

**EDGERTON CITY COUNCIL**  
**MEETING AGENDA - AMENDED**  
**CITY HALL, 404 EAST NELSON STREET**  
**July 13, 2023**  
**7:00 P.M.**

**Call to Order**

**1. Roll Call**

\_\_\_\_ Roberts \_\_\_\_ Longanecker \_\_\_\_ Lewis \_\_\_\_ Beem \_\_\_\_ Lebakken \_\_\_\_ Malloy

**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. Approve Minutes from June 22, 2023 Regular City Council Meeting.**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

**Regular Agenda**

**5. 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.

**6. Public Comments.** The City of Edgerton encourages public participation in local governance issues. To facilitate an efficient and effective meeting, persons wishing to address the City Council must sign-up before the meeting begins. Speakers must provide their name and address for the record and are limited to three (3) minutes. The maximum time limit for all speakers will be thirty (30) minutes. Comments on personnel matters or matters pending before court/other outside tribunals are not permitted. Any comments are for informational purposes only. No action will be taken.

The Mayor may modify these provisions, as necessary. The Mayor may limit any unnecessary, off-topic, or redundant comments or presentations. Speakers should address their comments to City Council members only and should not speak to fellow audience members. City Council members will not engage in a dialogue or debate with speakers. Speakers and audience members should conduct themselves in a civil and respectful manner. Disruptive conduct may result in removal from the meeting.

**Business Requiring Action**

**7. CONSIDER ORDINANCE NO. 2140 ADOPTING THE PLANNING COMMISSION'S RECOMMENDATION TO APPROVE A CONDITIONAL USE PERMIT (CU2023-02) ALLOWING A CHILD CARE FACILITY FOR SIX (6) OR MORE PERSONS FOR NEW CITY CHURCH ON THE PROPERTY LOCATED AT 517 MORGAN STREET, EDGERTON, KANSAS.**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

8. **CONSIDER ORDINANCE NO. 2141 AN ORDINANCE RESTATING CHAPTER XI, ARTICLE 7 OF THE MUNICIPAL CODE OF THE CITY OF EDGERTON, KANSAS REGARDING THE REGULATION OF WHEELED DEVICES AND REPEALING ALL OTHER ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

9. **CONSIDER AWARD OF CONSTRUCTION OF THE GREENSPACE PROJECT TO COMBES CONSTRUCTION LLC AT \$6,761,000 TO INCLUDE THE BASE BID AND ALTERNATES 1, 2, 4 AND 5**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

10. **CONSIDER AGREEMENT BETWEEN CITY OF EDGERTON AND EDGERTON LAND HOLDING COMPANY FOR SNOW DEPOT AGREEMENT**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

11. **Report by the City Administrator**

- Discussion Regarding Snow Removal on Private Property in Downtown Edgerton

12. **Report by the Mayor**

- Update from Frontier Days Association regarding Frontier Days 2023

13. **Future Meeting Reminders:**

- July 27: City Council Meeting & Work Session – 7:00PM
- August 7: Envision Edgerton Open House – 5:00PM-8:00PM
- August 8: Planning Commission – 7:00PM
- August 10: City Council Meeting – 7:00PM
- August 24: City Council Meeting – 7:00PM
- September 12: Planning Commission – 7:00PM
- September 14: City Council Meeting – 7:00PM
- September 28: City Council Meeting – 7:00PM

14. **Adjourn** Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

# EVENTS

July 15: Nocturnal Nature  
July 18: Municipal Court  
July 19: Senior Lunch and BINGO  
July 22: Movie Night – Top Gun Maverick in the Downtown Greenspace  
July 25: Dog Bite Prevention Class  
July 26: Silver Screen Cinema Club  
July 26: Cooking Class – Chef Around the World  
July 27: Kid Chefs

**City of Edgerton, Kansas**  
**Minutes of City Council Regular Session**  
**June 22, 2023**

A Regular Session of the City Council (the Council) was held in the Edgerton City Hall, 404 E. Nelson, Edgerton, Kansas June 22, 2023. The meeting convened at 7:00 PM with Mayor Roberts presiding.

**1. ROLL CALL**

Clay Longanecker	present
Josh Lewis	absent
Josh Beem	absent
Deb Lebakken	present
Bill Malloy	present

With a quorum present, the meeting commenced.

Staff in attendance:

- City Administrator, Beth Linn
- City Attorney, Lee Hendricks
- Deputy City Clerk/Planning and Zoning Coordinator, Chris Clinton
- Assistant City Administrator, Meagan Borth
- Marketing & Communications Manager, Kara Banks
- Public Works Superintendent, Trey Whitaker
- Development Services Director, Zachary Moore
- Justin Vermillion, Accountant

**2. WELCOME.** Mayor Roberts welcomed all in attendance.

**3. PLEDGE OF ALLEGIANCE.** All present participated in the 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. Approve Minutes from June 8, 2023 Regular City Council Meeting.
5. Approve Resolution No. 6-22-23A Approving The Mayoral Appointments For Certain Public Officials For The City of Edgerton, Kansas.
6. Approve Ordinance No. 2139 Providing For The Ranges Of Salaries And Compensation Of Various City Officers And Employees.

Mayor Roberts requested item number six (6) be removed as it will be discussed later in the meeting.

Councilmember Longanecker moved to approve the Consent Agenda, except item 6. Councilmember Lebakken seconded the motion. The consent agenda, except item 6, was approved, 3-0.

**Regular Agenda**

7. **Declaration.** There were no declarations made.
8. **Public Comments.** No public comments were made.

**Business Requiring Action**

**9. CONSIDER APPROVAL OF ENCROACHMENT AGREEMENT WITH KPC PIPELINE LLC**

Ms. Beth Linn, City Administrator, addressed the Council. She stated the 2023-2027 Capital Improvement Program (CIP) includes the Dwyer Farms Sewer Main Extension Project to provide sanitary sewer conveyance to the new Dwyer Farms residential development and surrounding area. As designed, the alignment of the proposed eighteen (18) inch sewer pipe crosses the existing KPC Pipeline LLC infrastructure. KPC Pipeline's existing infrastructure consists of two (2) high pressure cross country natural gas pipelines, with one being an eight (8) inch line and the other a ten (10) inch line. She stated in order to construct the sewer lines over the KPC Pipeline infrastructure, KPC Pipeline requires an encroachment agreement. The agreement outlines the use within the KPC Pipeline easement and was provided in the Councilmember's packets. She explained this is similar to other agreements that have been entered into on other projects.

Ms. Linn stated the agreement requires the City to reimburse KPC Pipeline at the rate of \$800 per day in connection with KPC Pipeline's observation and inspection of construction activities as referred to in the agreement. Reimbursement will be required if activities require full, 8-hour day inspections. She stated City staff anticipates the number of days for the required inspection to be relatively low. The agreement has been reviewed by City staff, the City Engineer, and the City Attorney.

Councilmember Longanecker inquired if the new sewer line would be installed above or under the pipelines. Ms. Linn replied that she is unsure but will have Mr. Dan Merkh, Public Works Director, reach out with that information when he returns to the office. Councilmember Longanecker assumes it would be under the pipeline. Ms. Linn believes the sewer line will be under the pipelines because the sewer will connect to the system on the other side of the railroad tracks, which the sewer line will also need to go under.

Councilmember Longanecker asked about the funds for inspections. Ms. Linn answered City staff uses that amount for these types of projects and has already been budgeted. Mayor Roberts stated he is very confident the amount will be less than what is budgeted. Ms. Linn added there have been other projects with the same pipeline and the inspections did not cost near the budgeted amount.

Councilmember Longanecker moved to approve the encroachment agreement with KPC Pipeline LLC. The motion was seconded by Councilmember Lebakken. The agreement was approved, 3-0.

**10. APPROVE APPLICATION PUD2023-01, FINAL PUD PLAN/PLAT FOR DWYER FARMS, PHASE 1, LOCATED AT THE SOUTHWEST CORNER OF BRAUN**

**STREET/207<sup>TH</sup> STREET AND W. 8<sup>TH</sup> STREET/EDGERTON ROAD, EDGERTON, KANSAS**

Mr. Zachary Moore, Development Services Director, spoke before the Council. He stated that Rausch Coleman Homes submitted Application PUD2023-01 for a Final PUD Plan/Plat of Dwyer Farms, Phase I at the southwest corner of Braun Street/207<sup>th</sup> Street and 8<sup>th</sup> Street/Edgerton Road. The proposal is the first phase of a phased development of single-family homes that will include 275 residences once completed. This proposal includes ninety-three (93) single-family residential lots and five (5) common tracts on 35.50 acres, equating to a net density of 2.61 units per acre. The 5 common tracts will all be owned and maintained by the Homeowner's Association and will be used for open space, a playground, monument signage, stormwater detention, and landscaping. He said included with the Final PUD Plan/Plat application is the request to accept the dedication of land for public use for Utility Easements and public street right-of-way for both Braun Street/207<sup>th</sup> Street and W. 8<sup>th</sup> Street/Edgerton Road, as well as the road network on the interior of the development.

Mr. Moore stated the Planning Commission voted to recommend approval of PUD2023-01 at their June 13, 2023 meeting.

Mr. Moore said City staff has reviewed the Final PUD Plan/Plat submittal for conformance with the approved Conceptual PUD Plan and requirements in Articles 6 and 13 of the Edgerton Unified Development Code (UDC). The applicant's engineer will update the Final Plat as required by stipulations listed in the staff report prior to the Final Plat being recorded with the County. The Final Plat has been reviewed by the City Engineer and found to be in compliance with City Code requirements.

Councilmember Longanecker asked how large the entire property is. Mr. Moore answered the entire PUD is eighty (80) acres and the first phase is 35.5 acres.

Mayor Roberts asked the developer when they might break ground. Mr. Kyle Jones, Rausch Coleman Homes, stated they will be opening bids and deciding a grading contractor tomorrow, and they hope to be grading in mid-July. He added they have received approvals for the sanitary sewer through the state.

Councilmember Lebakken moved to approve Application PUD2023-01, Final PUD Plan/Plat for Dwyer Farms, Phase 1. Councilmember Malloy seconded the motion. Final PUD Plan/Plat PUD2023-01 was approved, 3-0.

**11. Report by the City Administrator**

- Updated Job Description for City's Building Inspector

Ms. Linn stated City staff has 2 previously authorized positions that have had job description updates. These updates help with recruitment and retaining employees.

Mr. Moore addressed the Council. He stated the first description is that of the Building Inspector. City staff looked at other city's requirements for a Building Inspection, and Edgerton is one of only a few cities that require a bachelor's degree, if not the only city. He stated that an associate degree or high school diploma is the typical education requirement with experience added. He explained this will help expand the pool of applicants. The other item that will help attract applicant is moving the job class from six (6) to seven (7) on the salary ordinance. The minimum salary is increased by \$5,000 and increases the maximum pay. Mr. Moore said the current pay for a Building Inspector is lower than that of neighboring jurisdictions.

Ms. Linn said the Dwyer Farms development requires eighty-four (84) homes constructed a year per the development agreement. The first phase is to be 93 homes and all of those will require inspections. She said GBA has been a great asset for the City, but it will be difficult for GBA to keep up with the inspections.

Councilmember Longanecker inquired how the updated salary will compare to other cities. Mr. Moore answered the maximum is higher than most of the cities and that could make it more lucrative to an applicant. Mayor Roberts said the salary brackets are wider to help keep and retain talent with the City.

Councilmember Longanecker asked how much the change in salary would save the City compared to the services of GBA. Ms. Linn stated City staff is currently working on that information for the budget and will be happy to provide it when it is known. She explained the ability to start recruitment soon would be beneficial. Mayor Roberts added the City does not intend to drop the contract with GBA. Mr. Moore stated that is correct as the newly hired Building Inspector would focus on the residential applications and GBA focus on commercial and industrial applications. City staff would then request GBA allow the Building Inspection shadow them on inspection as much as possible. Councilmember Longanecker stated there is a big difference between intermodal projects and residential ones. Mayor Roberts explained this position will also add depth to City staff. If the Building Inspector is out sick or on vacation, then GBA can fill in as needed.

Ms. Linn stated the second position is also approved in the budget. The position will provide general administrative support to the Community Development Department by taking minutes at the Planning Commission meetings and handling the building permits on the office side. The job description is being updated to match what the City needs.

Councilmember Longanecker moved to approve the job descriptions and Ordinance No. 2139. Councilmember Lebakken seconded the motion. Ordinance No. 2139 and the job descriptions were approved, 3-0.

- Ms. Linn reminded the Council about the 3<sup>rd</sup> of July event. She said if councilmembers want to help, please let City staff know. Councilmembers would need to show up at 5:45 PM so they are able to park at Martin Creek Park. Councilmember Lebakken inquired if they could get there earlier. Ms. Linn replied that she recommends 5:45 but maybe 5:30 at the earliest.

Mayor Roberts explained that time is so Councilmembers can bypass the line and get to where they need to be to help.

Councilmember Longanecker asked if they will be serving food like in years past. Ms. Linn stated Councilmembers would be handing out t-shirts, monitoring the inflatables, sending people through food line, and other odd jobs. The caterer will be serving like they have been since the pandemic.

Mayor Roberts stated it is a normal business day, so City staff is working during the day and then the event as well. He requested that if any councilmembers attend the event, that they thank City staff members.

- Ms. Linn requested direction as to what light poles Council wants required on new, residential streets. City staff partnered with Olsson Engineering to survey nearby municipalities and come up with some options. There are two typical choices many cities have gone with. She explained the current Edgerton typical streetlight is a wooden pole with the LED cobra-head luminaire mounted at about twenty-five (25) feet. The spacing is inconsistent and the light poles are owned by Evergy and the City pays Evergy for the maintenance.

Ms. Linn stated option one is a round, tapered, brushed aluminum pole with a traditional cobra-head LED luminaire that is mounted twenty-five (25) to thirty (30) feet high. These are spaced about every 200 feet. This option is used in Olathe, Gardner and Spring Hill. Some cities own the streetlights, while others pay Evergy like Edgerton does now. She explained these lights cast light onto the street and little light on the sidewalk.

The other option is the residential post top. These too have a round, tapered, brushed aluminum pole with a LED black acorn style fixture mounted at fourteen (14) feet. These lights are spaced seventy (70) to ninety (90) feet apart. These streetlights are used in Overland Park, Merriam, Leawood and some area of Shawnee and the cities own the lights. The lights are typically located between the street and sidewalk. The street trees that are planted end up blocking the house from the light. They give a more neighborhood ambience and have a greater spread of the light instead of a direct beam of light. Mayor Roberts said these lights still light the road, but mostly used for pedestrian traffic. Councilmember Longanecker said the photos show the larger spread because they look brighter.

Mayor Roberts clarified that the Council is looking for streetlights for small residential streets. Ms. Linn said these would be on the interior streets of the Dwyer Farms development.

Councilmember Longanecker said the post top light up the street and sidewalk where the cobra-head mostly lights the street. Mayor Roberts said he likes the post top and not the cobra-head streetlights that are by his house.

Mayor Roberts stated he does not care for the brushed aluminum and prefers the black poles. Ms. Linn replied that it can be the policy to have black poles if they are available.

Councilmember Longanecker inquired as to how they will be powered. Ms. Linn answered that Everygy will install electrical service to the poles, but the City will install and maintain them. She said it is preferred for the City to own the lights. Councilmember Longanecker asked if the City had considered having these lights solar powered. Ms. Linn replied it can be looked into, but she is unsure how it is done with streetlights. Mayor Roberts said he has seen solar lights, but it is not common practice on public street lighting. Councilmember Longanecker stated it does allow for flexibility in terms of placement. Councilmember Lebakken said it should be looked into, but she does have concerns about the solar panels not getting enough sunlight in the winter months. Ms. Linn stated she will reach out to Olsson to obtain more information about solar powered streetlights.

Mayor Roberts stated it is best to have the lights at intersections and that should be a focus for the developers.

The Council agreed that the residential post top with black poles, with brushed aluminum being an approved alternative is what is preferred. Councilmember Malloy stated the brushed aluminum is probably cheaper. He asked if equipment to maintain these lights is owned by the City. Ms. Linn answered it is not currently.

## **12. Report by the Mayor**

- Mayor Roberts requested the City Attorney update the Council on several lawsuits. Mr. Lee Hendricks, City Attorney, briefed the Council on the three (3) lawsuits that were filed involving the annexations and rezonings that took place in late 2020 and early 2021. He stated there is a result in the third case, which involved the rezonings.

He stated the first case was dismissed for lack of prosecution. He explained that basically the plaintiff did not move forward with the steps in the case and the judge dismissed it. On the second case, the City filed a motion to dismiss the case as the complaining parties do not have jurisdiction to bring the suit forward. The property owners approached the City with a consent to annex application. They would be the only ones who could bring the suit forward, which is highly unlikely as they approached the City and filed the application. He stated oral arguments on the motion to dismiss are set for next week and he is confident with the City's stance as to why the case should be dismissed.

Mr. Hendricks stated the third case involves the rezonings that occurred early in 2021. He explained that the Court found that the Council was acting in a quasi-judicial setting during the rezonings, which means the courts can only overturn the rezonings if the law was not followed. Mr. Hendricks explained that City staff presented and considered the *Golden* factors in great detail. He reminded the Council there was an application that was not reviewed correctly, so it was sent back to the Planning Commission.



Mr. Hendricks said the City submitted a motion for a summary judgement on the third case. All of the facts of the case are agreed upon, so the only question is to if the Council's actions were legal. The judge agreed and granted the motion. Mr. Hendricks read from the Summary Judgement and Standard of review of city's zoning decisions and the Analysis of the opinion. The highlighted sections of the attached opinion is what was read to the Council.

Mayor Roberts said it is important to take those correct steps and the City went above and beyond of what is actually required for rezoning cases.

### **13. Future Meeting Reminders:**

- July 6: Budget Work Session – 7:00PM
- July 11: Planning Commission – 7:00PM
- July 13: City Council Meeting & Work Session – 7:00PM
- July 27: City Council Meeting – 7:00PM
- August 8: Planning Commission – 7:00PM
- August 10: City Council Meeting – 7:00PM
- August 24: City Council Meeting – 7:00PM

### **Adjourn**

Councilmember Malloy moved to adjourn, seconded by Councilmember Longanecker. All in favor. The meeting was adjourned at 7:46 PM.

Submitted by Chris Clinton, Deputy City Clerk/Planning and Zoning Coordinator

Charles Koch: p.51:11-25, p.52:1-25, p. 53:1-24, Exhibit 4, Deposition Exhibit A, PRJC EV Report).

45g. Land and building value will be rendered zero or substantially reduced to the location in an industrial area for a variety of reasons. (Deposition of Charles Koch: p.53:2-25, p.54:1-25, p. 55:1-11, p. 56:2-25, p. 57:1-23, Exhibit 4, Deposition Exhibit A, PRJC EV Report).

45h. The loss of residential building value once warehouses are built close to those properties was nine and a quarter percent of their value just between 2019 and 2020 and homes with less acreage lose greater value. (Deposition of Charles Koch: p.63:5-25, p.64:1-25, p. 65:1-17, Exhibit 4, Deposition Exhibit A, PRJC EV Report).

#### **STANDARD OF REVIEW:**

**Summary Judgment.** A party against whom relief is sought may move for summary judgment on all or parts of a claim. K.S.A. 60—256(b). Summary judgment is only appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. K.S.A. 60-256(c)(2). A genuine issue of material fact exists if “the facts alleged are such as to constitute a legal defense or are of such a nature as to affect the results of the action. Weber v. Southwestern Bell Tel. Co., 209 Kan. 273 (1972). A fact is “material” if it “has legal controlling force as to a controlling issue. Muhl v. Bohi, 37 Kan.App.2d 225 (Kan. App. 2012).

The burden of proof is on the non-moving party to show that a genuine issue of material fact exists. Thoroughbred Assocs., L.L.C. v. Kansas City Royalty Co., 297 Kan. 1193, 308 P.3d 1238 (2013). However, the trial court is required to resolve all facts and inference which may reasonably be drawn from the evidence in favor of the party against whom the ruling is sought. Id. Where reasonable minds could differ as to the conclusions drawn from the evidence, summary judgment must be denied. Id.

**Standard of review of city’s zoning decision.** A district court’s authority to review a city’s zoning decision is limited to reviewing its reasonableness. K.S.A. 12-760. An action is unreasonable when it is so arbitrary that it can be said it was taken without regard to the benefit or harm involved to the community at large, including all interested parties, and was so wide of the mark that its unreasonableness lies outside the realm of fair debate. Golden v. City of Overland Park, 224 Kan. 591 (1978). The aggrieved individual has the burden of proving unreasonableness by a preponderance of the evidence. Evans v. City of Emporia, 44 Kan. App. 2d 1066, 1069, 243 P.3d 374, 376–77 (2010) citing McPherson

Landfill, Inc. v. Board of Shawnee County Comm'rs, 274 Kan. 303, 304-05, 49 P.3d 522 (2002).

### ANALYSIS

The Court, having reviewed the pleadings, the motions, responses, and evidence finds that here is no longer an issue of genuine material fact, and the Defendant is entitled to a judgment as a matter of law.

The standard of review in this case is akin to abuse of discretion. The local zoning authority, and not the court, has the right to prescribe, change or refuse to change, zoning. Evans v. City of Emporia, 44 Kan. App. 2d 1066, 1069, 243 P.3d 374, 376–77 (2010) citing McPherson Landfill, Inc. v. Board of Shawnee County Comm'rs, 274 Kan. 303, 304-05, 49 P.3d 522 (2002). Golden v. City of Overland Park, 224 Kan. 591, 595 (1978). Whether an action is reasonable or not is a question of law to be determined upon the basis of the facts which were presented to the zoning authority. Combined Inv. Co. v. Board of County Com'rs of Bulter County, 227 Kan. 17, 20 (1980); Evans v. City of Emporia, 44 Kan. App. 2d 1066, 1069, 243 P.3d 374, 376–77 (2010). Unreasonableness is defined as when an action is so arbitrary that it can be said it was taken without regard to the benefit or harm involved to the community at large, including all interested parties and was so wide of its mark that it's unreasonable lies outside the realm of fair debate. Combined Inv. Co. v. Board of County Com'rs of Bulter County, 227 Kan. 17, 20 (1980); Evans v. City of Emporia, 44 Kan. App. 2d 1066, 1069, 243 P.3d 374, 376–77 (2010).

It is not required for the city to specifically enumerate the Golden factors in its reasoning. Landau v. City Council of City of Overland Park, 244 Kan. 257 (1989). In fact, the city is not required to make formal findings and conclusions, nor is it required to give any specific reasons for its ruling as long as there is a record of consideration that shows the reasons for the ruling and more than just a yes or no vote. Board of County Comm'n of Johnson County v. City of Olathe, 263 Kan. 667 (1998); McPherson Landfill, Inc. v. Board of Shawnee County Comm'rs, 274 Kan. 303 (2002). The city's decision may be principally based on staff recommendations so long as the factors are considered. Landau v. City Council of City of Overland Park, 244 Kan. 257 (9189).

In this case the record is clear that the Council was presented with thousands of pages of information both for and against zoning of these properties. The Council heard comments from the public and was presented with the Golden Factors to consider when reviewing the information. The Court may not substitute its judgment for that of the governing body and should not declare the action unreasonable unless clearly compelled to do so by the evidence. Landau v. City Council of City of Overland Park, 244 Kan. 257 (9189), *emphasis added*. The Court should not re-weigh the evidence that was presented to the City Commission. Golden v. City of Overland Park, 224 Kan. 591, 596 (1978).



In the present case, the Plaintiffs disagree with evidence submitted to the Council for consideration and claim that they did not adequately consider all the evidence to the contrary. However, in a review pursuant to K.S.A. 12-760, the existence of refuted evidence alone does not render the city's decision unreasonable. What matters is whether the Council's decision was based on evidence and not just a simple yes or no answer. The question for this Court then becomes whether there is evidence to show that the City Council considered the evidence in light of the Golden factors when there is no requirement for formal findings and conclusions, and there is no requirement to give any specific reasons for its rulings. This Court does not reweigh the evidence presented to the Council.

In reviewing the evidence, the Court finds that the volume of information provided to the Council, the numerous references to the Golden Factors in the information provided to the Council, hours of devoted to public comment, and the willingness to receive additional information from protesting parties demonstrates that there is a record of consideration in light of the Golden factors; this is not just a "yes or no vote." While Plaintiffs disagrees with the ultimate decision, this Court cannot find evidence that clearly states that the actions of the Council were so arbitrary that it can be said it was taken without regard to the benefit or harm involved to the community at large. In fact, the evidence supports that the Council received a significant amount of information to try to come to an informed decision. It is for these reasons that the Court finds that the final decision of the city was not unreasonable and hereby **GRANTS** the Defendant's motion for summary judgment.

**IT IS SO ORDERED.**

  
DISTRICT COURT JUDGE, Div. 21

## City Council Action Item

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**Council Meeting Date:** July 13, 2023

**Department:** Community Development

**Agenda Item: Consider Ordinance No. 2140 Adopting The Planning Commission's Recommendation To Approve A Conditional Use Permit (CU2023-02) Allowing A Child Care Facility For Six (6) Or More Persons For New City Church On The Property Located At 517 Morgan Street, Edgerton, Kansas.**

**Background/Description of Item:**

The City of Edgerton has received Application CU2023-02 requesting a Conditional Use Permit (CUP) to operate a Child Care Facility for six (6) or more persons New City Church, which is located at 517 Morgan Street. Child Care Facilities for six (6) or more persons are only permitted in the R-1 District with an approved Conditional Use Permit, pursuant to Unified Development Code (UDC), Section 3.2.D.

New City Church is requesting this Conditional Use Permit so they may provide child care service through their Extended Learning Academy. Their initial request is to provide care for 20-24 children between the ages of 2 ½ and 5, between the hours of 6:30 AM and 5:30 PM.

In order to recommend approval or disapproval of a proposed CUP, the 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, Article 7, Section 7.1(C) of the UDC states that the Governing Body may consider all factors they deem relevant. City Staff has reviewed Application CU2023-03 with respect to all these requirements and staff's analysis can be found in the staff report from the June 20 Planning Commission meeting, which is included in this packet. The staff report presented to the Planning Commission outlining the findings of staff's review is included in the packet.

On June 20, 2023 the City of Edgerton Planning Commission held a public hearing regarding Application CU2023-02, and the Planning Commission recommended approval of the Conditional Use Permit, with a 4-0 vote with the following stipulations:

1. The Conditional Use Permit to allow Child Care for six (6) persons or more at 517 W. Morgan Street is valid for a period of ten (10) years following the date of approval.
2. All State laws pertaining to operating a Child Care facility must be followed.

Staff recommends approval of CU2023-02 as stipulated. The City Attorney has not yet reviewed the draft enclosed Ordinance No. 2140 Any changes will be provided at the July 27, 2023 City Council meeting.

**Related Ordinance(s) or Statue(s):** N/A

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**Funding Source:** N/A

**Budget Allocated:** N/A

**Finance Director Approval:** N/A

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**Recommendation: Approve Ordinance No. 2140 Adopting The Planning Commission's Recommendation To Approve A Conditional Use Permit (CU2023-02) Allowing A Child Care Facility For Six (6) Or More Persons Located At 517 Morgan Street, Edgerton, Kansas**

**Enclosed:**

- Draft Ordinance No. 2140
- CU2023-01 Staff Report prepared for the June 20, 2023 Planning Commission Meeting
- Excerpt from draft Minutes – June 20, 2023 Planning Commission Meeting.

**Prepared by:** Zachary Moore, Development Services Director

## **ORDINANCE NO. 2140**

### **AN ORDINANCE ADOPTING THE RECOMMENDATION OF THE CITY OF EDGERTON PLANNING COMMISSION TO APPROVE A CONDITIONAL USE PERMIT (CU2023-02) ALLOWING A CHILD CARE FACILITY FOR SIX (6) OR MORE PERSONS IN THE R-1 (SINGLE FAMILY RESIDENCES) DISTRICT LOCATED AT 517 W. MORGAN STREET, EDGERTON, KANSAS**

**WHEREAS**, the City of Edgerton, Kansas received Application CU2023-02 for a Conditional Use Permit from New City Church (the "Applicant") on May 1, 2023 for the property located at 517 W. Morgan Street, Edgerton, Kansas (the "Property"); and

**WHEREAS**, both at the time of application and at the time of the signing of this Ordinance, the property is owned by New City Church; and

**WHEREAS**, the Applicant is requesting permission to operate, pursuant to the terms of a Conditional Use Permit, a child care facility for six (6) or more persons; and

**WHEREAS**, the Edgerton Planning Commission held a public hearing on June 20, 2023 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 request for a period of ten (10) years, conditioned on the following being adhered to by the Applicant and any future owner or tenant of the Property within that ten-year period.

1. The Conditional User Permit to allow Child Care for six (6) persons or more at 517 W. Morgan Street is valid for a period of ten (10) years following the date of approval.
2. All State laws pertaining to operating a Child Care facility must be followed.

**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 User Permit should be approved upon the terms described above.

**WHEREAS**, all required newspaper and mailing notifications were performed.

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

**Section 1.** The proposed Conditional Use Permit for a Child Care facility for six (6) or more persons is hereby approved for the property located at 517 W. Morgan Street, Edgerton, Kansas.

**Section 2.** The Conditional Use Permit approved by this Ordinance is expressly conditioned on the Applicant/Owner's strict compliance with the two (2) conditions set forth above, which were recommended by the Edgerton City staff, Planning Commission, and

approved by the Edgerton City Council.

**Section 3.** The validity of this Conditional Use Permit is conditioned upon the strict compliance by the Applicant/Owner with the provisions contained herein as well as strict compliance with the City of Edgerton Zoning Regulations. Should the Applicant/Owner fail to comply with any term or provision thereof and should such failure continue following written notice from the City to the Applicant/Owner specifying the breach and actions to be taken to cure the same, then , at the direction of the City Administrator, the Applicant/Owner 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 occur through 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. The Applicant/Owner 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 Regulations of the City of Edgerton, Kansas affecting the use of the Property heretofore described which are inconsistent with this Ordinance are hereby made inapplicable to said Property until the Conditional Use Permit expires, is vacated, or is declared null and void.

ADOPTED BY THE GOVERNING BODY AND APPROVED BY THE MAYOR OF THE CITY OF EDGERTON, KANSAS ON THE 13<sup>th</sup> DAY OF JULY, 2023.

CITY OF EDGERTON, KANSAS

By: \_\_\_\_\_  
Donald Roberts, Mayor

ATTEST:

\_\_\_\_\_  
Alexandria Clower, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Lee Hendricks, City Attorney



## NEW CITY EARLY LEARNING ACADEMY

Application CU2023-02  
517 W. Morgan Street

### QUICK FACTS

#### PROJECT SUMMARY AND REQUESTED APPROVALS

The Applicant is requesting approval of a childcare facility for six (6) persons or more.

**A Public Hearing is required.**

#### Owner and Applicant

Brandy Peterson,  
Agent of New City Church

#### Existing Zoning and Land Use

Currently R-1 (Single Family Residence District) with one (1) structure on the subject parcel used as a church.

#### Parcel Size

3.15 acres

#### Staff Report Prepared by

Zachary Moore



## BACKGROUND

### **1. Proposal**

The applicant, New City Church, has submitted a request for a Conditional Use Permit to allow for a child care facility in the R-1 (Single Family Residence) District. The Unified Development Code (UDC) requires a Conditional Use Permit to operate child care facility for six (6) persons or more in the R-1 District. New City will operate their Early Learning Academy on site daily, from 6:30 AM to 5:30 PM and will be able to accommodate 24 children ages 2 ½ to 5.

### **2. Subject Site & History**

The 3.15-acre subject property was annexed into the City of Edgerton in 1965 and was platted in 1912 with the County Clerk's Subdivision plat. The property includes an approximately 3,485 square foot church on site, with parking lots to the northwest and east of the building. Access is provided to the site in two (2) locations from 56 Highway.

The UDC requires that churches in the R-1 (Single Family Residence) District must obtain a Conditional Use Permit. The existing church on the subject property has been in operation as a legal nonconforming use, as the structure was permitted as a church in 1985, prior to the adoption of Zoning Regulations in the City of Edgerton, which occurred in 1988. The use of the property may remain on site as a church, provided there is no expansion or termination of the use for greater than 180 days. This Conditional Use Permit request for a Child Care facility does not impact the status of the church on the property as a legal nonconforming use.

### **3. Service Providers**

- a. Water Service – City of Edgerton.
- b. Sanitary Sewer – City of Edgerton.
- c. Electrical Service – Evergy.
- d. Gas Service – Kansas Gas Service.
- e. Police Protection – City of Edgerton through the Johnson County Sheriff's Office.
- f. Fire protection – Johnson County Fire District #1.



*View of subject property looking southwest from 56 Highway/Morgan Street*

## CONDITIONAL USE PERMIT REVIEW

City Staff reviewed the Site Plan under the requirements outlined in Article 7 – *Conditional Uses* of the Unified Development Code (UDC).

The purpose of this article is to provide for certain uses, which because of their unique characteristics cannot be distinctly listed as a permitted use in a particular zoning district. The Planning Commission may recommend approval of Conditional Uses to the Governing Body after consideration in each case of the impact of such uses upon neighboring uses, the surrounding area, and the public need for the use at the particular location. Limitations and standards are herein established to ensure the use's consistency with the character, uses, and activities in the zoning district. Before any Conditional Use may be approved, the Governing Body must review the record of the public hearing held by the Planning Commission.

The Planning Commission, in accordance with the procedures and standards of the UDC, may recommend the Governing Body authorize Conditional Uses in specific instances and in particular districts set forth provided that:

- a. the location is appropriate and consistent with the Comprehensive Plan;
- b. that the public health, safety, morals, and general welfare will not be adversely affected;
- c. the necessary safeguards will be provided to surrounding property, persons, and neighborhood values; and
- d. further provide that additional standards of this Article be specified as a condition of approval.

### **Section 7.1 Issuance of Conditional Uses**

1. **Criteria.** In order to recommend approval or disapproval of a proposed conditional use permit, both the Planning Commission and the 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, 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, including the following:
  - a. **The extent to which there is a need in the community for the proposed use.**
    - i. *The City of Edgerton and the Kansas City region is currently underserved when it comes to day care opportunities. This proposed day care would be the first large day care in the City and would be a useful service to employees in the region, specifically employees at Logistics Park Kansas City (LPKC).*
  - 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.**
    - i. *The properties to the west and south are zoned R-1 and the properties to the east are zoned R-2. The neighborhoods to the west and south are developed with low-density single-family homes ranging between one- and two-stories in height. The neighborhood to the east is developed with duplex homes, all one-story in height. The entire area to the west, south, and east is platted, and there is a small amount of open space to the south and east of the existing church building. The entire area across 56 Highway to the north is developed with rural residential and agricultural uses with large amounts of open space.*



- 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.**

  - i. The proposed use of a child care facility will be low-intensity in nature, with no new structures proposed with the use. The child care facility will be compatible with the surrounding residential area without a need for buffering and screening at this time.*
- d. Suitability of the uses of the property without the proposed conditional use permit.**

  - i. The subject property is zoned R-1, which allows for 9 uses by right and 14 uses with a conditional use permit. Of the permitted uses, the location of the property on a highway makes the property unsuitable for several uses typically found in an R-1 District, such as single-family residential.*
- e. Length of time the subject property has remained vacant without the proposed conditional use permit.**

  - i. The subject property was developed with a church in the early 1990s, which has remained to date.*
- f. The extent to which the proposed use may detrimentally affect nearby property.**

  - i. Staff does not anticipate any detrimental effect on nearby properties by a child care facility operating on the subject property.*
- 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.**

  - i. The property, as it exists in its current state, contains an adequate amount of parking on site to accommodate a child care facility. The two (2) existing access points on 56 Highway will allow traffic to move freely about the site without delays, backups, or stacking on 56 Highway.*
- 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.**

  - i. All utilities necessary to operate the site exist today and no public improvements will be necessary in order for the child care facility to operate.*
- 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.**

  - i. The addition of a child care facility at an existing church building is relatively minor in nature and will not adversely affect the amount of traffic visiting the site on a State*

*Highway. The site also contains 24 marked parking stalls in addition to a significant amount of unmarked space for parking.*

- 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.**
- i. There will be no increase in the amount of impervious surface on the subject property with this Conditional Use request. The child care facility will terminate operation at 5:30 PM daily, therefore, no light pollution is anticipated. Since there is no increase in impervious surface on the property, there is no requirement for an additional stormwater study. Staff anticipates no increase in water pollution, air pollution, noise pollution, or light pollution with this Conditional Use request.*
- k. The economic impact of the proposed use on the community.**
- i. The addition of a child care facility to the existing church will allow greater flexibility for employees and families in the City. A new amenity in the City such as a child care facility may assist with employee retention for local businesses as their employees would have an opportunity for child care in the City.*
- 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.**
- i. There would be little to no gain to the public health, safety, and welfare of the City of Edgerton and the property owner should this request be denied.*
- 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.**
- i. The Future Land Use Map of the Comprehensive Plan identifies the subject property as 'Public', which the proposed use of a Child Care facility is consistent with. Additionally, the proposed Conditional Use aligns with Goals 2 "Create Employment Opportunities and Promote a Diversified Economic Base" and Goal 12 of the Comprehensive Plan, which is, "Provide services to senior citizens and the youth."*

#### DOCUMENTS INCLUDED IN PACKET

Sheet #	Title	Date on Document
Application	Application for CU2023-01	
1	Statement of Purpose	06/12/2023

#### STAFF RECOMMENDATION

City Staff recommends approval of Conditional Use Permit **Application CU2023-02** for *New City Church* with the following stipulations:

1. The Conditional Use Permit to allow Child Care for six (6) persons or more at 517 W. Morgan Street is valid for a period of ten (10) years following the date of approval.

2. All State laws pertaining to operating a Child Care facility must be followed.

***Note: For Application CU2023-02 the Planning Commission is the recommending body for the application to the Governing Body. The Application will be presented to the Governing Body on July 13, 2023.***

Please print or type.

**PROPERTY INFORMATION**Requesting Conditional Use Permit For: New City Church - New City Early Learning AcademyLocation or Address of Subject Property: 517 W Morgan St, Edgerton, KS 66021Legal Description: COUNTY CLERKS SUBDIVISION NW1/4 7-15-22 LT 7 EX S 300'Zoning on Subject Property: R-1 (Single Family) Current Land Use: Church**PROPERTY OWNER INFORMATION**Property Owner's Name(s): New City Church Phone: 913-568-4617Company: New City Church Fax: \_\_\_\_\_Mailing Address: 7230 Quivira RoadCity: Shawnee State: KS Zip: 66216**APPLICANT/AGENT INFORMATION**Applicant/Agent's Name(s): Brandy Peterson Phone: 913-568-4617Company: New City Church Fax: \_\_\_\_\_Mailing Address: 7230 Quivira RoadCity: Shawnee State: KS Zip: 66216**ENGINEER/ARCHITECT INFORMATION**

Engineer/Architect's Name(s): \_\_\_\_\_ Phone: \_\_\_\_\_

Company: \_\_\_\_\_ Fax: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**SIGNATURE**Signature of Owner or Agent:  5.1.23

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

**FOR OFFICE USE ONLY**

Application No.: CU-\_\_\_\_\_ Received by: \_\_\_\_\_

Permit Fee Paid: \$ \_\_\_\_\_ Date Fee Paid/Receipt #: \_\_\_\_\_

Publication Fee Paid: \$ \_\_\_\_\_ Date Fee Paid/Receipt #: \_\_\_\_\_

Hearing Date \_\_\_\_\_

20140326-0006176		
Electronic Recording	T: \$12.00	03/26/2014 09:44:43 AM
Pages: 2	Register of Deeds	T20140014218
JO CO KS	BK:201403	PG:006176

# KANSAS WARRANTY DEED

McCaffree-Short Title

14 0395

THIS INDENTURE, made on this 26th day of March, 2014, by and between

Edgerton Southern Baptist Church, Inc.

Grantor(s), and

New City Church, Inc.

Grantee(s), for the sum of one dollar and other good and valuable considerations.

Grantee's mailing address is: 517 W. Morgan, Edgerton, KS 66021

All of Lot 7, COUNTY CLERK'S SUBDIVISION, of the Northwest 1/4 of Section 7, Township 15, Range 22, in Johnson County, Kansas, except the South 300 feet and except a tract beginning at the Northwest corner of said Lot 7, thence South 38.9 feet; thence East 220.00 feet; thence North 38.51 feet; thence West 220.00 feet to the point of beginning.

Subject to restrictions, reservations, assessments, and easements, if any, now affecting said property.

TO HAVE AND TO HOLD THE SAME, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, forever.

And Grantor(s), for himself, his heirs, successors and assigns, does hereby covenant, promise and agree, to and with Grantee(s), that at the delivery of these presents he is lawfully seized in his own right of an absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the above-granted and described premises, with the appurtenances; that the same are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments taxes, assessments and encumbrances, of what nature and kind whatsoever, subject to Grantor's reservation set forth herein, and that he will

WARRANT AND FOREVER DEFEND the same unto Grantees and to his/her/its heirs and assigns forever, and all and every person or persons whomsoever lawfully claiming or to claim the same.  
Edgerton Southern Baptist Church, Inc.



# Aerial View



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02/18/2023



## Aerial View 2



02/23/2023

## AUTHORIZATION OF AGENT FORM

To: City of Edgerton

Case No. CU-202302

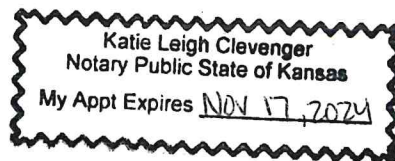
I, Jennifer Miller, of New City Church, do hereby  
authorize Brandy Peterson, of New City Church, to act as  
Agent for New City Church located at 7230 Quivira Rd  
Shawnee, KS 66216

Jennifer Miller  
Signature of Agent, Owner or Attorney

Subscribed and sworn to before me this 12<sup>th</sup> day of May, 2023.

Katie C  
Notary Public

My Commission Expires: NOV. 17, 2024







7230 Quivira Road Shawnee, KS 66216

June 12, 2023

Dear City of Edgerton:

My name is Brandy Peterson, and I am the Central Director for New City Early Learning Academy. Currently, we have two locations on our four campuses. I am writing today because we would like to open a Preschool and Pre-K based New Cit ELA within our New City Church building in Edgerton. We operate a year-round program open 6:30-5:30 Monday to Friday. We base our curriculum around learning through play, center-based exploration, and a bible rich activity-based yearlong plan. We will provide a structured schedule for up to 24 children ages 2.5-5 years in a mixed age Preschool/Pre-K based classroom. Based on the current application submission date of July 14, 2023, we anticipate our opening to be mid-October to early November 2023 due to the state requirements of 90 days to approve an application once submitted.

I look forward to sharing more about our program with you at the City Council meeting on June 20, 2023. I think you will find our experience as a program will be a good fit for the community and serve a need to provide quality preschool childcare within Edgerton. You will find Ms. Lindsey, our director, to be a structured planner who loves providing students and families with a chance to engage in the love of learning. If you have any questions, I can be reached via email at [brandy@newcityela.com](mailto:brandy@newcityela.com) or on my cell phone at 913-568-4617. I have included our Federal ID and current contact information should that be necessary.

Federal ID # 90-0541765

New City Early Learning Academy  
7230 Quivira Rd. Shawnee, KS 66203  
913-268-6301

Sincerely,

Brandy Peterson

NCELA Central Director

**PLANNING COMMISSION  
SPECIAL MEETING  
June 20, 2023**

A special session of the Edgerton Planning Commission (the Commission) was held in the Edgerton City Hall, 404 E. Nelson Street, Edgerton, Kansas on June 20, 2023. The meeting convened when Chair John Daley called the meeting to order at 7:00 PM.

**1. ROLL CALL**

Jeremy Little	absent
Charlie Crooks	present
Adam Draskovich	present
John Daley	present
Jordyn Mueller	present

With a quorum present, the meeting commenced.

Staff in attendance: Zachary Moore, Development Services Director  
Chris Clinton, Planning and Zoning Coordinator/Deputy City Clerk

- 2. WELCOME** Chairperson Daley welcomed all in attendance to the meeting.
- 3. PLEDGE OF ALLEGIANCE** All present participated in the Pledge of Allegiance.

**REGULAR AGENDA**

**4. DECLARATION**

Chairperson Daley asked the Commissioners to declare any correspondence they have received or communication they have had regarding the matters on the agenda. If they have received correspondence or have had any communication, he asked if it may influence their ability to impartially consider the agenda items.

The Commissioners did not have anything to declare at this time.

**BUSINESS REQUIRING ACTION**

**NEW BUSINESS**

- 5. CU2023-02: CONDITIONAL USE PERMIT APPLICATION FOR A CHILD CARE CENTER FOR NEW CITY CHURCH LOCATED AT 517 W MORGAN STREET**

Ms. Brandy Peterson, New City Church, spoke before the Commission. She stated she runs the childcare centers for New City Church in Shawnee and Raytown, Missouri. She explained the childcare center will be located in the basement of the building, where it was once located years ago. The childcare center will accommodate twenty (20) to twenty-four (24) toddlers

and kids aged two and a half (2.5) to five (5) years old from 6:30 AM to 5:30 PM. They will use a basic curriculum that focuses on learning through play, social skill, and Kindergarten prep. The year-round program will only be closed on the basic federal holidays and two (2) teacher prep/training days. She said she has been working on getting the Johnson County licensure secured. The director that would be hired to lead the center lives in Gardner and has written curriculum for the other centers the last few years.

Mr. Zachary Moore, Development Services Director, addressed the Commission. He explained City staff reviewed the application under the purview of Article 7 of the Unified Development Code (UDC) as a childcare facility for more than six (6) persons on a R-1 zoned parcel requires a Conditional Use Permit (CUP). He explained Article 7 has criteria that need to be reviewed when determining if a CUP should be approved or not and City staff reviewed the application against these criteria. There is a large need of this use in the City and this use fits the character of the neighborhood, as the intensity of the childcare facility will be low. The proximity of 56 Highway makes the subject parcel unsuitable for many uses in the R-1 District. The subject parcel has been developed with the church structure since the early 1990s and no further development is proposed at this time. Mr. Moore stated City staff does not believe there would be any detrimental effects to nearby properties. There is adequate parking on site that exists to accommodate the childcare facility and there are two (2) access points from 56 Highway will prevent any possible backups or stacking on the Highway. He explained that utilities are on site, so no new utility extensions are needed. No new environmental impacts are expected as there will not be any increase to impervious surface and the facility will close prior to the need of exterior lighting. He said the addition of a childcare facility would allow greater flexibility for employees and families in the City and would be a big help and economic boost to the community. City He told the Commission he was in a meeting with Human Resources representatives of tenants from Logistics Park Kansas City (LPKC), and the lack of childcare is a big reason why employees leave their employment at LPKC. There would be little to no gain to the public health, safety, and welfare if this application was denied. Mr. Moore stated the application is consistent with the Comprehensive Plan and City staff does recommend approval of the CUP for 10 years with the stipulation that all state law pertaining to operating a childcare facility are followed.

Chairperson Daley inquired what the plan was if traffic backs up to highway 56. Mr. Moore replied that parents will use the western access point and use the circle drive to drop off and exit to the east. He explained this would allow several cars the ability to stack, and there is a parking lot for people to park and go into the center to pick up children. Ms. Peterson added they will request parents park to come in and pickup or drop off their kids. There will be a small number of children between 6:30 and 7:00 AM. It is possible for some congestion around 8:00 AM for drop off, but it should be short lived.

Commissioner Crooks asked what the plan is for expanding once capacity is reached. Ms. Peterson answered that they would want to expand eventually but are more concerned about getting the childcare center licensed and started first.

Commissioner Draskovich stated he is not familiar with the building and asked if there are adequate exits in the basement. Ms. Peterson replied that there are, and preliminary approval was granted by the fire marshal. Commissioner Crooks stated the basement was a daycare

before. Ms. Peterson stated that the licensing agencies have approved a higher number for enrollment, but the center wants to stay around the 20-24 number.

Chairperson Daley wanted to clarify the age range of students. Ms. Peterson stated 2.5 to 5 years old.

Commissioner Draskovich asked if the center was compliant with the Americans with Disabilities Act (ADA). Ms. Peterson replied the center is.

Chairperson Daley opened the public hearing.

Mr. James Oltman, President of ElevateEdgerton!, approached the Commission. He stated he is in support of this CUP, and that this is a huge need in the community. When he fields calls for companies from LPKC, the second most requested service behind more food options is childcare. He believes this is a good step in the right direction, and he is happy this organization has stepped up to be the first major center in Edgerton.

Ms. Amy Francis, 109 W. 7<sup>th</sup> Street, addressed the Commission. She said that she supports this great opportunity for the community. She said Edgerton is growing with many new houses planned. Childcare centers are needed now and more in the future. She wants to get this center to start and grow for the future of Edgerton.

Commissioner Crooks moved to close the public hearing. Commissioner Draskovich seconded the motion. The public hearing was closed, 4-0.

Commissioner Crooks moved approve Application CU2023-02 with the stipulations outlined by City staff. The motion was seconded by Commissioner Mueller. Application CU2023-02 was recommended for approval with the stipulations, 4-0.

Mr. Moore stated the application will be presented to the governing body on July 13, 2023.

## **6. FUTURE MEETING REMINDERS**

Chairperson Daley stated that the next regular sessions are scheduled for July 11, 2023; August 8, 2023; September 12, 2023; and October 10, 2023.

## **7. ADJOURN**

Commissioner Crooks moved to adjourn the meeting. Commissioner Draskovich seconded the motion. The meeting was adjourned at 7:14 PM, 4-0.



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Edgerton, KS 66021  
P: 913.893.6231  
EDGERTONKS.ORG

## City Council Action Item

**Council Meeting Date:** July 13, 2023

**Department:** Administration

**Agenda Item: CONSIDER ORDINANCE NO. 2141 AN ORDINANCE RESTATING CHAPTER XI, ARTICLE 7 OF THE MUNICIPAL CODE OF THE CITY OF EDGERTON, KANSAS REGARDING THE REGULATION OF WHEELED DEVICES AND REPEALING ALL OTHER ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH**

**Background/Description of Item:**

City Council held a workshop in June 2023 to discuss possible regulations to allow the operation of electric scooters and electric bikes on roads as well as toy vehicles on sidewalks within corporate city limits. All their considerations were added to the draft ordinance, prepared by the City Attorney, for further review and discussion.

11-702 defines the types of vehicles, operators, and other pertinent terms included in this section of Code, as defined by the Standard Traffic Ordinance (STO) and other entities when available. This section includes definitions from the STO as written today.

11-703 is the original language from the ordinance prohibiting these actions. The following section provides for exceptions.

11-704 defines exceptions for operation, including now for e-bikes, e-scooters, and toy vehicles.

**Age-** Must be 14 years of age or older. No license or registration required.

**Trails-** Not allowed on any trails or multi-use paths.

**Speed Limits-** Follow the posted speed limit.

**Passengers-** Only permit the vehicle to carry the number of people for which it is designed or equipped.

**Time-** Operated just between the hours of sunrise to sunset.

**Roads and Sidewalks-** Same road privileges and rules as regular bicycle riders. Not allowed on streets with a posted speed limit of more than 30 mph. Not allowed on sidewalks or unpaved surfaces. Not allowed on truck routes. Can walk e-bikes and e-scooters on sidewalks, truck routes, etc. Must follow all laws associated with operating a vehicle on right-of-way.

**Highways-** State regulation prohibits e-scooters and e-bikes to cross or travel any interstate, federal or state highway unless otherwise allowed by state statute.



**Toy Vehicles-** Any motorized or propellant-driven device with a maximum speed capability of 5 mph that has no manufacturer-issued vehicle identification number that is designed or used to carry any person or persons, on any number of wheels, bearings, glides, blades, runners, or a cushion of air for recreation or play specifically designed and used for the purpose of transporting children, infants, incapacitated or disabled persons. "Toy vehicle" does not include electric personal assistive mobility devices, electric power-assisted bicycles, mopeds, scooters, skateboards, or motorcycles, nor does it include any nonmotorized or nonpropellant-driven devices such as bicycles, roller skates, or skateboards.

Toy vehicle operations limited to the sidewalk and multi-use paths and trails. Do not cross or travel on any street with a posted speed limit of over 30 mph. The present adult is required to be within 15 feet and maintain visual sight of the child operating the vehicle at all times. They must follow all typical traffic laws.

11-705 makes enforcement of these regulations the parent's responsibility if the operator is not considered an adult.

11-706 deems any violation of any provision of the ordinance as a traffic infraction.

**Related Ordinance(s) or Statute(s):** ARTICLE 2. LOCAL TRAFFIC PROVISIONS. 14-201. ARTICLE 7: REGULATION OF WHEELED DEVICES. 11-701, 702, 703

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**Funding Source:** N/A

**Budget Allocated:** N/A

**Finance Director Approval:** N/A

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<p><b>Recommendation: CONSIDER ORDINANCE NO. 2141 AN ORDINANCE RESTATING CHAPTER XI, ARTICLE 7 OF THE MUNICIPAL CODE OF THE CITY OF EDGERTON, KANSAS REGARDING THE REGULATION OF WHEELED DEVICES AND REPEALING ALL OTHER ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH</b></p>
--

**Enclosed:** Draft Ordinance No. 2141

**Prepared by:** Meagan Borth, Assistant City Administrator

## ORDINANCE NO. 2141

AN ORDINANCE RESTATING CHAPTER XI, ARTICLE 7 OF THE MUNICIPAL CODE OF THE CITY OF EDGERTON, KANSAS REGARDING THE REGULATION OF WHEELED DEVICES AND REPEALING ALL OTHER ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH

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

**SECTION 1.** Chapter XI, Article 7, of the City Code of the City of Edgerton, Kansas, which is titled “Regulation of Wheeled Devices”, is hereby restated to read as follows:

### ARTICLE 7: REGULATION OF WHEELED DEVICES

**11-701.INTENT.** The intent of this Article is to supplement the Standard Traffic Ordinance adopted each year by the City to address specific concerns the City has with motorized wheeled devices that are not subject to being registered as vehicles by the Division of Vehicles of the Kansas Department of Revenue. Nothing herein is intended to conflict with the Standard Traffic Ordinance and, in the event a conflict arises, the Standard Traffic Ordinance shall supercede this Chapter. (Ord. 773, 2005, Ord. 2141, 2023)

**11-702.DEFINITIONS.** For the purpose of this Chapter, the following terms, phrases, words and their derivations shall mean:

- (a) City is the City of Edgerton, Kansas.
- (b) Child is anyone thirteen (13) years of age or younger, whose care and custody as well as right to his or her earnings, repose in a parent or legal guardian.
- (c) Electric-Assisted Bicycle (or e-bike) is a bicycle with two or three wheels, a saddle, fully operative pedals for human propulsion, and an electric motor of less than 750 watts that meets the requirements of one of the following three classes:
  - (i) Class 1 electric-assisted bicycle means an electric-assisted bicycle equipped with a motor that provides assistance only when the rider is pedaling and ceases to provide assistance when the bicycle reaches the speed of 20 miles per hour;
  - (ii) Class 2 electric-assisted bicycle means an electric-assisted bicycle equipped with a motor that may be used exclusively to propel the bicycle and is not capable of providing assistance when the bicycle reaches the speed of 20 miles per hour; or
  - (iii) Class 3 electric-assisted bicycle means an electric-assisted bicycle equipped with a motor that provides assistance only when the rider is pedaling and ceases to provide assistance when the bicycle reaches the speed of 28 miles per hour. (as defined by K.S.A. 8-1489 as amended)
- (d) Electric Assisted Scooter (or e-scooter) is every self-propelled vehicle, other than an electric-assisted bicycle, that has at least two wheels in contact with the ground, an electric motor, handlebars, a brake and a deck that is designed to be stood upon when riding. (as defined by K.S.A.8-1498) as amended)

(e) Motorized Wheeled Device is any device with wheels that is propelled by a motor or battery, used to transport persons, and is not subject to being registered as a vehicle by the Division of Vehicles of the Kansas Department of Revenue.

(f) Parent is any person having legal custody of a minor: (i) as a natural or adoptive parent, (ii) as a legal guardian (iii) as a person who stands in loco parentis, or (iv) as a person to whom legal custody has been given by court order.

(g) Person is every natural person, firm, association, partnership or corporation.

(h) Sidewalk is that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

(i) Street or Highway is the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic. Where the word “highway” or the word “street” is used in this Article, it shall mean street, avenue, boulevard, thoroughfare, trafficway, alley and other public way for vehicular travel by whatever name unless the context clearly indicates otherwise.

(j) Toy Vehicles are any motorized or propellant-driven device with a maximum speed capability of 5 mph that has no manufacturer-issued vehicle identification number that is designed or used to carry any person or persons, on any number of wheels, bearings, glides, blades, runners, or a cushion of air for recreation or play specifically designed and used for the purpose of transporting children or infants. "Toy vehicle" does not include electric personal assistive mobility devices, electric power-assisted bicycles, mopeds, scooters, skateboards, or motorcycles, nor does it include any nonmotorized or nonpropellant-driven devices such as bicycles, roller skates, or skateboards. (Ord. 773, 2005, Ord. 2141, 2023)

**11-703.MOTORIZED WHEELED DEVICES PROHIBITED.** It is unlawful for any person to operate a motorized wheeled device on any City street, highway, or sidewalk. (Ord. 773, 2005, Ord. 2141, 2023)

**11-704.EXCEPTIONS TO SECTION 11-703 OF THIS ARTICLE.** The following devices, or use of devices, shall be exempt from this Article, and shall constitute being “authorized by the City” for purposes of provisions of the Standard Traffic Ordinance that prohibit such devices except if authorized by the City:

(a) When the device is being used by or for a “Person with a Disability” (as defined by the Standard Traffic Ordinance) who, without use of the device, is unable to transport himself or herself;

(b) When the device is being used in a City parade, or other community event authorized by the Governing Body, or the device has been otherwise exempted from Section 11- 703 by the Governing Body, provided, however, that nothing herein shall be construed as waiving or relieving such users from any other ordinances, statutes, or regulations that may be applicable to such use;

(c) When the device is being used by law enforcement officers or by emergency personnel while in the performance of their official duties;

(d) Lawn care equipment, construction equipment, or other commercial or residential equipment which temporarily enter upon a City street or sidewalk for the purpose of completing a task or project requiring such equipment, which task or project shall not be related to the transport of persons;

(e) Lawn care equipment, construction equipment, or other commercial or residential equipment driven from dawn to dusk by someone 14 years of age or older upon the outermost edge

of a City street [excluding streets with a speed limit in excess of 30 miles per hour] for the purpose of moving said equipment to a jobsite where the equipment will be used to complete a task or project, but such task or project shall not be the transport of persons;

- (f) “Authorized Emergency Vehicle” as defined by the Standard Traffic Ordinance;
- (g) “Farm Tractor” as defined by the Standard Traffic Ordinance;
- (h) “House Trailer” as defined by the Standard Traffic Ordinance;
- (i) “Implement of Husbandry” as defined by the Standard Traffic Ordinance;
- (j) “Motorized Wheelchair” as defined by the Standard Traffic Ordinance;
- (k) “Micro Utility Truck” as defined by the Standard Traffic Ordinance;
- (l) “Recreational Vehicle” as defined by the Standard Traffic Ordinance; or
- (m) “Special Mobile Equipment” as defined by the Standard Traffic Ordinance.
- (n) “Electric Assisted Bicycles” and “Electric Assisted Scooters” as defined in this Article,

when used subject to the following restrictions:

- (i) All operators must be 14 years of age or older. No license or registration shall be required.
- (ii) E-bikes and E-Scooters shall not be allowed on streets with a posted speed limit of more than 30 mph. They shall not be allowed on truck routes, sidewalks, trails, multi-use paths or unpaved surfaces. They may be walked on truck routes, sidewalks, trails, multi-use paths, unpaved surfaces and streets with a posted speed limit of over 30 mph. Operators must follow all laws associated with operating a bicycle on right-of-way, and shall not be allowed to cross or travel on any interstate, federal or state highway unless otherwise allowed by state statute.
- (iii) Operators shall follow the posted speed limit.
- (iv) The E-Bike and E-Scooter operator shall only permit the number of passengers for which the E-Bike and E-Scooter is designed or equipped to carry.
- (v) E-Bike and E-Scooter shall only be operated between the hours of sunrise and sunset.
- (o) “Toy Vehicles” as defined in this Article, when used subject to the following restrictions:
  - (i) Toy vehicle operations shall be limited to the sidewalk and multi-use paths and trails.
  - (ii) Toy Vehicles shall not cross or travel on any street with a posted speed limit of over 30 mph.
  - (iii) A present adult is required to be within fifteen (15) feet and maintain visual sight of a child operating a toy vehicle at all times.

(Ord. 925, 2012; Ord. 909, 2011; Ord. 773, 2005, Ord. 2141, 2023)

**11-705.SAME; PARENTAL RESPONSIBILITY.** It shall be unlawful for a parent of a child to permit, or by insufficient control, to allow such child to violate Section 11-703 or 11-704 of this Article. (Ord. 773, 2005, Ord. 2141, 2023)

#### **11-706.ENFORCEMENT.**

(a) Violations of this Article, whether by an adult or a minor, shall be deemed a traffic infraction;

(b) If there is a violation of this Article by any person, that person shall be charged and served with a Notice to Appear in Municipal Court. Upon conviction, the fine for first offense shall be One Hundred Fifty Dollars (\$150.00), the fine for a second offense shall be Three Hundred Dollars (\$300.00) and the fine for a third and subsequent offenses shall be Five Hundred Dollars (\$500.00).

(c) If a parent, having custody or control of a child, authorizes or knowingly permits a child to violate Section 11-703 or Section 11-704 of this Article, said parent shall be charged and Served a Notice to Appear in Municipal Court and, upon conviction, shall be subject to a fine not a exceed Three Hundred Dollars (\$300.00) and costs. (Ord. 2111, 2022, Ord. 2141, 2023)

**SECTION 2. REPEAL OF CONFLICTING ORDINANCES.** All ordinances or sections of ordinances in conflict herewith are hereby repealed.

**SECTION 3. EFFECTIVE DATE.** This ordinance shall take effect and be in force from and after its passage, approval and publication once in the City's official paper.

PASSED by the Council and APPROVED by the Mayor on this 13<sup>th</sup> day of July, 2023.

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DONALD ROBERTS, Mayor

ATTEST:

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ALEXANDRIA CLOWER, City Clerk

APPROVED AS TO FORM:

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LEE W. HENDRICKS, City Attorney

## City Council Action Item

**Council Meeting Date:** July 13, 2023

**Department:** Public Works

### **Agenda Item: Consider Award of Construction of The Greenspace Project to Combes Construction LLC at \$6,761,000 to Include the Base Bid and Alternates 1, 2, 4 and 5**

**Background/Description of Item:**

On August 26, 2021, City Council approved the contract with the architect Incite Design Studio. On November 18, 2021, City Council approved a contract with Henderson Building Solutions for the services of Owner's Representative. On December 9, 2021, City Council attended a work session to get familiar with early concepts of the building details. On September 9, 2022, City Council approved the project scope and updated project budget.

On February 9, 2023 City Council approved Concurrence to Bid the Greenspace Project. This project consists of the base bid, with six (6) alternates. The bid documents included the base bid of The Greenspace building, with alternates listed below:

1	New South Parking Lot
2	North Nelson Street Upgrades
3	South of Alley – Seed in Lieu of Sod
4	Nelson Street Mill & Overlay
5	New Monument Sign
6	Landscape Maintenance and Warranty

On Thursday, June 22, 2023, the City held a public bid opening and received eight bids. The base bids received ranged in cost of \$5,956,163 to \$8,079,000. The base bid from the architect is \$7,000,000. A copy of the bid tabulations is attached, including the base bid and all the alternates. The bidding documents allow the City Council to choose to accept any and all alternates.

After reviewing the bid documents and approved project budget, staff recommends the City Council consider awarding the base bid plus alternates 1, 2, 4, and 5.

- **Alternate 1 New South Parking Lot** is the construction of the new south parking lot south of the alley along Martin Street. Parking often fills up very quickly during events in downtown. Staff recommends this alternative to provide additional parking in downtown for additional event space in The Greenspace, but can also be used for other city functions and downtown businesses.

- **Alternate 2 North Nelson Street Upgrades and Alternate 4 Nelson Street Mill & Overlay** would complete the construction the streetscape along Nelson Street from East 3<sup>rd</sup> Street to East 4<sup>th</sup> Street as conceptually designed in the Downtown Edgerton Master Plan. The southside streetscape improvements are included in the base bid. Awarding this alternate now takes advantage of the contractor already being on site and downtown already being disrupted rather than having to come back in the future.
- **Alternate 5 New Monument Sign** would construct a new LED monument sign along Nelson Street to advertise city events and functions to the community.

Staff would recommend to not award Alternate Nos 3 (South of Alley – Seed in Lieu of Sod) and 6 (Landscape Maintenance and Warranty). Alternate 3 was included as a possible budget saving measure that is not preferred if within budget. Alternate 6 is also not necessary or preferred after evaluation of limited budget dollars.

Enclosed is a summary of the bid tabs based on recommended alternates. Following the bid opening, staff together with the design team and owner’s representative reviewed additional information provided by both Infinity Group, LLC and Combes Construction, LLC including Contractor Qualifications, similar Project Experience in both type and scope of work completed by the Company and amount of work anticipated to be self-performed. Note, on July 7<sup>th</sup>, staff received notification from Jayger Construction Group, LLC that they were withdrawing their bid due to a calculation error.

After completing that review, staff would recommend rejecting the bid from Infinity Group, LLC as permitted in Section 5.2 of the Instruction to Bidders due to lack of comparable project experience both in scope and type of construction. The Experience Summary submitted by Infinity Group did not include any completed projects valued over \$2.3 million, with most of the project submitted below \$750,000. When asked to provide a similar project to The Greenspace based on scope, type of construction, magnitude, etc. Infinity Group provided projects completed by their team members previously, not while working as Infinity Group. Finally, Infinity Group has indicated that they do not indent to self-perform any of the scope of work.

Staff, together with the Architect and Owner’s Representative, would recommend Combes Construction as the lowest responsive, responsible and most qualified bidder for the Base Bid and Alternates 1, 2, 4 and 5 at \$6,761,000 as provided for in 5.3 of the Instructions to Bidders. A copy of the Architect’s Letter of Recommendation is enclosed with this packet. Combes Construction has extensive public project experience similar to The Greenspace Project in both scope and price. Similar projects in both new construction and major renovation like Trailridge Middle School Expansion and Renovation, Harmony Major Mechanical, Baldwin City Public Works Facility, Leawood Aquatic Center and many others for public clients similar to the City of Edgerton including Shawnee Mission School District, Blue Valley School District, De Soto School District, City of Tonganoxie, City of Bonner Springs, City of Baldwin City etc.

The Greenspace total project budget is \$8,704,950. The construction of the project is budgeted for \$7,565,549. The contract with Combes Construction LLC at \$6,761,000 for base bid and alternates 1, 2, 4 and 5 is within that budgeted amount. A summary of the bids with these alternates is included with the packet.

**Related Ordinance(s) or Statue(s):**

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**Funding Source:** General Obligation Bonds (using revenues from LPKC Phase I Maintenance Fee and roll-off of LPKC abatements for payment of annual debt service)

**Budget Allocated:** \$8,704,950 (Total Project)  
\$7,565,549 (Construction)

x 

**Finance Director Approval:** Karen Kindle, Finance Director

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**Recommendation: Consider Award of Construction of The Greenspace Project to Combes Construction LLC at \$6,761,000 to Include the Base Bid and Alternates 1, 2, 4 and 5**

**Enclosed:** Original Bid Tabulations  
Bid Tabulations with Recommended Alternates  
iDS Letter of Recommendation

**Prepared by:** Beth Linn, City Administrator



Bidders	A/E Bid	Centric Construction Group	Combes Construction, LLC	Fogel-Anderson Construction, LLC	Haren Companies	Infinity Group, LLC	Jayger Construction Group, LLC	Loyd Builders, Inc.	Straub
Bid Guarantee (Bid Bond/ Security or Check)	~	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Contractor's Qualification Statement	~	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Acknowledgement of Addenda (#1 - #4)	~	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Base Bid	\$7,000,000.00	\$7,076,971.00	\$6,444,000.00	\$7,147,000.00	\$7,498,000.00	\$5,956,163.00	\$6,525,845.00	\$6,950,000.00	\$8,079,000.00
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Alt #1 - New South Parking Lot	\$295,000.00	\$132,952.00	\$130,000.00	\$128,000.00	\$141,000.00	\$97,255.00	\$128,471.00	\$210,500.00	\$96,000.00
Alt #2 - North Nelson Street Upgrades	\$106,800.00	\$153,358.00	\$128,000.00	\$151,000.00	\$131,000.00	\$69,862.00	\$84,790.00	\$195,000.00	\$136,000.00
Alt #3 - South of Alley - Seed in Lieu of Sod	-\$5,000.00	-\$3,017.00	-\$2,500.00	-\$2,400.00	-\$6,000.00	\$5,400.00	-\$4,000.00	-\$4,000.00	-\$4,500.00
Alt #4 - Nelson Street Mill & Overlay	\$20,000.00	\$14,846.00	\$42,000.00	\$13,200.00	\$15,000.00	\$137,500.00	\$12,200.00	\$41,700.00	\$13,500.00
Alt #5 - New Monument Sign	\$50,000.00	\$14,129.00	\$17,000.00	\$19,400.00	\$46,000.00	\$48,450.00	\$15,236.00	\$43,500.00	\$15,000.00
Alt #6 - Landscape Maintenance and Warranty	\$25,000.00	\$23,058.00	\$130,000.00	\$70,200.00	\$5,500.00	\$89,999.00	-\$22,200.00	\$86,700.00	\$117,000.00

BID DATE: June 22, 2023  
 BID TIME: 2:00 pm

BID TABULATION - AS RECOMMENDED BY STAFF  
**THE GREENSPACE**



Bidders	A/E Bid	Centric Construction Group	Combes Construction, LLC	Fogel-Anderson Construction, LLC	Haren Companies	Infinity Group, LLC	Jayger Construction Group, LLC (BID WITHDRAWN)	Loyd Builders, Inc.	Straub
Bid Guarantee (Bid Bond/ Security or Check)	~	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Contractor's Qualification Statement	~	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Acknowledgement of Addenda (#1 - #4)	~	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

<b>Base Bid</b>	\$7,000,000.00	\$7,076,971.00	<b>\$6,444,000.00</b>	\$7,147,000.00	\$7,498,000.00	<del>\$5,956,163.00</del>	<del>\$6,525,845.00</del>	\$6,950,000.00	\$8,079,000.00
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Alt #1 - New South Parking Lot	\$295,000.00	\$132,952.00	<b>\$130,000.00</b>	\$128,000.00	\$141,000.00	<del>\$97,255.00</del>	<del>\$128,471.00</del>	\$210,500.00	\$96,000.00
Alt #2 - North Nelson Street Upgrades	\$106,800.00	\$153,358.00	<b>\$128,000.00</b>	\$151,000.00	\$131,000.00	<del>\$69,862.00</del>	<del>\$84,790.00</del>	\$195,000.00	\$136,000.00
Alt #4 - Nelson Street Mill & Overlay	\$20,000.00	\$14,846.00	<b>\$42,000.00</b>	\$13,200.00	\$15,000.00	<del>\$137,500.00</del>	<del>\$12,200.00</del>	\$41,700.00	\$13,500.00
Alt #5 - New Monument Sign	\$50,000.00	\$14,129.00	<b>\$17,000.00</b>	\$19,400.00	\$46,000.00	<del>\$48,450.00</del>	<del>\$15,236.00</del>	\$43,500.00	\$15,000.00

<b>Total with Alternates Selected (#1, #2, #4, #5)</b>	\$7,471,800.00	\$7,392,256.00	<b>\$6,761,000.00</b>	\$7,458,600.00	\$7,831,000.00	<del>\$6,309,230.00</del>	WITHDRAWN	\$7,440,700.00	\$8,339,500.00
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RECOMMENDED

REJECTED

July 10, 2023

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

RE: The Greenspace Project – Recommendation for Award

Dear Ms. Linn,

Bids were opened for The Greenspace project at 2:00 p.m. on June 22, 2023. The City of Edgerton received eight (8) bids. One of those bids was withdrawn at a later date. One bidder was determined to not meet the qualification requirements needed to complete the project. This left a total of six (6) complete and qualified bids.

After review of the complete and qualified bids for the above referenced project, it is the recommendation of incite Design Studio to award the contract to Combes Construction Company, LLC from Bucyrus, KS. After reviewing all bids on the project, their bid was the lowest responsible bid received, with a Base Bid + Addendums #1, #2, #4 and #5 in the amount of Six Million Seven-Hundred Sixty-One Thousand Dollars and Zero Cents (\$6,761,000.00). We have reviewed their references and previously completed projects and believe that they are the best qualified bidder to complete the work.

Attached to this recommendation letter is the bid tabulation sheet that provides the breakdown for each of the bids received.

Additional information can be provided on the other complete and qualified bids, should you choose to review or select an alternate contractor.

If you have any further questions, please let me know.

Sincerely,  
incite Design Studio



Patrick Smith, NCARB, LEED AP BD+C, A4LE  
Principal

## City Council Action Item

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**Council Meeting Date:** July 13, 2023

**Department:** Community Development

### **Agenda Item: Consider Agreement Between City of Edgerton and Edgerton Land Holding Company for Snow Depot Agreement**

**Background/Description of Item:**

On August 30, 2022, the City of Edgerton sent a letter (enclosed) to NorthPoint Development and The Martz Bros., their snow removal contractor regarding outside storage of equipment and materials. This letter was issued in response to an ongoing challenge related to winter weather operations in Logistics Park Kansas City (LPKC). The letter temporarily granted exceptions to the outside storage of equipment and materials related to snow removal, which is not permitted in the Edgerton Unified Development Code (UDC), while NorthPoint developed a long-term solution.

NorthPoint Development previously submitted development applications to permit the construction of a permanent snow depot along 191<sup>st</sup> Street. These applications were originally intended to be considered at the July 11, 2023 Planning Commission meeting, but continuances are required for their public hearing. Since then, an alternative location for the permanent snow depot has been identified by NorthPoint Development that will allow for more appropriate use of land throughout Logistics Park Kansas City (LPKC). The proposed alternative site is west of Waverly Road, and just northwest of the current western terminus of W. 193<sup>rd</sup> Street, which is a private street.

To ensure that the snow depot is constructed in advance of the 2024 winter season, staff approached NorthPoint Development with the terms of an Agreement (enclosed), which they are amenable to. The Agreement outlines deadlines for applications such as Final Site Plans, Final Plats, and Building Permits to be submitted, as well as ultimately, the deadline for the Development team to obtain a Certificate of Occupancy from the City.

The draft Agreement is still under review by the City Attorney and City's Economic Development Counsel. Staff would recommend approval of the Agreement pending any changes from these individuals.

**Related Ordinance(s) or Statue(s):** N/A

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**Funding Source:** N/A

**Budget Allocated:** N/A

**Finance Director Approval:** N/A

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<b>Recommendation: Approve Agreement Between City of Edgerton and Edgerton Land Holding Company for Snow Depot Agreement</b>
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**Enclosed:** Draft Agreement  
Letter Regarding Snow Material Storage Dated August 30, 2022

**Prepared by:** Zachary Moore, Development Services Director

## **AGREEMENT**

### **(Snow Depot)**

This Agreement (this “Agreement”) is entered into as of July \_\_\_, 2023, between the **CITY OF EDGERTON, KANSAS**, a Kansas municipal corporation (the “City”), and **EDGERTON LAND HOLDING COMPANY, LLC**, a Kansas limited liability company, and its successors and assigns (“ELHC”). The City and the ELHC may each be referred to herein as a “party” and collectively as the “parties.”

## **RECITALS**

A. ELHC has been storing winter weather operations equipment and materials, including snow removal equipment and salt (collectively, the “Winter Equipment and Materials”).

B. The City’s Unified Development Code requires that all Winter Equipment and Materials be stored inside.

C. ELHC has identified real property and is working on constructing a depot for the storage of Winter Equipment and Materials (the “New Facility”).

D. The New Facility will not be complete by Winter 2023.

E. The City is willing to grant ELHC a waiver from the requirement that Winter Equipment and Materials be stored inside for the upcoming winter season so long as ELHC continue construction of the New Facility according to the terms of this Agreement.

## **AGREEMENT**

In consideration of the mutual assurances and agreements contained in this Agreement, and for other good and valuable consideration, the parties agree as follows:

Section 1. Undertaking of ELHC. ELHC agrees to build the New Facility. The New Facility shall be of sufficient size to hold all of the Winter Equipment and Materials. ELHC agrees to and will bear the costs of the design and construction of the New Facility. The performance of all activities by ELHC hereunder shall be as an independent contractor and not as an agent of the City.

Section 2. Schedule. ELHC agrees to construct the New Facility according to the following schedule (the “Schedule”):

- (a) the Plat and Site Plan Application must be submitted on or before August 22, 2023;
- (b) Planning Commission approval on or before October 10, 2023;
- (c) City Council approval of replat on or before October 26, 2023;
- (d) Building Permit submitted to the City on or before October 27, 2023

(contingent upon approval of the Final Site Plan by Planning Commission); and

(e) Certificate of occupancy for the New Facility issued by the City on or before August 31, 2024.

Section 3. Review Time. City review periods for the Plat and Final Site Plan applications shall follow the Development Calendar published by the City. Building permit review periods for building permits shall be no longer than 20 business days.

Section 4. Winter 2023. Any snow removal equipment and salt stored between September 1, 2023 and March 30, 2024 must comply with the conditions outlined in the attached letter dated August 30, 2022.

Section 5. Default by ELHC. ELHC shall be in default under this Agreement if: (a) ELHC fails to construct the New Facility according to the Schedule; or (b) ELHC abandons construction of the New Facility. In the event of such default, the City may (i) revoke any temporary permission granted for the storage of Winter Equipment and Materials from the Unified Development Code, and (ii) pursue all other remedies provided for in City, Code, the Unified Development Code or any other City regulation for the storage of Winter Equipment and Materials outside.

Section 6. Amendments. This Agreement may be amended, changed, or modified only by a written agreement duly executed by the City and the ELHC.

Section 7. Construction and Enforcement. This Agreement shall be construed and enforced in accordance with the laws of the State of Kansas.

Section 8. Execution of Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 9. Time. Time is of the essence in this Agreement.

Section 10. Notices. All notices required or desired to be given hereunder shall be in writing and all such notices and other written documents required or desired to be given hereunder shall be deemed duly served and delivered for all purposes to the recipient's last known address.

Section 11. Term. This Agreement shall become effective as of the date of its execution and shall remain in full force and effect until the New Facility is completed or until the Agreement is terminated as a result of an event of default.

**[Signature Page Follows]**

**IN WITNESS WHEREOF**, the parties have caused these presents to be executed as of the day and year first above written.

**CITY OF EDGERTON, KANSAS,**  
a Kansas municipal corporation

[SEAL]

By: \_\_\_\_\_  
Donald Roberts  
Mayor

ATTEST:

\_\_\_\_\_  
Alexandria Clower  
City Clerk

**EDGERTON LAND HOLDING COMPANY, LLC**  
a Kansas limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_





August 30, 2022

Bob Gregovich  
Senior Account Manager  
Martz Bros. Snow Management

Alana Dean  
Commercial Property Manager  
NorthPoint Development

Dear Bob and Alana:

As discussed, I am following up after our meetings regarding the winter weather operations for Logistics Park Kansas City (LPKC) provided by Martz Bros. Snow Management. As I have previously stated, the outside storage of equipment and materials is not permitted by Edgerton Unified Development Code (UDC). However, for the upcoming 2022-2023 winter season the City of Edgerton has agreed to temporarily allow the following exceptions as a short-term solution to support winter weather operations at LPKC. This letter outlines the specific details of those temporary exceptions.

- Location will be at 31401 W 193<sup>rd</sup> Street (Northside of IPXXXII) currently occupied by Matheson
- Delivery of salt will occur from 193<sup>rd</sup> Street to the north (shown in green on map)
- Outdoor storage of approximately 20-30 pieces of winter weather equipment such as skid steer, tractor, snow blade, wheel loader, etc. (shown in yellow on map)
- Several containers (not on chassis – on ground) for salt storage (shown in yellow on map)
- Allowed from September 1, 2022 to March 31, 2023. City can choose to extend additional 30 days based on winter weather forecast

In closing, I cannot stress enough the importance of either NorthPoint Development or Martz Brothers beginning the planning/zoning process as soon as possible to build a long-term solution to the storage of materials and equipment for winter weather operations. The City will not permit these exceptions in the future.

If you have any questions, do not hesitate to contact me at 913.893.6231 or [blinn@edgertonks.org](mailto:blinn@edgertonks.org)

Sincerely,



Beth Linn  
City Administrator

