

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/207TH STREET AND W. 8TH 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/207th Street and 8th 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/207th Street and W. 8th 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 3rd 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