of Intent to another entity, and such assignee will be entitled to the benefits of this Resolution, the Resolution of Intent and the proceedings related hereto.

Section 4. Effective Date. This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body of the City.

ADOPTED this 9th day of January, 2014.

CITY OF EDGERTON, KANSAS

[SEAL]

By: _____
Mayor

ATTEST:

City Clerk



6330 Lamar
Suite 200
Overland Park, Kansas 66202

Jeff White, Principal
913.312.8077
jwhite@columbiacapital.com

January 3, 2014

Ms. Beth Linn
City Administrator
City of Edgerton
404 East Nelson
Edgerton, KS 66021

RE: Cost-Benefit Analysis for ELHC IV, LLC

Dear Beth:

Please find attached the results of our cost-benefit analysis related to the projected property tax abatement to be granted by the City to applicant ELHC IV, LLC, related to the construction of a new 547,000 square foot warehousing facility in Logistics Park Kansas City (LPKC). The purpose of this analysis is to satisfy the City's requirement pursuant to KSA 12-1749d or KSA 79-251(a)(1) to undertake a cost-benefit analysis before granting a property tax abatement. Consistent with the City's agreements with BNSF and Northpoint/Edgerton Land Holding Company (ELHC), we assumed that the project would receive a 10-year property tax abatement with a 25% payment-in-lieu-of-taxes each year.

KSA 12-1749d(2) requires notification of anticipated abatements only to counties or school districts affected. As a result, our analysis focuses on financial impacts to the City, Johnson County and the Gardner/Edgerton schools. We have not calculated the cost-benefit on other taxing jurisdictions. State law also requires the analysis to include "the effect of the exemption on state revenues." Our modeling includes such an estimate.

Our proprietary cost-benefit modeling relies on a number of key assumptions in the calculation of net present value benefit to the City, Johnson County and USD 231. Most of our assumptions are derived from public information, although some inputs are based upon dialogue with subject matter experts, including staff of the Kansas Department of Revenue. Some of these key assumptions include:

- An evaluation of the direct costs and benefits of the project. Columbia's model does not include indirect or "spin-off" effects as a result of input-output multipliers.
- A ten-year analysis timeframe for each individual project, matching the maximum permitted term of the abatement.

- Direct costs to the City, the County, the school district and the State as estimated by Columbia based upon the financial reports, expert analysis and/or conversations with key staff members within those agencies and at the State of Kansas.
- Where applicable, reliance upon statistical data as reported in the 2010 US Census.
- The use of a discount rate comprised of two components: a risk-free rate of return (the current yield of the on-the-run 10-year US Treasury) plus a risk premium of two (2) percent. The value of the discount rate is a proxy for the opportunity cost of the City (and other agencies) of foregoing the future property and/or sales tax revenues that would be generated by the development. Thought of another way, if the City had those revenues in hand and placed them in an alternative investment with the same risk characteristics, what would be its expected rate of return?

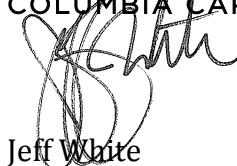
The output of the model is presented as the net present value benefit/(cost) of the project for the City, County and school district over the 10-year life of the abatement on each project. The net benefit (or, if negative, cost) of the incentive package is presented in today's dollars. The estimated impact on State revenues is presented in nominal (future value) terms. We also provide an estimated future value project contribution to the City's Public Infrastructure Fund (PIF). While the modeling shows a significant net present value benefit to the City, it is important to note that the vast majority of this net benefit is reinvested in LPKC through the PIF.

In the preparation of this cost-benefit analysis, Columbia has relied upon the information provided to it by applicant and has not independently verified or validated these data. The City must draw its own conclusions as to the reliability of these data.

Finally, the intent of this analysis and of the applicable statutes is to inform the governing body's policy debate about the value of the abatement incentive it is providing to the applicant. The project's generation of a net present value benefit to the agencies affected should be but one of the many factors in the governing body's decision about whether and how much incentive to provide to any applicant.

Thank you in advance for your thoughtful consideration of the analysis attached. Please let me know if you have any questions.

Respectfully submitted,
COLUMBIA CAPITAL MANAGEMENT, LLC



Jeff White
Principal

SUMMARY OF COSTS AND BENEFITS
City of Edgerton, Kansas

APPLICANT INFORMATION:

Application Date: 12/30/13
Firm Name: ELHC IV, LLC
Firm Address: 6300 N Revere Drive, Suite 225
 Kansas City, MO 64151

Firm Contact: Patrick Robinson
 816.888.7380

SUMMARY OF INCENTIVE PACKAGE:

Year	Property Tax Abatement		Construction Sales Tax Abatement		Direct Incentives		
	(%)	(\$)	(%)	(\$)	City	County	School
2	75	436,309	100	0	0	0	0
3	75	436,309	100	0	0	0	0
4	75	436,309	100	0	0	0	0
5	75	436,309	100	0	0	0	0
6	75	436,309	100	0	0	0	0
7	75	436,309	100	0	0	0	0
8	75	436,309	100	0	0	0	0
9	75	436,309	100	0	0	0	0
10	75	436,309	100	0	0	0	0
11	75	436,309	100	0	0	0	0

SUMMARY OF PRESENT VALUE BENEFITS:

City Summary					County Summary				School District Summary			
Year	Total Benefits	Total Costs	Net Benefit	Net PV Benefit	Total Benefits	Total Costs	Net Benefit	Net PV Benefit	Total Benefits	Total Costs	Net Benefit	Net PV Benefit
2	375,565	125,564	250,001	226,759	80,315	74,924	5,391	4,890	357,572	275,011	82,561	74,885
3	349,460	125,564	223,897	193,410	78,981	74,924	4,057	3,505	357,572	275,011	82,561	71,319
4	349,477	125,564	223,913	184,214	79,021	74,924	4,097	3,371	357,572	275,011	82,561	67,923
5	349,494	125,564	223,930	175,455	79,063	74,924	4,139	3,243	357,572	275,011	82,561	64,688
6	349,512	125,564	223,948	167,114	79,107	74,924	4,183	3,121	357,572	275,011	82,561	61,608
7	349,531	125,564	223,967	159,169	79,154	74,924	4,229	3,006	357,572	275,011	82,561	58,674
8	349,551	125,564	223,987	151,603	79,202	74,924	4,278	2,895	357,572	275,011	82,561	55,880
9	349,571	125,564	224,008	144,397	79,253	74,924	4,329	2,790	357,572	275,011	82,561	53,219
10	349,593	125,564	224,030	137,535	79,307	74,924	4,383	2,690	357,572	275,011	82,561	50,685
11	349,616	125,564	224,053	130,999	79,363	74,924	4,439	2,595	357,572	275,011	82,561	48,271
	3,521,370	1,255,636	2,265,734	1,670,655	792,769	749,244	43,525	32,107	3,575,718	2,750,112	825,606	607,154

SUMMARY OF ECONOMIC IMPACT (over 10-year period):

Number of jobs to be created : 150

Number of new residents:
 City 3
 County 6
 School District 6

Nominal change in City sales tax: \$ 3,908

Nominal change in City property tax: \$ 1,615,805

Expected 10-Year Contribution to PIF: \$ 1,900,537

Impact of exemption on state revenues: \$ (48,900)

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Change Order #3 to the Design/Build Agreement with Burns and McDonnell/CAS Construction, LLC to decrease the contract amount by \$47,946.69 and increase the Contract Time by 92 additional calendar days

Department: Administration

Background/Description of Item: In May 2012, the City of Edgerton approved a Design/Build Agreement with Burns and McDonnell/CAS Construction LLC for completion of design and construction of the Big Bull Creek Wastewater Treatment Facility and conveyance system.

In addition, the City of Edgerton entered into an agreement with the City of Gardner for Construction of Wastewater Improvements and Transportation and Treatment of Wastewater. This agreement anticipated the need for additional infrastructure to be constructed by the City of Gardner to connect Gardner's existing wastewater infrastructure to the Big Bull Creek conveyance system. The new infrastructure includes gravity interceptor northeast of 191st Street and Waverly, the Waverly lift station and the force main to connect Waverly lift station to the Big Bull Creek conveyance system.

To date, Edgerton City Council has approved two change orders to the agreement.

- Change Order #1 was approved by Edgerton City Council in August 2012. Change Order #1 was a zero-cost change order that added language (such as wage rate requirements, anti-discrimination, etc.) to the contract as required by Kansas Department of Health and Environment (KDHE).
- Change Order #2 was approved by Edgerton City Council in February 2013. Change Order #2 amended the agreement to add the costs for the design and construction of the Gardner infrastructure of \$2,450,000. In addition, Change Order #2 additional calendar days to the contract time. The Change Order extended the Contract Time due to added day-for-day adjustment time of execution after December 15, 2012. The entire cost of this change order was funded by the City of Gardner. However, the City of Edgerton holds the contract with Burns and McDonnell/CAS Construction LLC; therefore, the City of Edgerton City Council also approved the change order. The City of Gardner approved the change order and amended their Kansas Water Pollution Control Revolving Fund in the amount of \$2,629,000 on January 22, 2013.

The Big Bull Creek Wastewater Treatment Facility and Conveyance System project is nearly complete. All items of construction have reached substantial completion. Therefore, the Contractor has requested Change Order #3 to "true up" the allowance items with the actual costs incurred. Changer Order #3 includes items associated with both the Edgerton and Gardner portions of the project. The summary below is for just Edgerton related changer order items. The total project savings for Edgerton is \$12,056.06.

Number	Item Description	Contract Amount	Edgerton %	Edgerton Amount	Actual Amount	Edgerton Portion Change Order
1	Civil Testing	\$ 20,000.00	50%	\$ 10,000.00	\$ 6,084.00	\$ 6,958.00
2	Lab Furniture	\$ 15,000.00	50%	\$ 7,500.00	\$ 14,090.86	\$ 454.57
3	Seed/Fertilizer/Landscaping	\$ 5,000.00	50%	\$ 2,500.00	\$ 9,765.00	\$ (2,382.50)
4	HVAC	\$ 100,000.00	50%	\$ 50,000.00	\$ 265,815.00	\$ (82,907.50)
5	Existing Plant Renovations	\$ 75,000.00	100%	\$ 75,000.00	\$ 19,198.00	\$ 55,802.00
6	8" Gardner Force Main	\$ 400,000.00	0%	\$ -	\$ 319,680.00	\$ -
7	Move IMF Pump Station	\$ 125,000.00	100%	\$ 125,000.00	\$ 64,912.00	\$ 60,088.00
8	Owner Controlled Contingency					\$ -
a	Widmer Connection	\$ 75,200.00	100%	\$ 75,200.00	\$ 75,200.00	\$ -
b	Schlagel Connection	\$ 37,000.00	100%	\$ 37,000.00	\$ 37,000.00	\$ -
c	Temporary Power Connection	\$ 17,161.00	50%	\$ 8,580.50	\$ 17,161.00	\$ -
d	CT Cabinet	\$ 15,530.00	50%	\$ 7,765.00	\$ 15,530.00	\$ -
e	2" Waterline, 2" Comm Conduit, 6" Sleeve	\$ 5,109.00	50%	\$ 2,554.50	\$ 30,584.00	\$ (12,737.50)
f	IMF/HLN Fencing	\$ -	100%	\$ -	\$ 14,574.00	\$ (14,574.00)
22	Supply water for startup	\$ 1,354.99	100%	\$ 1,354.99	\$ -	\$ 1,354.99
Total Project Savings						\$ 12,056.06

Extension of Time

Change Order #3 also includes the extension of contract time by 92 calendar days from September 30, 2013 to December 31, 2013. This extension of time is a result of delays associated with the availability of lands to construct and procure materials for the Waverly Lift Station and Collection System. A general overview of the items resulting in the delays are listed below.

- 1) Easement negotiations / condemnation of the "Klaton Properties," upon which approximately 1,800LF of the Waverly Collection System pipeline was to be installed, were not finalized until August 1, 2013, preventing construction from commencing.
- 2) Design and easements for the supply of electrical power to the remote valve vault at STA 0+25 were not complete until late September 2013. As of 11/21/13, the power supply to the remote valve vault has not been installed by Gardner Energy. It is assumed that power will be installed to facilitate substantial completion within this requested time extension.
- 3) Prior to annexation of the Waverly Lift Station property, the design of the lift station had to be changed to abide by Johnson County Planning and Zoning regulations. These changes included, but were not limited to, the site layout, temporary electrical racks, temporary generator connections/panels, Johnson County Building/Conditional Use permit, etc. The Johnson County building permit was issued August 19, 2013, allowing construction and procurement of the major lift station components to commence. Subsequently, annexation of the Waverly Lift Station property was complete in early October 2013, negating the changes that were previously made to meet the Johnson County requirements.

Change Order #3 was accepted by the City of Gardner on December 3, 2013.

Enclosures: Change Order #3

Recommendation: Approve Change Order #3 to the Design/Build Agreement with Burns and McDonnell/CAS Construction, LLC to decrease the contract amount by \$47,946.69 and increase the Contract Time by 92 additional calendar days

Funding Source: KWPCRLF Project # C20-1926-01; Contract for Services with City of Gardner

Prepared by: Beth Linn, City Administrator
Date: January 6, 2014

CITY OF EDGERTON, KS
EDGERTON BIG BULL CREEK WWTP
MODIFICATIONS TO WWTP DESIGN-BUILD CONTRACT

CHANGE ORDER NO. 3

This Change Order No. 3 covers adjustments to the Contract Price and Contract Time which resulted from the changes in the work described herein.

Description of work –

The following outline adjustments to various Contract allowance line items based upon actual allowance utilization to date, as well as adjustments for additional scope of work not associated with allowance line items:

- 1) Decrease the \$20,000.00 “Civil Testing” allowance line item to account for the aggregate sum of actual costs associated with this scope of work. Decrease the Civil Testing allowance by **(\$13,916.00)**, for an allowance expenditure of \$6,084.00.
- 2) Decrease the \$15,000.00 “Lab Furniture & Equipment” allowance line item to account for the aggregate sum of actual costs associated with this scope of work. Decrease the Lab Furniture & Equipment allowance by **(\$909.14)**, for an allowance expenditure of \$14,090.86.
- 3) Increase the \$5,000.00 “Seed / Fertilizer / Landscaping” allowance line item to account for the aggregate sum of actual costs associated with this scope of work. Increase the Seed / Fertilizer / Landscaping allowance by **\$4,765.00**, for an allowance expenditure of \$9,765.00.
- 4) Increase the \$100,000.00 “HVAC” allowance line item to account for the aggregate sum of actual costs associated with this scope of work. Increase the HVAC allowance by **\$165,815.00**, for an allowance expenditure of \$265,815.00.
- 5) Decrease the \$75,000.00 “Existing Plant Renovations” allowance line item to account for the aggregate sum of actual costs associated with this scope of work. Decrease the Existing Plant Renovations allowance by **(\$55,802.00)**, for an allowance expenditure of \$19,198.00.
- 6) Decrease the \$400,000.00 “10” FM (Gardner) in Same Trench” allowance line item to account for the aggregate sum of actual costs associated with this scope of work. Decrease the 10” FM (Gardner) in same trench by **(\$80,320.00)**, for an allowance expenditure of \$319,680.00.
- 7) Decrease the \$125,000.00 “Move IMF Pump Station” allowance line item to account for the aggregate sum of actual costs associated with this scope of work. Decrease the Move IMF Pump Station by **(\$60,088.00)**, for an allowance expenditure of \$64,912.00.
- 8) Increase the \$150,000.00 “Owner Controlled Contingency” allowance line item to account for the aggregate sum of actual costs associated with this scope of work. Increase the Owner Controlled Contingency by **\$40,049.00**, for an allowance expenditure of \$190,049.00. The following line items detail the allocation of the Owner Controlled Contingency expenditures:
 - a. Add allowance line item “Widmer Connection.” Total allowance line item paid from Owner Controlled Contingency \$75,200.00.

- b. Add allowance line item “Schlagel Connection.” Total allowance line item paid from Owner Controlled Contingency \$37,000.00.
 - c. Add allowance line item “Temporary Power Connection from KCP&L.” Total allowance line item paid from Owner Controlled Contingency \$17,161.00.
 - d. Add allowance line item “CT Cabinet for KCP&L Transformer.” Total allowance line item paid from Owner Controlled Contingency \$15,530.00.
 - e. Add allowance line item “2” Waterline, 2” Communication Conduit, 6” Creek Sleeve.” Total allowance line item paid from Owner Controlled Contingency \$30,584.00.
 - f. Add allowance line item “IMF and HLN Fencing.” Total allowance line item paid from Owner Controlled Contingency \$14,574.00.
- 9) Decrease the \$25,000.00 “Wetlands Restoration / Erosion Control” allowance line item to account for the aggregate sum of actual costs associated with this scope of work. Decrease the Wetlands Restoration / Erosion Control allowance by **(\$20,000.00)**, for an allowance expenditure of \$5,000.00.
- 10) Decrease the \$50,000.00 “Differing Site / Geology Issues” allowance line item to account for the aggregate sum of actual costs associated with this scope of work. Decrease the Differing Site / Geology Issues allowance by **(\$50,000.00)**, for an allowance expenditure of \$0.00.
- 11) Decrease the \$108,000.00 “HDD – Waverly Road and Floodway Crossing” allowance line item to account for the aggregate sum of actual costs associated with this scope of work. Decrease the Differing Site / Geology Issues allowance by **(\$91,400.00)**, for an allowance expenditure of \$16,600.00.
- 12) Decrease the \$10,000.00 “Water to the Lift Station” allowance line item to account for the aggregate sum of actual costs associated with this scope of work. Decrease the Water to the Lift Station allowance by **(\$5,000.00)**, for an allowance expenditure of \$5,000.00.
- 13) Increase the \$50,000.00 “Gardner Power” allowance line item to account for the aggregate sum of actual costs associated with this scope of work. Increase the Gardner Power allowance by **\$9,654.00**, for an allowance expenditure of \$59,654.00.
- 14) Increase for changes made to the Waverly Collection System gravity pipeline as a result of the final pipeline alignment, including but not limited to, added pipeline length, added manholes, added depth of manholes, added concrete encasement, and added rip rap at creek. Total net increase of **\$43,717.13**.
- 15) Decrease for changes made to the Waverly Collection System forcemain pipeline as a result of the final pipeline alignment, including but not limited to, reduced pipeline length and added second by-pass pumping connection. Total net decrease of **(\$1,533.17)**.
- 16) Increase for changes made to the Waverly Collection System gravity pipeline as a result of requests made by the City of Gardner, including but not limited to, added flowable fill trench checks and Zebron manhole coating at MH-1 and MH-6 . Total net increase of **\$13,741.73**.

- 17) Increase for changes made to the Waverly Collection System forcemain pipeline as a result of requests made by the City of Gardner, including but not limited to, added concrete encasement, added flowable fill trench checks, and modified connection to the existing Horizon Trails forcemain connection. Total net increase of \$6,281.72.
- 18) Increase for changes made to the Waverly Lift Station as a result of requests made by the City of Gardner, including but not limited to, add for changing fencing from chain link to 8' wooden privacy, add for increase in vault access hatch size/quantity, and add for wet well influent drop pipe in lieu of wall pipe. Total net increase of \$16,292.65.
- 19) Increase for changes made to the Waverly Lift Station and Collection design as a result of requests made by the City of Edgerton associated with the Edgerton Land Holding Company development along 191st St, including but not limited to, add for additional rock excavation caused by modified grades and pipeline elevations and add for flowable fill pipe backfill at (2ea) road crossings in lieu of compacted CA-5. Total net increase of \$23,294.90.
- 20) Increase for changes made to the Waverly Lift Station and Collection System as a result of land acquisition for the Waverly Lift Station construction site. Add for Johnson County Building permit that was required prior to annexation of the lift station property into Gardner. Total net increase of \$3,742.28.
- 21) Increase for multiple changes made to the Waverly Lift Station and Collection System design as a result of land acquisition. Total net increase of \$5,023.20.
- 22) Decrease for the cost to supply water from the Rural Water #7 potable water source to the Big Bull Creek WWTP for initial plant fill and startup. Cost was paid by Edgerton and to be reimbursed for the period from 8/18/13 through 10/21/13 billings by RW7 to Edgerton. Total net decrease of (\$1,354.99).

Cost of change – A lump sum Decrease of (\$47,946.69)

Contract Time –

The substantial completion date for the Work shall be extended from September 30, 2013 by 92 calendar days, or to December 31, 2013. This extension of time is a result of delays associated with the availability of lands to construct and procure materials for the Waverly Lift Station and Collection System. A general overview of the items resulting in the delays are listed below. This extension of time is requested in accordance with section 4.01 of the General Conditions to the Contract.

- 1) Easement negotiations / condemnation of the “Klaton Properties,” upon which approximately 1,800LF of the Waverly Collection System pipeline was to be installed, were not finalized until August 1, 2013, preventing construction from commencing.
- 2) Design and easements for the supply of electrical power to the remote valve vault at STA 0+25 were not complete until late September 2013. As of 11/21/13, the power supply to the remote valve vault has not been installed by Gardner Energy. It is assumed that power will be installed to facilitate substantial completion within this requested time extension.

- 3) Prior to annexation of the Waverly Lift Station property, the design of the lift station had to be changed to abide by Johnson County Planning and Zoning regulations. These changes included, but were not limited to, the site layout, temporary electrical racks, temporary generator connections/panels, Johnson County Building/Conditional Use permit, etc. The Johnson County building permit was issued August 19, 2013, allowing construction and procurement of the major lift station components to commence. Subsequently, annexation of the Waverly Lift Station property was complete in early October 2013, negating the changes that were previously made to meet the Johnson County requirements.

Original Contract Value :	\$ 16,947,000.00
Change Orders to Date :	\$ 2,450,000.00
Amount This Lump Sum Change :	(\$ 47,946.69)
Total Contract Value to Date :	\$ 19,349,053.31
Contract time adjustment :	<u>92</u> calendar days

This change order includes all costs, direct, indirect, and consequential, and all changes in contract time arising from the work as known at this time.

All other provisions of the contract remain unchanged.

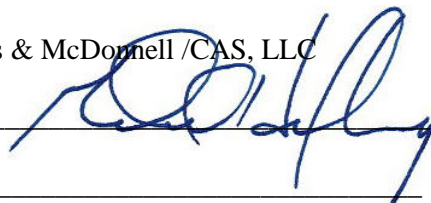
Agreed to this _____ day of _____, 201__

Approved:

Burns & McDonnell /CAS, LLC

By: _____

Date: _____



Approved:

City of Edgerton, KS

By: _____

Date: _____