

City of Edgerton, Kansas
Minutes of City Council Regular Session
March 10, 2022

A Regular Session of the City Council (the Council) was held in the Edgerton City Hall, 404 E. Nelson, Edgerton, Kansas on March 10, 2022. The meeting convened at 7:00 PM with Mayor Roberts presiding.

1. ROLL CALL

Clay Longanecker	present
Josh Lewis	present
Josh Beem	present
Jody Brown	present
Josie Stambaugh	present

With a quorum present, the meeting commenced.

Staff in attendance: City Administrator, Beth Linn
City Attorney, Lee Hendricks
City Clerk, Alex Clower
Public Works Director, Dan Merkh
Accountant, Justin Vermillion
Development Services Director, Katy Crow
Marketing & Communications Manager, Kara Banks

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 February 24, 2022 Regular City Council Meeting
5. Accept Easements for 8th & Braun Intersection Improvements

With no questions or comments, Mayor Roberts requested a motion to approve the consent agenda.

Councilmember Lewis moved to approve the consent agenda, seconded by Councilmember Longanecker. The consent agenda was approved, 5-0.

Regular Agenda

6. Declaration.

There were no declarations made by the Governing Body.

7. Public Comments.

Mayor Roberts stated the city encourages public participation in local governance issues and to facilitate an efficient and effective meeting, persons wishing to address the Council must sign up before the meeting begins. He stated all public comments will be limited to 3 minutes per person with a maximum time of 30 minutes for the public comments portion of the agenda. He stated he encourages people to reach out to Council Members outside of the Council Meetings to discuss things they are concerned with. He stated they may direct the person to come to a meeting after hearing the issue but would encourage the residents to seek out the members and have conversations and get to know the persons elected to represent them for the city.

Mayor Roberts then opened the meeting for public comments.

Bill Bushno, 20685 S Gardner Rd., addressed the Council.

He stated that it is unconstitutional to define free speech and limit the time a person may speak at an open meeting. He added studies have been completed which determine this unconstitutional.

He stated he served in this community for over 40 years and has known many of the Council Members for years. He stated he has taken care of everyone in the community when nobody else would and he is disgusted with the treatment he has now received from staff and NorthPoint Development. He alleged both the City and the developer have been negligent by not completing a 3-lane road prior to opening the Hostess facility. He claimed that because this has yet to be done, a truck driver died in his front yard as a result. He stated he sent a cease-and-desist letter but has received no response. He stated he listened to Katy Crow at the Planning Commission meeting say that the city is struggling to obtain easements for the project, and he owns 4 of the 8 lots that need easements. He discussed the traffic study that was presented to the Planning Commission and raised concerns about how it was completed and the estimates for the numbers of vehicles that would travel through the area. He stated he doesn't want to see another person die in his front yard. He stated he has yet to see a plan for how much easement is needed, but he wants to see Phase 2 completed before anything else moves forward. He stated he spends every day listening to trucks slamming on their brakes, and he has people on his doorstep daily asking for directions. He stated he thinks the City should try to work with the people in this area first before they take this to the state to try to condemn the ground.

Mayor Roberts stated nothing has gone to the state and he appreciates Mr. Bushno speaking tonight before the council.

Councilmember Stambaugh stated she saw his passion at the Planning Commission meeting and saw the passion from the neighbors in that area. She stated she listened to everything said and she sympathizes.

Mr. Bushno stated the city agreed to specific things, that these warehouses would not affect the health, safety and welfare of the people, and that roads were to be completed and barriers put in place on Waverly Road.

Mr. Jason Acord, representative of Quick Trip Corporation, addressed the Council. He stated he has worked for the corporation for 23 years and it has been a great place to work. He stated they are currently building a store at Gardner Rd. and I-35. He stated the traffic study is very concerning to them and they were surprised that they were never notified of such study taking place. He stated they are concerned that the closing of 191st St. is on the table, directly south of the new store. He stated his concerns do not come purely from an economic perspective, but more so from a safety concern because fire and emergency personnel would not be able to get to their site as quickly and there are a lot of other businesses and warehouses that will have that same concern. He stated he noticed minutes from a previous meeting on September 21st suggest 191st should be closed more so for an economic standpoint. He stated from his time in real estate, closing roads is not the way to grow, building new roads and identifying new ways to improve surrounding infrastructure is much more valuable and effective. He stated he would like to note the KDOT and Gardner have already done significant research and there have been several meetings with KDOT and plans are still being finalized. He stated as development occurs, there are plans to have medians, so things will change and some of the items found in this study will be corrected with the new improvements. He stated closing roads prematurely is not a good use of taxpayer money. He stated also, at the time the study was completed the GPS systems had not been updated to identify the recently closed road in front of Phillips 66. He stated at a minimum, have a new study completed to review how traffic is flowing now. He stated he would think time would need to go by for people to reestablish their driving habits and learn the new routes. He stated they are very concerned with this plan, they plan to be in this spot for a long time and have made a large investment to build here. He stated this will not only hurt the citizens going to the intermodal, but it also would not be good for their business either.

Mr. Rob Kirk, 38902 W 215th Street, addressed the Council.

He stated there have been references made to a cul-de-sac and he called Mayor Roberts and had a long talk with him about this, and he spoke with Mayor Winters of Gardner and Sheriff Hayden regarding his concerns. He stated he thinks the gentleman with QuickTrip said a lot of good things. He stated he would like to remind everyone a very expensive station was just built at the Logistics Park, and everyone in the district paid for that station with equipment housed there that is to be used for everyone in the district. He stated when he and Chief Myers were looking at land to build the new station, they look at circles first and then routes that will be the quickest to use to get to major roadways in the event of an emergency. He stated he can say, if a cul-de-sac gets put in, it will blow the \$10 Million station right out of the water and there will have to be a tough decision made regarding the equipment and manpower that will be housed at that station. He stated if it were him, he would take the manpower down to a minimum and make adjustments to the equipment housed there. He stated the closure of the road would take away from the customers of the district. He stated he would also look at the station in Edgerton too as far as cutbacks for people and equipment. He stated he's lived in Gardner his entire life and has dealt with the differences of councils from both sides. He stated he has tried to do his

best to fix the issues between the two cities and it still doesn't work. He stated the issue is not about the city, it's about Gardner vs. Edgerton. He stated he went back and read notes from the September 21st meeting too, when the cul-de-sac was first discussed, there was nothing mentioned but for it to be built to keep people from going East on 191st. He stated if Edgerton closes 191st, then Gardner will shut down 183rd. He stated he would ask each of the councilmembers if they are willing to give up public safety over cutting through a gas station, if they are willing to give up the ability for emergency personnel to get to a fire. He stated there was a fire on the 3rd floor of apartment buildings in Gardner the other day, so if the cul-de-sac would have been there they would have had to go all the way around, because a cul-de-sac was put in for no good reason.

Mr. Todd Allenbrand, Payne & Brockway, P.A. (Representative of Olathe Health), 426 S. Kansas Avenue, addressed the Council. He stated Olathe Health is not pleased with KDOT's plans for that interchange. He stated one thing to point out is the plans of closing off Gardner Rd. with median islands. He stated he is not privy to all the details, but if the city closes 191st and there is a medical emergency in the intermodal, they will have a hard time getting to Olathe Health. He stated the plans for the clinic on Gardner Rd. is to become more than just a clinic, eventually this will be a fully functioning ER to reduce the time it takes to get the Olathe Medical Center. He stated everyone must realize that minutes mean everything in saving a person's life. He stated one minute can be the difference for someone having a stroke. Mr. Allenbrand stated they're in communication with KDOT to change their plans and the plans being shown tonight are not the most updated ones.

There were no further Public Comments.

8. Report by City Attorney. Advisory Opinion returned from Kansas Governmental Ethics Commission.

Mr. Lee Hendricks, City Attorney, addressed the Council. He stated in January the council asked for a written request to be sent to the Kansas Ethics Commission regarding Councilmember Stambaugh's concern about Councilmember Beem's residential lease agreement and whether that relationship constitutes a substantial interest that could impact his ability to vote on certain issues. He gave the governing body a copy of the report received from the commission.

He stated he would like to point to the second page, which lays out the questions sent to the Ethics Commission and read those questions aloud. **(See Exhibit A for the full report)**

He stated prior to sending in this written request the Governing Body walked through the steps and scenarios that could be deemed substantial interest. He stated none applied directly in this case, but the Governing Body thought it best to send in the request anyway for a clear and concise opinion.

He read aloud the results.

He stated there is no substantial interest for Councilmember Beem, and that he can vote on any and all items with NorthPoint and their subsidiary, Hillsdale Land and Cattle.

Councilmember Beem thanked Mr. Hendricks for the time to complete this request and the Council for approving the request for an opinion.

Mr. Hendricks stated he appreciates Council allowing this to be sent in and he is glad to have the answer back in writing. He stated this helped the City learn through this process and allows other cities who might face the same situation to have an answer too.

Business Requiring Action

9. CONSIDER RENEWAL OF CORPORATE INSURANCE POLICY FOR APRIL 1, 2022 – MARCH 31, 2023

Ms. Alex Clower, City Clerk, addressed the Council. She stated as noted at the last Council meeting, the city did not yet have quotes on Cyber and Pollution Insurance Premiums. She stated based off the quotes provided to the City's insurance consultant, Mr. Kevin O'Brien, recommends renewing the Pollution Control policy with Crum & Forster with no increase from last year. She stated the cyber premium will increase significantly over last year. She stated Mr. O'Brien received a total of 5 bids with costs ranging from roughly \$4,000 to over \$16,000. After reviewing the quotes, Mr. O'Brien narrowed the final quotes to 3 and recommends EVOLVE, as they have the best level of coverage with the lowest premium of \$4,293.

Councilmember Longanecker asked what the differences are between the companies offering at the low cost vs. the higher costs.

Mr. O'Brien stated those companies are proud of their products.

Ms. Linn stated it is a large feat to get through this process and Mr. O'Brien does a great job finding these companies, researching them, and comparing the quotes. She thanked him on behalf of the City's staff.

Mr. O'Brien stated there is a lot of prep time and info required from city staff as well and he is very thankful for the hard work they put in to make this process as smooth as it can be.

Ms. Clower stated she would like to note that the 2023 budget is adequate to cover the cost of premiums.

With no further questions Mayor Roberts then requested a motion to approve the purchase of Cyber and Pollution Insurance from the companies listed.

Councilmember Longanecker moved to approve the renewal of the corporate insurance policy, seconded by Councilmember Brown. The item was approved, 5-0.

10. CONSIDER ORDINANCE NO. 2103 LEVYING SPECIAL ASSESSMENTS ON PARCELS OF GROUND FOR THE PURPOSE OF PAYING PROJECT COSTS WITHIN THE LPKC DISTRICT NO. 3 COMMUNITY IMPROVEMENT DISTRICT

Mr. Scott Anderson, Bond Counsel, addressed the Council. He stated as part of ELHC 52, the city created LPKC CID 3. In this agreement, the city agreed to levy a \$.05 CID Special Assessment over a 10-year term in which costs have been certified through the city. He stated this ordinance is just to close out the project and tell the county to certify special assessments to their tax bill for the next 14 years.

With no questions or comments, Mayor Roberts requested a motion to approve Ordinance No. 2103.

Councilmember Lewis moved to approve the motion, seconded by Councilmember Longanecker. The item was approved, 5-0.

11. CONSIDER RESOLUTION NO. 03-10-22A DETERMINING THE INTENT OF THE CITY OF EDGERTON, KANSAS, TO ISSUE ITS INDUSTRIAL REVENUE BONDS IN THE MAXIMUM AMOUNT OF \$26,000,000 TO PAY THE COST OF ACQUIRING, CONSTRUCTING AND EQUIPPING A COMMERCIAL PROJECT FOR THE BENEFIT OF ELHC CY, LLC.

Mr. Scott Anderson addressed the Council. He stated the city has received an IRB application for the construction and equipping of a commercial building. He stated there is no property tax abatement associated with this project, there will only be a sale tax project exemption certificate issued for the purchase of material for the construction. He stated this bond is identical to prior bonds done in the past.

Councilmember Stambaugh asked to see a map of where this property is located.

Ms. Linn pulled the map on AIMS and stated it is directly north of Smart Warehousing.

Councilmember Stambaugh asked what ELHC CY LLC is, she stated she assumes it's a subsidiary of NorthPoint Development.

Mayor Roberts stated the Planning Commission documents say it's a container storage facility.

With no further questions or comments, Mayor Roberts then requested a motion to approve Resolution No. 03-10-22A.

Councilmember Lewis moved to approve the motion, seconded by Councilmember Brown. The item was approved, 5-0.

12. **CONSIDER RESULTS OF 191ST STREET/GARDNER ROAD/INTERSTATE 35 SAFETY STUDY**

Mayor Roberts stated he would like to outline the remainder of the agenda. He stated he would like to allow public safety members to speak on this subject to hear their input and concerns. He stated he has some information he would like to share as well. He stated his intent is to have an executive session following the information presented by staff and after executive session and final discussions, there may be action. He stated he would encourage everyone to stay around after executive session to see how it all turns out.

Ms. Beth Linn, City Administrator, addressed the Council. She stated in October 2021, the City Council entered into an agreement with RIC to complete a safety study for 191st Street/Gardner Road/Interstate 35 area. Over the last several years, Edgerton City Council has received numerous safety concerns related to traffic around Gardner Road Interchange at Interstate 35, particularly related to the proximity of 191st Street and Nike Elementary School. She stated Edgerton has previously responded to those concerns that any improvements in the area would be the responsibility of various other agencies like the City of Gardner, Kansas Department of Transportation, Johnson County, etc, given the intersection is located outside the Edgerton city limits.

She stated the Safety Study analyzed existing and projected future conditions to identify specific trouble areas and potential remediation. To evaluate current traffic conditions, traffic counts were collected for the AM and PM peak periods at six different intersections. A copy of the Safety Study is included with this packet.

She stated to understand the existing conditions, RIC reviewed previous traffic studies, reviewed area truck routes, analyzed crash history, collected and analyzed existing traffic counts, and collected on-site observations at several locations. She stated of particular note, the study observed a considerable amount of traffic using the Phillips 66 gas station as a cut-through to access Locust Street.

She stated RIC then performed an intersection capacity analysis for both existing conditions and existing condition + approved project scenario. As noted in the Study, the intersection with a failing Level of Service was the Phillips 66 & Gardner Road driveway.

Based on the Safety Study, RIC prepared the following four recommendations to the City of Edgerton.

1. **Cut-through Traffic at Phillips 66** – Emphasizing enforcement to curb cut-through traffic at Phillips 66
2. **Truck Route Signage** – Leave current dynamic message board on I-35 and remove Truck Route sign posted on 191st Street just east of Edgerton/Gardner city limits
3. **Driveway Closure at Phillips 66** – Consider limiting access to Phillips 66 from Gardner Road
4. **Closure of 191st Street Connection** – Consider Closing 191st Street prior to the Edgerton/Gardner city boundary.

As stated on Page 21 of the study, while City of Edgerton has specific safety concerns about cut-through traffic outlined in the study, Edgerton does not have jurisdictional rights over the study area, nor the jurisdictional authority to complete recommendations 1-3. She stated therefore, the Safety Study recommends the "City of Edgerton consider closing 191st Street prior to the Edgerton/Gardner boundary", as it is the only option the City is empowered to take. The Study further recommends the engineering detail for the closure to include a combination of cul-de-sac and Type 4 Object Markers as shown on page 21.

As directed by City Council, staff notified our public safety partners that the Safety Study is complete and invited them to attend the City Council meeting related to this item.

She stated if City Council would choose to close 191st Street, Staff would continue to work with BG Consultants to finalize the design of the improvements, acquire any right-of-way necessary and package the project for bid and construction.

She stated the job of staff was to outline the study and advise council of the recommendations prepared by the consultant, but the intent of this agenda item is to review the results, not specifically to vote on any solution or any closure of roadways.

Mayor Roberts then invited the public safety members in attendance to speak.

Mr. Dennis Meyers, Johnson County District #1 Fire Chief, addressed the Council. He stated when there is a fire situation, whether that be inside or outside LPKC, there are at least 10 different pieces of equipment responding to that fire from all locations. He stated the new truck located at LPKC covers the west side of Gardner too. He stated it amazes him that just a few weeks ago everyone was celebrating the opening of 207th Street Bridge and taking the equipment for the first drive across, and here we are now talking about closing a direct route of traffic. He stated if you are that person needing help, 4 minutes has just been added to even get to you. He stated if emergency services need equipment there in seconds, they cannot have a built-in delay to get to someone. He questioned why the City is worried about the Phillips 66 instead of the 191st and Waverly intersection. He stated his biggest concern is that they were never contacted by the consultant to hear the concerns of the emergency personnel related to the closure of the road, he stated they are public safety and they are willing to work with the City to come to a conclusion. He stated there are plans that are soon to happen that include the entrance into Phillips 66 going away, and the problems will be solved. He stated what about Waverly from the bridge to 56 Highway. He stated he wishes everyone would just take a deep breath, table the decision until all parties can get together and a solution can be made with everyone. He stated the city is not taking into consideration what problems this will cause for everyone. He added everyone in the district invested money to open this new station and by closing the road, the city just closed that station off to everyone. He stated if they had known this was happening, that building would have never been built at that location. He stated they are 100% against the closure of the road, this will be disastrous for them.

Mayor Roberts asked Chief Meyers to stay for the discussion following the executive session.

Mr. Paul Davis, Emergency Services Director for Johnson County, addressed the Council. He stated they had an opportunity to place a squad at 191st and Homestead, and they anticipate adding an ambulance there as well. He stated when they did their time and travel studies, they looked at routes and 191st to Gardner Rd. was the most direct access, even using 183rd St. causes a delay. He stated he was disheartened to hear that if 191st was closed by Edgerton, Gardner would then close 183rd. He stated the new route they would then have to take, would add about 5 minutes, with the other route adding 4 minutes. He stated this is very concerning for emergency personnel.

Mayor Roberts asked him to stay for more discussion following the executive session.

Mr. Frank Martinez, Captain of Patrol Division for Johnson County Sheriff's Dept., addressed the Council. He stated he spends a lot of time in Edgerton. He stated the department does have concerns with the plan to close the road since they do provide policing services throughout the county. He stated he looks at it differently than those here for emergency services, he is concerned about the safety of officers. He stated if there is a call in LPKC, there could be other officers coming from surrounding districts, if direct routes are cut off, this impacts the safety of the officers. He stated they echo the concerns mentioned tonight.

Mayor Roberts asked him to stay for the discussion following the executive session.

Mayor Roberts stated when this topic first came up at a meeting, the city did a safety study to understand the gravity of concerns that have been brought forward. He stated he thinks it is important to consider opinions in anything the city does. He stated he appreciates the emergency personnel coming with their opinions and that they were honest with their concerns.

He stated there are multiple levels of conversation that have happened with Gardner and Johnson County regarding this intersection. He stated these conversations have included potential fixes and his desire for tonight was to come in and ask the council for 90 days to have discussions with Gardner, which was mentioned in a conversation with the Mayor of Gardner just yesterday. He stated he has since received an email from the Mayor of Gardner, which was additionally sent to all members of the Governing Body, which states that Gardner is not willing to have any conversations regarding closures of roadways within their jurisdiction. He stated he does believe the issue is within Gardner's jurisdiction and the only option Edgerton has would be to close 191st, based on the safety study.

Ms. Linn stated based on the study, the traffic flow in the morning is coming southbound turning right on Gardner Rd. and then turning immediately left into Phillips 66. She stated the study shows 121 cars making that left in 45 minutes. She stated there is not enough space and ultimately these vehicles are then backing up onto I-35. She displayed the plans from KDOT for that interchange. She stated the plans shown are at 50 percent complete. She stated she did confirm the schedule from KDOT, the interim project will go out for bid September 2023 and is set for two construction seasons, 2024 and 2025.

Mayor Roberts stated he does want to point out that although these plans are available, the project has not been let out for bid yet. He stated if KDOT does not move forward, then safety improvements are at a standstill. He stated that as an example the improvements were stalled for 6 years at Sunflower.

Ms. Linn stated there are also a couple of milestones that will have to be completed, namely Gardner must approve a City-State Agreement, acquisition of right of way can take time, and there could be changes to the funding perspective they have set now.

Mayor Roberts stated he believes they want this to happen, but the timing may change based on outside factors.

Public Works Director Mr. Dan Merkh stated the KDOT plans show a proposed new median that would prevent left turns and a newly built 188th St. that turns into Locust. He stated they received these plans a few days ago.

Ms. Linn stated the plans also show the removal of the Phillips 66 entrance.

Councilmember Brown asked so their only way to get into Olathe Health, would be to turn right coming off the highway?

Mayor Roberts stated they are still working with KDOT on potential changes.

Mr. Merkh stated yes, there will be no ability to turn left into Olathe Med from Southbound.

Mayor Roberts stated all of this is available through KDOT and the County.

Councilmember Stambaugh asked why Edgerton conducted a traffic study in Gardner.

Mayor Roberts stated this was done because there have been numerous concerns raised at Planning Commission and City Council from members of the public and Gardner blaming Edgerton for the safety problems.

Councilmember Stambaugh stated she drives on that road daily to take her child to school. She stated she believes the increased truck traffic is due to Edgerton.

Mayor Roberts stated the study says that most of the traffic is commuter cars, not trucks.

Councilmember Stambaugh stated the truck traffic is due to the intermodal. She asked if Phillips 66 has made a direct complaint related to the use of their parking lot as a cut through.

Mayor Roberts stated he would like to get through this discussion and then go into executive session.

The representative from Olathe Health stated the plans seen tonight mean nothing until right of way negotiations are completed. He stated the final result probably will not look like what is seen today.

Mr. Hendricks stated unfortunately this is the best information we have today and is what we have to use for the current conversations.

Mayor Roberts stated that while these plans can still change, it will be KDOT changing them, not the city, so Council needs to base their decision on what is planned right now. He stated his intent was to recommend that Council not take any action and try first to work with Gardner. He stated he is not backing off of the idea of having time to talk to Gardner, but the email from Mayor Winters has made it difficult to come to a conclusion. **(See Exhibit B)**

He stated this response was a change from the conversation that took place yesterday with the Mayor of Gardner where he agreed verbally to 90 days to discuss future plans for this area. He stated in another discussion with the Mayor he does believe any closure on Gardner's side is off the table, however potential fixes related to this area could come with a cohesive plan from both communities. He stated his recommendation would be to give at least 30 days to allow conversations to happen with Gardner and the public safety personnel in this area. He stated he does believe the safety study shows there is a safety concern in this area.

Mayor Roberts stated he would like to recommend a motion to approve recessing into Executive Session for 20 minutes to include the City Attorney, City Administrator and Public Works Director for Attorney Client Privilege for the purposes of prospective litigation. He stated the meeting will reconvene in the council chambers.

Councilmember Brown moved to approve the motion to recess into executive session, seconded by Councilmember Longanecker. The motion was approved, 5-0.

The meeting recessed into executive session at 8:26PM.

Mayor Roberts requested motion to return to open session with no action taken.

Councilmember Longanecker made motion to return to open session with no action taken, seconded by Councilmember Brown. The motion was approved, 5-0.

The open meeting resumed at 8:46PM in the council chambers.

Mayor Roberts thanked the emergency personnel for staying. He stated he would now like the opportunity for council to have a discussion. He stated he values all input in this process.

Councilmember Lewis asked the emergency personnel in attendance if they believe the current situation as it is today, doesn't carry any safety concern at all.

Chief Meyers stated he has traveled that route many times a day and has never seen a bunch of cars cutting through the gas station. He stated he checked with Gardner to see if there have been any complaints from Phillips 66, and they have had zero complaints. He stated he does not see huge amounts of traffic coming out from there, he sees more coming out of the apartments. He stated they run twice as many calls at 191st and no calls at this intersection.

Mayor Roberts asked if he would mind providing the crash data for that area.

Chief Meyers confirmed the Mayor is asking for the Phillips 66 data, to which he stated there is zero data and nothing that shows a call being ran there. He stated since it has been completely open, there have been zero issues. He stated yes, during the time of construction there could have been problems there, but he would like to see the data today since the project has been complete.

Chief Davis stated he has lived at 186th and Gardner Rd. for many years and trying to get out in the morning is a mess there. He stated he is hopeful that through work, they can make a viable well flowing intersection. He stated he cannot imagine trying to get a child to Nike Elementary because traffic is at a standstill in that peak time. He stated to the point of the cut through at Phillips 66 being a safety issue, he does not see one and he has not run any accidents there.

Chief Meyers stated he is not saying 191st is not a big problem, they have just as many if not more calls coming from the curve at Homestead. He stated 191st doesn't have curbs and many trucks fall off the road. He stated people cause them to have calls, so the more vehicles on the road, the more accidents there will be and more calls they will have.

Mayor Roberts stated he does believe there is a way to calm traffic if it is done correctly.

Councilmember Longanecker stated for some reason it seems to be a consensus that Edgerton is shutting down the road. He stated there needs to be time to discuss options now that everyone has the information and see where it goes from there.

Councilmember Brown stated when this all started, he had phone calls from people with concerns about the intersection and he brought those up to Council. He stated the city spent money to see the extent of the problem and what options the City has to make it better. He stated he feels like the city has done their due diligence and can make an informed decision based on the facts. He stated the Council is doing what they think is right to take care of safety issues. He stated they want to do what is best to resolve the safety issue that was brought up from concerned citizens. He stated if someone else from the other side wants to come and help with this, that would be great.

Mr. Hendricks stated there were two instances during comment on this matter where persons cited minutes from the September 9, 2021 council meeting, but this was a selective review of the minutes. He stated using selective reading and claiming this is a

vendetta between two municipalities is completely incorrect, and all it can lead to is the creation of a vendetta which doesn't exist. He stated he encourages those present to go back and read the minutes in their entirety to see what the purpose of the study was.

He stated he thinks that people are off topic in what is being brought forward here tonight. He stated item 12 states that council should consider the results of the safety study, not vote on a conclusion of that study and begin construction. He stated the only option Edgerton has been provided at this moment given the results of the safety study is by no means the option we want to take moving forward.

Chief Meyers stated the intersection project in Gardner has been in the works for two-plus years, it is finally opened and now the only option is to close a road.

Councilmember Lewis stated there are three other options given in this safety study, but those are not in Edgerton's jurisdiction.

Chief Meyers stated when they read this study and the only option for Edgerton was to close the road, they had concerns.

Mr. Hendricks stated he respects Council's approach tonight, to listen to all comments and hold their comments until they had a discussion. He stated all anybody has done tonight is jump to conclusions and assume action from the council which has not even been considered. He stated his legal recommendation is to not close the road and to have a conversation with the neighboring jurisdiction and safety partners.

Chief Meyers stated he will do anything he can to help in a conversation with Gardner.

Mayor Roberts stated he still would like to have a conversation with Gardner since the study shows a public safety hazard.

Chief Meyers discussed the history of 183rd Street and stated closure of that road would have caused safety concerns as well. He stated he wants a conclusion that will work cohesively for everyone.

Mr. Hendricks stated Council members have been receiving negative comments for a conclusion that has not even been established. He stated emergency personnel are the most important people to help guide and establish a decision like this, and it is important to understand facts.

Captain Martinez stated he appreciates the passion from the City Attorney. He stated they were invited tonight to speak directly on concerns about the closing of 191st Street, and that's why they've shared their comments directly related to the closure. He stated that's what directly affects them.

Mayor Roberts asked Cpt. Martinez if the traffic cutting through the Phillips 66 affects public safety.

Capt. Martinez stated yes, it does.

Mayor Roberts stated Edgerton's only option to rectify the safety concerns is to close the road, but he believes the best fix for these safety concerns is not in Edgerton. He stated multiple studies, from KDOT, Edgerton and even a 2018 study in Gardner, have identified safety hazards in that area. He stated this is why he wants to have a conversation with Gardner, although Mayor Winters has already established that they will not consider one of the options.

Chief Meyers stated he cannot speak for Gardner, but he thinks they recognize there is a problem there.

Councilmember Stambaugh stated as a parent, she will always choose having emergency personnel on scene five minutes earlier versus being backed up in traffic.

Councilmember Lewis stated if the traffic is backed up on the highway and through the intersection, there is also a safety concern there too.

Mayor Roberts stated there is no disagreement over safety issues at that intersection. He stated that while Edgerton has an option to close the road, he would recommend Council approve at least 30 days to continue talks with Gardner.

Councilmember Lewis stated he thinks further discussion with the experts in the field from both municipalities is the best way forward.

Mayor Roberts stated he is not recommending action on this item, he is recommending time to have conversations with the neighboring jurisdiction and safety partners.

Councilmember Longanecker asked where it goes from here.

Mayor Roberts stated a motion will need to be made to direct staff or to recommend an option. He stated council could also take no action until council wants to bring it back.

Councilmember Longanecker made motion to allow 90 days for local public safety members, the City of Gardner, KDOT and the City of Edgerton to discuss options regarding the safety study report. Councilmember Lewis seconded the motion. The motion was approved, 5-0.

Mayor Roberts stated Council and Staff will be back with a report on June 9th following discussions.

13. Report by the City Administrator

- KRWA Designation of Voting Delegate

Ms. Linn stated in light of encouraging continuing education, the city is a member of the Kansas Rural Water Association which requires the city to send a delegate to the yearly meeting. She stated this is a standard practice. The city recommends nominating Utilities Superintendent Mike Mabrey as the delegate and Public Works Director Dan Merkh as the alternate.

Mayor Roberts requested motion to designate Mike Mabrey as the voting delegate for the KRWA 2022 Annual Membership Meeting and Dan Merkh as the alternate delegate.

Councilmember Brown moved to approve the delegates, seconded by Councilmember Longanecker. The delegates were approved, 5-0.

- 2023 Budget Calendar

Beth Linn referenced the calendar given to the councilmembers and highlighted a few upcoming dates for the 2023 Budget season.

14. Report by the Mayor

Mayor Roberts stated he had no report to give at this time.

15. Future Meeting Reminders:

- March 24th: City Council Meeting – 7:00PM
- April 12th: Planning Commission – 7:00PM
- April 14th: City Council Meeting – 7:00PM
- April 28th: City Council Meeting – 7:00PM

16. Adjourn

Councilmember Lewis moved to adjourn, seconded by Councilmember Brown. All in favor. The meeting was adjourned at 9:20 PM.

Submitted by Alexandria Clower, City Clerk

EXHIBIT A



2887 SW MacVicar Avenue, Topeka, Kansas 66611
Telephone (785) 267-3410 Facsimile (785) 267-9516
www.stumbolaw.com

January 21, 2022

Kansas Governmental Ethics Commission
c/o Brett Barry
901 South Kansas Ave.
Topeka, KS 66612

**RE: City of Edgerton, Kansas
Request for Advisory Opinion Pursuant to K.S.A. 75-4303a**

Dear Sir or Ma'am,

As City Attorney for the City of Edgerton, Kansas I have been asked by the City Council to request an advisory opinion under K.S.A. 75-4303a on an alleged conflict of interest involving a city councilmember. A recently seated councilmember contacted the mayor regarding her concern that another councilmember was conflicted out of voting on certain matters due to the contractual relationship he has with his landlord, Hillsdale Land & Cattle, LLC ("Hillsdale"). That concern was forwarded to me, and after providing my opinion on the matter to the council it was agreed that I would request this opinion for further clarification from your office. The following is a brief overview of the situation and my review of the request:

Northpoint Development ("Northpoint") is an industrial property developer and has been a partner with Edgerton in the growth and expansion of Logistics Park Kansas City. Northpoint would best be described as the master developer of Logistics Park, and is a party to two master development agreements with the City. Northpoint has numerous subsidiary companies, some of which own properties in and around the City of Edgerton. One of those subsidiaries is Hillsdale. The city has had very few agenda items requiring a vote involving Hillsdale specifically, but did vote on a request from the entity to annex and rezone a property into the City limits in December of 2020. That was prior to the tenancy at issue, and it is worth noting that the councilmember involved in this request voted against Hillsdale's requests. The City does however have numerous agenda items annually which involve Northpoint.

The allegation is that due to the one-year, written lease the councilmember has with Hillsdale, he should have filed notice of a substantial interest involving Hillsdale/Northpoint and should refrain from voting on any matters involving both entities. I requested a copy of the lease, and it is a one-year lease and includes an anti-assignment, non-sublease clause. I asked the councilmember both

Tom R. Barnes II
Todd A. Luckman
Lee W. Hendricks
Tiffany R. Thomas

Of Counsel: Gary H. Hanson
Quentin E. Kurtz

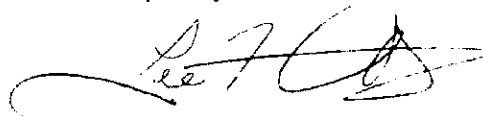
Walter G. Stumbo (1911-1998)

privately and in open session during a meeting whether he has paid timely rent pursuant to the lease and he stated he has. I asked him if he has received any financial benefit beyond the residence-for-rent arrangement and he stated he has not. I asked him if he had any ownership interest in either business, was a partner, director or officer of either business, or received compensation from either business and he stated he did/was not. Given the information he provided to the council and those present, it was my opinion to the council that he clearly did not meet any of the statutory definitions for a substantial interest under K.S.A. 75-4301a(1), (2), (4), or (5). Since he stated he is not receiving \$500.00 or more in value without consideration from Hillsdale, it would appear that (3) would not apply either, although I did inform the council that it could be argued that a leaseholder could transfer their interest in a lease to another party for over \$500.00 which would trigger a substantial interest classification. Even that possibility was a dead end however, due to the anti-assignment, non-sublease clause in the lease. As such my review of the matter resulted in my informing the council that the councilmember did not have a substantial interest as defined in K.S.A. 75-4301(a).

The City's request for opinion from the Governmental Ethics Commission would be three-fold: The first question is whether the Commission agrees that the councilmember at issue does not have a substantial interest as defined in K.S.A. 75-4301(a) as a result of his residential lease? Secondly, should the Commission determine that the councilmember does have a substantial interest, if he were to provide notice of that interest as required by law would he only be conflicted out of voting for matters involving Hillsdale, or would that conflict also extend to the parent company, Northpoint? Lastly, should the Commission determine that the councilmember does have a substantial interest, is the City correct in reading K.S.A. 75-4304 that if the councilmember files a notice of his substantial interest as required by law that he is barred only from voting on contractual matters involving Hillsdale/Northpoint (depending on your answer to question 2) and allowed to vote on other, regulatory, non-contractual matters involving those parties such as platting, zoning or annexation questions?

The City truly appreciates your time and review of this matter, and should you have any questions or concerns regarding these requests please let me know.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Lee W. Hendricks", with a long, sweeping underline that extends to the left and loops around the name.

LEE W. HENDRICKS
City Attorney, City of Edgerton, Kansas



Ethics Opinion Search

February 23, 2022

Opinion No. 2022-01

Lee W. Hendricks

Stumbo Hanson LLP

2887 SW MacVicar Avenue

Topeka, Kansas 66611

Synopsis: A lease agreement in which a local governmental officer is the tenant is not a substantial interest in the landlord.

Cited herein: K.S.A. 75-4301a, 75-4302a, 75-4303a, and Opinions 2008-11, 2010-06, 2011-04.

Dear Mr. Hendricks,

In response to your January 21, 2022, letter request, this opinion is provided by the Kansas Governmental Ethics Commission (commission), concerning application of the local conflict of interest laws, K.S.A. 75-4301a *et seq.* The commission's jurisdiction is limited to applicability of this law. This opinion, provided pursuant to K.S.A. 75-4303a(a), does not address whether some other statutory system, common law theory, agency rule or regulation applies to your inquiry.

FACTUAL STATEMENT

We understand that your firm requests this opinion as counsel for the City of Edgerton. Your letter provides the following facts regarding a conflict based upon the relationship a member of the city council has with their landlord, Hillsdale Land & Cattle, LLC ("Hillsdale"):

Northpoint Development ("Northpoint") is an industrial property developer and has been a partner with Edgerton in the growth and expansion of Logistics Park Kansas City. Northpoint would best be described as the master developer of Logistics Park, and is a party to two master development agreements with the City. Northpoint would best be described as the master developer of Logistics Park, and is a party to two master development agreements with the City. Northpoint has numerous subsidiary companies, some of which own properties in and around the City of Edgerton. One of those subsidiaries is Hillsdale. The city has had very few agenda items requiring a vote involving Hillsdale specifically, but did vote on a request from the entity to annex and rezone a property into the City limits in December of 2020. That was prior to the tenancy at issue, and it is worth noting that the councilmember involved in this request voted against Hillsdale's requests. The City does however have numerous agenda items annually which involve Northpoint.

The allegation is that due to the one-year, written lease the councilmember has with Hillsdale, he should [... file] notice of a substantial interest involving Hillsdale/Northpoint and should [...abstain] from voting on any matters involving both entities. [...The] lease [...] is a one-year lease and includes an anti-assignment, non-sublease clause.

The councilmember has not received any financial benefit from the lease. The councilmember doesn't have any ownership interest in either business, isn't compensated by either business, and isn't a partner, director, or officer of either business.

QUESTIONS

1. Does the councilmember have a substantial interest in Hillsdale?
2. If so, would the substantial interest extend to Northpoint?

3. Does a substantial interest bar the councilmember from voting on non-contractual matters involving Hillsdale or Northpoint?

ANALYSIS AND OPINION

Edgerton, Kansas, is a "governmental subdivision" and a member of its council is a "local governmental officer." K.S.A. 75-4301(f), 75-4301(d). The councilmember in question is subject to the requirements of the local level conflict of interest laws, K.S.A. 75-4301, et seq.

Substantial interests, as provided in K.S.A. 75-4301a(a)(1)–(a)(5), subject to thresholds and other limitations, require that the councilmember: (1) have a pecuniary interest in a business, (2) receive compensation from a business or combination of businesses, (3) receive goods or services without reasonable and valuable consideration, (4) hold a position in a business, or (5) receive compensation which is a portion or percentage of a fee or compensation to a business. The facts do not provide a basis for the councilmember to have a substantial interest in Hillsdale or its parent Northpoint. The facts only reveal a lease agreement between Hillsdale and the councilmember in which the latter is the tenant. The lease agreement prohibits subleasing. The tenant does not receive compensation, goods and services without reasonable consideration, or a portion of fees or commissions paid to Hillsdale or Northpoint. The tenant does not hold a position or pecuniary interest in Hillsdale or Northpoint.

Without a substantial interest in Hillsdale or Northpoint, the third question is moot. However, the commission has addressed the issue in prior opinions, including Opinion 2008-11 (ordinance), Opinion 2010-06 (special use permit) and Opinion 2011-04 (building permit).

Sincerely,

Nicholas Hale, Chairman

By Direction of the Commission

NH:BB:sf

[Return to Search](#)

EXHIBIT B

From: Beth Linn
Sent: Monday, March 21, 2022 3:26 PM
To: Alexandria Clower
Subject: Fwd: Agenda Item 12 - 191st safety concerns

Sent from my iPhone

Begin forwarded message:

From: Todd Winters <twinters@gardnerkansas.gov>
Date: March 10, 2022 at 3:07:11 PM CST
To: Donald Roberts <mayor@edgertonks.org>, Clay Longanecker <clonganecker@edgertonks.org>, Jody Brown <jbrown@edgertonks.org>, Josh Lewis <jlewis@edgertonks.org>, Josh Beem <jbeem@edgertonks.org>, Josie Stambaugh <jstambaugh@edgertonks.org>, Beth Linn <blinn@edgertonks.org>
Subject: Agenda Item 12 - 191st safety concerns

Mayor Roberts
CA Beth Lynn
Governing Body,

I am writing regarding agenda item number 12 relating to 191st safety concerns.

I want to be clear that, any decision regarding safety concerns of roads and businesses in Gardner will be addressed by our own governing body. At this time, closure of any access point is not an option we will entertain, as there are no valid safety issues that currently exist that would warrant such closure. Any future access point closures will be determined by KDOT in consultation with the City of Gardner as part of the scheduled Gardner Road interchange project.

Any attempt to disrupt traffic flow along 191st St. will be seen as a thinly veiled attempt at discouraging LPKC employees and vendors from doing business in our community and will damage further working relationships/partnerships between our two cities.

There are opportunities for success for both of our communities working together. It is in the best interests of our citizens. I trust you will make the right decision.

Respectfully,
Todd Winters
Mayor of Gardner