

**EDGERTON SPECIAL CITY COUNCIL
MEETING AGENDA
CITY HALL, 404 EAST NELSON STREET
July 16, 2024
7:00 P.M.**

Call to Order

1. Roll Call

_____ Roberts _____ Longanecker _____ Lewis _____ Lebakken _____ Malloy _____ Conus

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. Confirm Request for a Special Meeting of the Edgerton City Council

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.

Business Requiring Action

6. CONSIDER THE APPEAL BY DAMAC DIGITAL SOLUTIONS KANSAS, LLC OF THE EDGERTON PLANNING COMMISSION'S DENIAL OF FINAL SITE PLAN APPLICATION FSP2026-0002.

This is a quasi-judicial hearing on the Planning Commission's denial. Other planning applications or disputes are not to be addressed. Appellant DAMAC will present evidence and argument for the Council and answer questions. The City shall present evidence and argument in support of the Planning Commission, and stand for questions. The Council shall then consider the Appeal.

EXECUTIVE SESSION: After the presentation of the parties, the City Council may, but is not required to, recess into executive session for quasi-judicial review of the appeal.

The Council may deny the appeal, overrule the Planning Commission and approve the final site plan or remand the matter to the Planning Commission for further action. The Council should outline reasons for the action taken, and/or specifically state the actions required on remand. Denial or overruling of the action is a final determination of the City on the matter, but does not prejudice any future applications allowed by law or the City Code.

Motion: _____ Second: _____ Vote: _____

7. Adjourn Motion: _____ Second: _____ Vote: _____

FINAL SITE PLAN APPEAL PROCEDURE

- I. The Council is determining this independently and without bias: Council members should abide by the requirements of this review by not prejudging the matter or deciding based on the preferences of the council member or the public. As with all meetings, the council will have the opportunity to note any conflict or communication that would influence their decision. If public comments are made by Council members on social media, in emails or otherwise, they may be used later to show bias.
- II. Action limited to the site plan denial: The site plan was denied based upon a specific requirement of the UDC regarding fuel tanks, as it relates to a UDC provision about providing a compliant site plan. It did not address noise, water pollution, or other matters that are being brought up online. Your review is not about these separate issues; it is only if the actual determination was proper for the reasons given.
- III. Information Provided or Reviewed: Generally, the information presented will be limited to the information provided to the Planning Commission at the meeting, and information explaining the reasons for the appeal. Recordings, notes, written statements or verbal statements extraneous to meeting minutes are not evidence. There should be no consideration of claims of other violations of the UDC based on public complaints. The Planning Commission was required to provide its reasons for denial, and those are to be addressed, not possible violations or extraneous issues.
- IV. Public Comment: The appeal is not an open public hearing, so no comment will be allowed. No evidence may be produced or introduced by the public. Council members should not consider documents or facts outside of those provided.
- V. Executive Session: The City Council may recess into executive session for quasi-judicial review of the appeal.
- VI. Standard of Review: The City Council is to determine if the Planning Commission denial was legal and reasonable. An action is legal if it follows the UDC and state law when the determination was made. 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. If the determination was legal and reasonable, the City Council should affirm the Planning Commission action.
- VII. Ruling: The Council may deny the appeal which keeps the denial in place, overrule the Planning Commission and approve the site plan or remand the

matter to the Planning Commission for further action. The Council should outline reasons for the action taken, and/or specifically state the actions required on remand. Denial or overruling of the action is a final determination of the City on the matter, but does not prejudice any future applications allowed by law or the City Code.

LEGAL POSITION STATEMENT—CITY PLANNING COMMISSION

On June 9th, Edgerton Planning Commission approved a motion to deny Application FSP2026-0002, Final Site Plan for Edgerton Project located at 31800 W. 196th Street, finding that the submitted plan does not represent an overall development pattern that is consistent with the Comprehensive Plan and other adopted City policies as stated in UDC Section 10.1.H.8, with the inconsistency being the lack of underground fuel storage.

On June 10th, DAMAC Digital Solutions Kansas, LLC filed a formal appeal of the Edgerton Planning Commission's denial of final site plan application FSP2026-0002 pursuant to UDC Section 10.1(K).

In determining the legality and reasonableness of the Planning Commission's determination, City Council must first understand its role. The Planning Commission's role for site plans is to review the specific project details in comparison to the established regulations in the Unified Development Code (UDC) and other city codes. This review often includes building and property details such as building materials, setbacks, outdoor equipment, lighting, landscaping, etc. Certainly, the Planning Commission must follow the law and the Unified Development Code (UDC). The Planning Commission review is separate and independent of City Staff as it should make its own determination as to compliance.

I. REVIEW STANDARD.

Under UDC Section 10.1.K. the site plan applicant has the right to appeal the Planning Commission's decision to the City Council. This is determined under rules established by Kansas law, as the City Council is to determine if the Planning Commission's action was lawful and reasonable. An action contrary to state statute or case law is unlawful. Also:

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. *Combined Investment*, 227 Kan. at 28, 605 P.2d 533. We are limited to determining whether the given facts could reasonably have been found by the Board to justify its decision. *Golden*, 224 Kan. at 595–96, 584 P.2d 130. The above analysis of each factor should not be viewed as a reweighing of the

evidence but, rather, a process of pointing out how the Board's findings of facts were reasonable in light of the record on appeal.

McPherson Landfill, Inc. v. Board of Cnty. Com'rs of Shawnee Cnty., 49 P.3d 522, 538, 274 Kan. 303, 331 (Kan.,2002).

II. **LEGAL AUTHORITY OF THE PLANNING COMMISSION.**

The Planning Commission's role in site plan review is not zoning compliance, as the overall use of the property is established before a site plan would be reviewed. Site plans involve reviewing specific details of the actual building and property development, according to established regulations. These examinations require active consideration, and the law provides that the Planning Commission significant discretion in making its decisions. Rodrock states:

The law now requires that the planning commission consider various factors in evaluating a plat. Consideration of the factors requires the exercise of judgment and discretion.

. . .

Clearly, the scope of the subdivision regulations and the authority of the planning commission to adopt and alter a comprehensive plan under the current law require the planning commission to exercise considerable discretion.

. . .

The planning commission has discretion to approve a plat with conditions or deny approval outright. See, *e.g.*, *Herr v. Lancaster County Planning Com'n*, 155 Pa. Cmwlth. 379, 394–95, 625 A.2d 164 (1993).

Rodrock Enterprises, L.P. v. City of Olathe, Kan., 21 P.3d 598, 602, 28 Kan.App.2d 860, 861- 864 (Kan.App.,2001). In this context, discretion must embrace the idea that the Planning Commission need not grant exceptions or conditions. Planning Commissions are not legal entities created by the City, they are mandated by state statute to be the bodies in review of certain aspects of all zoning codes in Kansas. Towards that end, the City Council is bound to respect this statutory grant by not lightly disregarding their discretionary actions.

It is also clear that this discretion is properly employed by the Planning Commission when comparing a site plan against requirements of the UDC, comprehensive plan and city policy:

Assuming that the planning commission has discretion in applying the regulations, its discretion must be exercised within the limits of the regulations and its statutory authority. Approval of a plat is improperly denied where the plat conforms to all zoning and subdivision regulations and planning commission standards. Denial must be based on violation of regulations and standards which are within the authority conferred by the enabling legislation. *See* 83 Am.Jur.2d, Zoning and Planning § 556, p. 445–46. However, the Kansas statutes provide that a city may adopt regulations which control the aesthetics of the development. *See Blockbuster Video, Inc., v. City of Overland Park*, 24 Kan.App.2d 358, 361, 948 P.2d 179 (1997). The city may then choose to enforce them or not when a development plan is proposed. 24 Kan.App.2d at 360–61, 948 P.2d 179.

Rodrock Enterprises, at 863–64. Thus, the questions are established—Did the site plan conform to all zoning, subdivision regulations and planning commission standards? Were those standards adopted by law—meaning within Kansas statutes and approved by City Ordinance? Were standards that are allowed to be adopted waived by the City or Planning Commission? The answers to these questions are the core of the appeal process.

Of these questions, two are established: First, there is no dispute that the City's UDC code and the City's Planning Commission are properly passed and established under Kansas legal authority. Second, as noted above, the waiver or condition of these standards is discretionary, and so the Planning Commission refusal was allowed. The only remaining question is whether the site plan conformed to zoning and planning standards.

III. DETERMINATION IF PLANNING COMMISSION PROPERLY APPLIED STANDARD SECTION H REGARDING STANDARD FOR APPROVAL (OR DISAPPROVAL).

It is the case that the City Council must determine if the Planning Commission properly applied the terms of Section 10.1(H)(8). This is a legal question—whether the reason for the denial under Section 5.2(H)(4) is properly invoked under this specific

section. Layle v. City of Mission Hills, 401 P.3d 1052, 1056, 54 Kan.App.2d 591, 594–96 (Kan. App., 2017). As such, if Section 5.2(H)(4)’s requirement for underground tanks is beyond the true scope of the site plan review process, so that a zoning violation is not couched anywhere in the terms of Section 10.1(H)(8), the Planning Commission cannot employ its discretion to avoid it.

Section 10.1(H)(8) says that the Planning Commission shall give consideration to whether “. . . [t]he plan represents an overall development pattern that is consistent with the Comprehensive Plan and other adopted City policies.” Based on the motion approved, Planning Commission found the site plan inconsistent with adopted city policies related to underground fuel storage.

The alleged violation of the “other adopted City policies” is not a legal determination, however. The remaining question for City Council is to determine if Section 10.1(H)(8) includes zoning standards, and if it does, whether or not a violation exists. City Council should determine if a violation exists only based on the facts outlined above.

But it also should be noted that the City Attorney did not “rule” on the claimed issue that Section 5.2(H)(4) is not sufficient for a denial motion. First, the City Attorney provides advice, not legal rulings. This is separate and apart from the fact that there was no statement that the use of Section 5.2(H)(4)’s requirement for underground tanks was not applicable or required, the statement was that the non-compliance under the District zoning regulations still had to be contained within Section 10.1(H) reasons for denial to be complete as a motion. A denial without relation to that Section is unlawful, and likely unfair. Thus, the City Attorney’s advice to the Planning Commission was merely that it should not rely on a statement that a Section 5.2(H)(4) violation was sufficient, it still had to tie it to the standards for site plans.

It is also argued that since the site plan includes required compliance with all aspects of the UDC, that DAMAC would have had to comply with the underground tank requirement in any case. But Kansas law clearly provides that an action of approval in a zoning matter can result in “equitable estoppel” on the part of the city. City of DeSoto v. Centurion Homes, Inc., 1 Kan. App. 2nd 634, 640, 573 P.2d 1081 (1977). This means that the City could be bound by its approval, with the notation by DAMAC of its non-compliance on above ground tanks and acknowledgement of the issue in the site plan, an approval could be deemed acceptance of the non-conforming use.

IV. CONCLUSION

The City Council should focus on legality and reasonableness in its review. The Edgerton Planning Commission determined that the site plan represents an overall development pattern that is inconsistent with the Comprehensive Plan and other adopted City policies, and therefore approved a motion to deny. The Planning Commission was not required to grant an exception offered by the Applicant. In this appeal, the legality of the action and its reasonableness should be carefully considered in light of the requirements of the UDC.



EDGERTON
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404 East Nelson
Edgerton, KS 66021
P: 913.893.6231
EDGERTONKS.ORG

DATE: July 13, 2026

TO: Mayor and City Council Members

FROM: Beth Linn, City Administrator
Zachary Moore, Development Services Director

SUBJECT: Project Heartland / FSP2026-0002 - Formal Filing of Appeal

Staff is providing the following information to City Council as background related to the Formal Filing of an Appeal related to FSP2026-002.

1. PLANNING COMMISSION ACTION FOR FSP2026-0002: FINAL SITE PLAN FOR EDGERTON PROJECT LOCATED AT 31800 W. 196TH STREET

On June 9, 2026, Edgerton Planning Commission approved a motion to deny Application FSP2026-0002, Final Site Plan for Edgerton Project located at 31800 W. 196th Street, finding that the submitted plan does not represent an overall development pattern that is consistent with the Comprehensive Plan and other adopted City policies as stated in UDC Section 10.1.H.8, with the inconsistency being the lack of underground fuel storage.

Section 5.2.H.4 of the UDC states that fueling tanks must be located underground. The exact language for this section of the Unified Development Code (UDC) is included below.

"Any exterior fuel tank(s) must be located below ground. All below ground fuel tanks must meet, at a minimum, International Building Code (IBC), International Fire Code (IFC), and Kansas Department of Health and Environment (KDHE) requirements. Below ground fuel tanks must be shown on Final Site Plans and must meet the appropriate code requisite building line and property line setbacks. Below ground tanks may only be installed once Final Site Plan approval has been received and a building permit has been issued. This section applies to all fuel tanks installed after January 1, 2021. Any above ground fuel tanks installed prior January 1, 2021 which are moved, repaired or replaced, must be located underground and must comply with this section."

2. DOCUMENTATION OR STATEMENTS FROM DAMAC DIGITAL PREVIOUSLY PROVIDED TO PLANNING COMMISSION RELATED TO GENERATORS/UNDERGROUND STORAGE TANKS.

- **Site Plans:** The site plans for this project were provide to Planning Commission as part of the May 12th Planning Commission packet and can be found on the City's website here: <https://edgertonks.org/wp-content/uploads/PC2026-05-12-PACKET.pdf> (pages 36-54).
- **Statement of Purpose** (dated April 14, 2026) from DAMAC Digital. Also available on in the May 12th Planning Commission packet using the link above, page 56.

"Fuel Storage. Each generator pod is equipped with an integral belly tank - a sub-base fuel tank housed within the generator skid - for on-site diesel fuel storage. The applicant acknowledges the requirement under the L-P District regulations that exterior fuel tanks be located below ground and that all below-ground fuel tanks meet, at a minimum, International Building Code, International Fire Code, and Kansas Department of Health and Environment requirements."

- **June 9, 2026 Planning Commission Minutes.** The draft minutes for the June 9th Planning Commission information provided by DAMAC Digital related to generators and underground storage tanks. The draft minutes are included in the July 14th Planning Commission packet located on the City's website here: <https://edgertonks.org/wp-content/uploads/PC2026-07-14-PACKET.pdf>.

3. **STAFF REVIEW OF SITE PLANS.** Edgerton City Staff, together with our plan review partners (City Engineer, JCCFD1, GBA) completed a standard review of FSP2026-002 and all submitted documentation. During that review process, staff did not note a code deficiency related to storage of fuel tanks nor that an exception would be permitted to allow fuel tanks above ground. None of the documentation included (plans, cut sheets, etc.) indicated whether or not the tanks on the generators would be installed above or below ground.

4. **PROCESS FOR REQUEST FOR DEVIATION FROM UNIFIED DEVELOPMENT CODE BY APPLICANT.** The standard review process for planning and zoning applications include one or more submittal of plans and additional documentation for review by the City for compliance with applicable city codes. This process includes staff providing comment and applicant responses to those comments. Typically for those items the applicant seeks a deviation from city code, applicant would provide detailed documentation and support of that request, like DAMAC Digital did related to proposed use of gravel for the surface at the transfer yard and substation. During the standard plan review, Staff noted a code deficiency related to the proposed use of gravel as the surface at the proposed transfer yard and substation. The Unified Development Code (UDC) requires all parking areas to be paved with concrete or asphalt. The applicant provided additional information (pages 57-58 of May 12th PC packet) documenting the technical safety reasons why the substation is designed with gravel. This documentation was reviewed by GBA, the City's Building Code and Plan Review Consultant, and GBA confirmed gravel is both the industry standard for installation at electrical substations and the preferred material from a safety perspective. Following that review, Staff recommended approval of the deviation as described in page 32 of the May 12th Staff Report.

5. **PROVISION BY APPLICANT FOR CONDITION TO MOVE THE TANKS UNDERGROUND.** Following the motion for denial made by Commissioner Draskovich, the Applicant stated to the Commission that the fuel storage tanks can be relocated to be underground, and the applicant would do so if it was a condition of approval. This process to suggest and/or agree to additional stipulations for approval is not uncommon practice for the Planning Commission. The suggested change and additional condition of approval was rejected by Commissioner Draskovich, and therefore not included in the motion.

6. **NOTICE OF CITY CODES AND PERMITS.** Staff recognize that on occasion a code deficiency may be identified or discovered later in the planning or building permit process. Therefore, the May 12th Staff Report includes the standard section on page 34 titled "NOTICE OF CITY CODES AND PERMITS." This Section notifies the applicant, Planning Commission and general public that the **Applicant is subject to all applicable City codes – whether specifically stated in this report or not – including, but not limited to, Zoning, Buildings and Construction, Subdivisions, and Sign Code.** The Applicant is also subject to all applicable local, State, and Federal laws. The project may also be subject to obtaining permits and/or approvals from other local, County, State, or Federal agencies. If this application had been approved and the specific requirement for installation of fuel tanks below ground not be noted at time of approval, this Notice would still require DAMAC Digital to install the tanks below ground as required by UDC.

HUSCH BLACKWELL

Charles G. Renner
Partner

4801 Main Street, Suite 1000
Kansas City, MO 64112
Direct: 816.329.4702
Fax: 816.421.0596
charles.renner@huschblackwell.com

July 9, 2026

VIA ELECTRONIC DELIVERY

Edgerton City Council
c/o Ms. Dusti Callahan, City Clerk
404 East Nelson Street
Edgerton, Kansas 66021

**Re: Summary of Brief in Support of Appeal - DAMAC Digital Solutions Kansas, LLC /
Final Site Plan Application FSP2026-0002 / 31800 West 196th Street**

Dear Council Members:

We represent DAMAC Digital Solutions Kansas, LLC ("DAMAC") in its appeal of the Edgerton Planning Commission's ("Commission") June 9, 2026 denial of the final site plan for a data center at 31800 West 196th Street. We are submitting this letter alongside the full legal brief to give you a separate summary of the project, the procedural background, and our arguments for why the Edgerton City Council ("Council") should overrule the Commission and approve the site plan. Under the City's own appeal procedure, the Council is to determine whether the denial was legal and reasonable. We believe the record clearly shows it was neither.

I. THE PROJECT

DAMAC is proposing to develop a data center on a 53.79-acre site at 31800 West 196th Street. The property is already zoned Logistics Park (L-P), and data centers are explicitly permitted in that zone: no rezoning, no conditional use permit, and no variance are needed. The City confirmed this in writing twice: in an April 2025 zoning determination issued by the Development Services Director, and again in a May 2026 memorandum from the City Administrator. The project involves relatively modest physical additions to an existing 378,038 square foot warehouse: two small utility intake buildings and a guard shack totaling approximately 4,886 square feet of new construction, along with landscaping and infrastructure improvements. The facility's cooling system is a closed-loop design that does not draw on the City's public water supply during normal operations, and the backup generators only run during power outages or brief periodic tests.

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II. PROCEDURAL BACKGROUND

City staff reviewed DAMAC's site plan application and identified three open items: a photometric plan, a stormwater report, and a floodplain permit. Staff recommended approval of the application subject to conditions addressing those items. Fuel storage tank placement was not identified as a problem.

At the May 12, 2026 hearing, some Commissioners expressed discomfort with the project, primarily around noise. The City Attorney advised the Commission that noise is not a recognized standard under the City's site plan review rules, and a motion to deny on noise grounds was withdrawn. The Commission then voted to continue (table) the application solely to receive additional engineering information about the generators. Fuel tanks were never mentioned.

DAMAC responded by providing a professional acoustic analysis from Barr Engineering Co., which showed sound levels at or below 51 decibels at the nearest residence, roughly the level of normal conversation, along with detailed generator design information.

At the June 9, 2026 hearing, no new staff report was prepared; staff's May 12 written recommendation of approval remained before the Commission and was never withdrawn, and staff identified no deficiency of any kind. Then, during the Commission's deliberations, moments before the vote, one Commissioner raised a provision of the City's code (UDC Section 5.2(H)(4)) addressing below-ground placement of exterior fuel tanks. This was the first time this issue had come up in either hearing, and it had not been flagged in any staff report.

DAMAC's representatives immediately stated on the record that the tanks would be placed underground if made a condition of approval. Despite that on-the-spot commitment, and despite staff's standing written recommendation of approval, the Commission denied the application 3-2, with its own Chair and Commissioner Soemer voting against denial. The sole stated ground was an amended motion finding the plan inconsistent with the Comprehensive Plan and other adopted City policies under UDC Section 10.1(H)(8), with the claimed inconsistency being the lack of underground fuel storage.

III. WHY THE DENIAL WAS IMPROPER

The brief sets out several independent legal arguments in detail. Here is a summary of each:

1. The issue was resolved before the vote. The staff report contained a standard "catch-all" provision stating that DAMAC is required to comply with all applicable City codes, whether or not specifically identified in the report. That obligation applied to DAMAC from the outset of the review process. When the fuel tank issue was raised, DAMAC committed on the record to place the tanks below ground. The concern the Commission cited was answered before the vote was taken; there was no reason left to deny.

2. Tank placement was entirely outside the permissible scope of the Commission's site plan review authority. UDC Section 5.2(H)(4) mandates below-ground placement and confers no discretion on any party (the applicant, City staff, and or the Commission) to vary that outcome. Because the mandatory installation standard was already fixed by law regardless of what the site plan depicted, the

question of above-ground versus below-ground placement was never properly before the Commission to decide. The City Attorney effectively recognized this at the June 9 hearing when he ruled that the original denial motion "does not address the standards for site plan approval" and addresses "requirements outlined in the zoning district." A denial grounded on a legal requirement the Commission cannot change, administered through a process that has no authority to alter that requirement, is not a reasonable exercise of site plan review authority.

3. The amended denial motion invoked UDC Section 10.1(H)(8), a standard that cannot sustain the denial. After the City Attorney ruled that a motion resting directly on Section 5.2(H)(4) did not address the standards for site plan approval, the denial motion was recast under Section 10.1(H)(8). That recast does not survive scrutiny: fuel tank location is a district-level plan-content regulation, not a matter of the project's overall development pattern or an adopted City policy; the Comprehensive Plan itself endorses this development pattern; and where every applicable criterion is satisfied and the applicant has committed to comply, the Code's conditional-approval mechanism, not denial, is the prescribed disposition.

4. DAMAC was never given a fair chance to respond. The underground tank requirement was not raised in the staff report, not raised at the May hearing, and not raised by City staff at the June hearing. It appeared for the first time during the Commission's deliberations immediately before the vote. DAMAC was given no opportunity to revise its drawings or address the issue in any organized way before the denial was entered. Basic fairness and constitutional due process require that applicants receive advance notice of concerns so they can respond.

5. The Commission handled every other similar issue by adding a condition, not by denying. Within the very same site plan review process, the Commission resolved multiple plan-content items through conditions rather than denial: the substation photometric plan (acknowledged by staff as non-compliant with the UDC) was resolved by stipulation; the stormwater management report was designated for resolution before permit issuance; the floodplain permit was handled the same way; and a documented departure from the Code's paving requirement at the substation was resolved through staff's technical review. Each of these items involved a plan element not yet in conformity with the Code, and each was handled by condition. Fuel tank location, an item DAMAC committed on the record to address, was treated as a ground for denial, without any basis in the UDC for that asymmetric treatment.

6. The denial did not satisfy the UDC's own decisional standard. UDC Section 8.1(F)(3), which governs Planning Commission decisions, requires that decisions be based on facts in the hearing record, staff's recommendation, the adopted plan, and the preservation of health, public safety, and the general welfare. The denial fails on every measure: staff's written recommendation of approval was never withdrawn and identified no deficiency; DAMAC committed on the record to below-ground tank placement; the Comprehensive Plan endorses this development pattern; and the denial identifies no health, safety, or welfare concern that a below-ground tank condition would not fully resolve. A decision entered against each of the inputs the Code directs the Commission to consider, without identifying any residual safety consequence that approval with a condition would leave unaddressed, does not satisfy the decisional standard the Code itself prescribes.

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7. The stated reasons for denial migrated throughout the proceedings, which is itself evidence of an arbitrary decision. At the May hearing, a motion to deny on noise grounds was withdrawn after the City Attorney advised that noise is not a site plan standard, and a motion to approve failed 2-2. The Commission then asked for more engineering information about generators, and DAMAC provided everything requested. At the June hearing, with the noise record answered, fuel tank location was raised as a new reason at the last moment, first under Section 5.2(H)(4) and then, when the City Attorney ruled that motion improper, relabeled under Section 10.1(H)(8) minutes later. When a decision-maker abandons one rationale after another and settles on a new one at the eleventh hour, that pattern is evidence that the outcome was predetermined rather than the result of a fair application of the rules.

IV. SOLUTION

The Council can resolve this entirely by approving the site plan with a condition requiring underground fuel tank placement, the same outcome DAMAC committed to on the record at the June 9 hearing and the same approach the Commission used for every other open item in this application. That approval would:

- directly address the Commission's stated concern (underground tanks will be required by the approval itself);
- allow a permitted, code-compliant, economically beneficial project to move forward; and
- avoid the cost and delay of further proceedings; any decision affirming the denial would be subject to judicial review on this record.

This is not a project in dispute on the merits; it is a project that City staff recommended for approval, that satisfies every applicable standard, and that is lawfully permitted on this property. The Council's reversal brings the matter to a close.

We respectfully request that the City Council overrule the Planning Commission and approve Final Site Plan Application FSP2026-0002, subject to the stipulations recommended by City staff and a condition requiring the exterior fuel tanks to be located below ground in conformity with UDC Section 5.2(H)(4) and shown on the amended Final Site Plan.

Alternatively, if the Council prefers, we request a remand to the Commission with instructions to approve the application on those terms.

Thank you for your time and consideration. We welcome the opportunity to address any questions the Council may have.

Respectfully submitted,

HUSCH BLACKWELL LLP



Charles G. Renner

HUSCH BLACKWELL

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Enclosures:

Brief in Support of Appeal (July 9, 2026)

Exhibit 1: Zoning Determination, City of Edgerton Development Services Director (April 3, 2025)

Exhibit 2: Envision Edgerton 2050 Comprehensive Plan (2024), excerpts (pp. 32, 112, 118)

HUSCH BLACKWELL

Charles G. Renner
Partner

4801 Main Street, Suite 1000
Kansas City, MO 64112
Direct: 816.329.4702
Fax: 816.421.0596
charles.renner@huschblackwell.com

LEGAL BRIEF

Date: July 9, 2026

To: Ms. Dusti Callahan
City Clerk, City of Edgerton
404 East Nelson Street
Edgerton, KS 66021
CityClerk@edgertonks.org

From: Charles G. Renner

Re: **Legal Brief in Support of DAMAC Digital Solutions Kansas, LLC's Appeal to the Edgerton City Council Regarding the Edgerton Planning Commission's June 9, 2026 Denial of Final Site Plan Application FSP2026-0002 (31800 West 196th Street)**

INTRODUCTION

DAMAC Digital Solutions Kansas, LLC ("DAMAC") respectfully submits this brief in support of its appeal of the Edgerton Planning Commission's (the "Commission") June 9, 2026 denial of Final Site Plan Application FSP2026-0002 (the "Site Plan") for the proposed data center development located at 31800 West 196th Street, Edgerton, Kansas (the "Project"). DAMAC timely appeals to the City Council of the City of Edgerton, Kansas (the "City Council" or the "Governing Body") pursuant to Section 10.1(K) of the City's Unified Development Code ("UDC").

The Project itself is straightforward: DAMAC proposes to convert an existing warehouse in Logistics Park Kansas City into a data center. The property has been zoned L-P (Logistics Park) since 2017, and a data center is a use permitted there by right, a point the City confirmed in writing in April 2025 and again in May 2026. City staff reviewed the Site Plan against the UDC and recommended approval in a written report, subject to three routine stipulations. That recommendation was never withdrawn.

The Commission heard the application twice. At the May 12, 2026 hearing, the discussion centered on generator noise, and the application was tabled for additional engineering information, which DAMAC promptly supplied. At the June 9, 2026 hearing, in the final minutes of deliberation, a Commissioner raised a new issue for the first time: the location of the backup generators' fuel tanks under UDC Section 5.2(H)(4), the district regulation addressing below-ground placement of exterior fuel tanks. DAMAC asked for a five-minute recess, conferred with its engineer, and committed on the record that "the fuel storage tanks can be

HUSCH BLACKWELL

relocated to be underground, and the applicant would do so if it was a condition of approval." The Commission denied the application anyway, 3-2, over the no votes of its own Chair and Commissioner Soemer. The sole stated ground was an amended motion finding the plan inconsistent with the Comprehensive Plan and other adopted City policies under UDC Section 10.1(H)(8), "with the inconsistency being the lack of underground fuel storage."

The question for the City Council, under the City's own appeal procedure, is whether that denial was legal and reasonable. It was neither. The stated ground does not hold up: as the Argument explains, the finding is not supported by the UDC's text, by the record, or by the Comprehensive Plan itself. The way the ground emerged does not hold up either: it surfaced for the first time at the moment of the vote, after a full staff review and two hearings in which no one mentioned it, and after DAMAC had already committed on the record to place the tanks below ground. Every comparable open item in this same application was resolved through conditions and stipulations. This one alone drew a denial.

This appeal is not a referendum on data centers; that decision was made when the property was zoned, and the use is permitted by right. The remedy is simple. DAMAC respectfully requests that the City Council overrule the Planning Commission and approve the Site Plan, subject to the stipulations recommended by City staff and a condition requiring the fuel tanks to be located below ground, the exact outcome the Commission's stated concern calls for. In the alternative, DAMAC requests a remand with the specific instructions set out in Part IV. Either disposition resolves the only issue the Commission ever identified and brings this matter to a close.

I. STATEMENT OF THE CASE

A. The Project and the Applicable Zoning

The Project is a data center development proposed for a 53.79-acre parcel located at 31800 West 196th Street, Edgerton, Kansas. The property has been zoned L-P (Logistics Park) since December 11, 2017 (Ordinance No. 986). Data centers are a use permitted by right in the L-P District, a point the City has twice confirmed in writing. On April 3, 2025, more than a year before this application was heard, the City's Development Services Director issued a written zoning determination that data center use "is currently permitted by-right in . . . the L-P (Logistics Park) District (UDC, Article 5.2)," and that any future data center development "must comply with all requirements of the Edgerton UDC and the Edgerton Municipal Code at the time of development." On May 5, 2026, the City Administrator confirmed to the Commission that "the property is currently zoned Logistics Park (L-P) which allows data centers as a permitted use; therefore no annexation or rezoning required." No rezoning, conditional use permit, or variance is required or has been sought.

The Project proposes modest additions to an existing 378,038 square-foot warehouse, consisting of approximately 4,886 square feet of new structures (two medium-voltage intake buildings and a guard shack), along with supporting utility, landscaping, and site infrastructure improvements. The facility's cooling system is a closed-loop, fully sealed recirculating design requiring no ongoing public water supply draw after its initial fill. The backup generators operate only during utility outages or brief periodic testing.

B. The Review Process and Procedural History

City staff conducted a compliance review under UDC Section 10.1(C)(2) prior to the May 12, 2026 Commission hearing. The staff report identified three open items (the photometric plan for the substation, the stormwater management report, and floodplain permitting) and recommended approval subject to conditions. Fuel tank location was not identified as a deficiency. The stormwater and floodplain items were designated for resolution prior to permit issuance; the photometric plan non-compliance was resolved by

stipulation at the May 12, 2026 hearing. The gravel surface at the electrical substation, a documented departure from the Code's paving requirement, was resolved through staff's technical review.

At the May 12, 2026 hearing, the Commission continued its decision solely under UDC Section 10.1(H)(5), the good land planning and site engineering design principles criterion, for the limited purpose of obtaining additional engineering information concerning the generators and associated systems. Specifically, Commissioner Draskovich moved to table the application in connection with UDC Section 10.1(H)(5) "for more site engineering design principles related to generators and noise pollution," and that motion passed 4-0. The Commission did not identify fuel tank location as an issue. DAMAC responded to the continuance by providing a professional acoustic analysis prepared by Barr Engineering Co., detailed backup power and generator design information, and documentation of the closed-loop cooling system.

No new staff report was prepared for the June 9, 2026 hearing; the Development Services Director's memorandum transmitted DAMAC's supplemental materials to the Commission. Staff's May 12 written recommendation of approval was never withdrawn or qualified and remained the operative staff recommendation before the Commission at the time of the vote. At the hearing, staff identified no deficiency of any kind, and the City Administrator encouraged the Commission to incorporate DAMAC's voluntary generator-testing restriction as an additional stipulation of approval. Fuel tank location was not identified as a deficiency by staff at any point in this proceeding.

At the June 9, 2026 hearing, the fuel tank issue was raised for the first time during Commission deliberations, immediately before the vote. Commissioner Draskovich moved to deny the application "per UDC Section 5.2.H.4 stating that fueling tanks must be located underground." DAMAC requested a brief recess, conferred with its engineer, and stated on the record "that the fuel storage tanks can be relocated to be underground, and the applicant would do so if it was a condition of approval." The City Attorney then ruled that the motion "does not address the standards for site plan approval outlined in UDC Section 10.1.H and is addressing requirements outlined in the zoning district," and required that it be revised to state a reason based on those standards. Commissioner Draskovich amended the motion to deny the application "finding that the submitted plan does not represent an overall development pattern that is consistent with the Comprehensive Plan and other adopted City policies as stated in UDC Section 10.1.H.8, with the inconsistency being the lack of underground fuel storage." The amended motion passed 3-2, with Chairperson Mathos and Commissioner Soemer voting no. Notwithstanding DAMAC's on-the-record commitment, and notwithstanding staff's standing written recommendation of approval, the application was denied.

II. THE CATCH-ALL COMPLIANCE CONDITION RESOLVES THE COMMISSION'S STATED GROUND FOR DENIAL

A. The Staff Report Imposed a Catch-All Obligation Requiring DAMAC to Comply with All Applicable City Codes

City staff's recommendation of approval for FSP2026-0002 was not unconditional. The staff report included a prominent "Notice of City Codes and Permits" stating: "The Applicant is subject to all applicable City codes – whether specifically stated in this report or not – including, but not limited to, Zoning, Buildings and Construction, Subdivisions, and Sign Code. The Applicant is also subject to all applicable local, State, and Federal laws." Staff Report, FSP2026-0002, May 12, 2026, p. 8 of 9. This catch-all provision is explicit and unambiguous: DAMAC's approval was conditioned on compliance with the entire UDC, including UDC Section 5.2(H)(4)'s below-ground fuel tank requirement, regardless of whether that provision was called out by name in the staff report.

Staff's recommended Stipulation 1 reinforced this obligation. It provides that the approved site plan "shall create an enforceable obligation to build and develop in accordance with all specifications and notations contained in the site plan instrument" and that "the applicant prior to the issuance of any development permit shall sign all site plans." The Site Plan's own cover sheet certification language requires the applicant to certify that it "will comply with all specifications, changes, and amendments herein, and that this instrument creates a legally enforceable obligation to build and develop in accordance with all final agreements." These provisions collectively confirm that approval never meant a license to depart from the UDC. Full compliance with all applicable codes, including any provision not specifically referenced in the staff report, was a condition of approval from the outset.

The catch-all notice exists precisely to ensure that items missed during staff's review do not slip through unaddressed. It is the UDC's safety valve: staff's review is thorough but not exhaustive, and the notice ensures that an approved site plan cannot be used to authorize anything that contravenes the Code, even if a specific provision went unmentioned in the review. In this way, the Code expressly anticipated the very circumstance before the Commission on June 9, 2026, a plan-content item not identified in the staff report, and provided a mechanism for addressing it through enforcement of the catch-all obligation, not through denial of the plan.

B. DAMAC's Obligation to Comply with All Applicable UDC Requirements Existed Independently of the Staff Report

The catch-all notice is not mere boilerplate. It is a substantive condition woven into the fabric of the site plan review process. By submitting the application, engaging in the staff review process, appearing at both Commission hearings, and accepting staff's recommendation of approval as the framework for the Commission's decision, DAMAC was at all times obligated to comply with all applicable City codes, including, to the extent it applies, Section 5.2(H)(4). There was never any ambiguity about DAMAC's obligation to place exterior fuel tanks below ground; that obligation exists independently of whether staff flagged it in the review report.

DAMAC confirmed this obligation expressly at the June 9, 2026 hearing. The moment Section 5.2(H)(4) was raised during deliberations, DAMAC's representatives stated on the record that the tanks would be placed below ground in conformity with that provision. That statement was not a concession of any deficiency; it confirmed that the compliance framework described in the staff report's catch-all notice was already in place, and that any item identified during review would be addressed through it. The Revised Final Site Plan now depicts the tanks below ground. DAMAC has done everything the UDC requires of an applicant in this circumstance.

C. Approval of This Appeal Resolves Precisely the Concern the Commission Cited

The Commission's stated reason for denial was the above-ground depiction of exterior fuel tanks in the site plan, framed in the amended motion as an inconsistency under UDC Section 10.1(H)(8) with reference to Section 5.2(H)(4). That concern is extinguished by the City Council's approval of the Site Plan with a condition requiring below-ground tank placement. DAMAC has agreed to that condition. The Revised Final Site Plan now depicts compliance with it. The applicant certification and Stipulation 1 make such a condition fully enforceable as a matter of law. Approval with a below-ground tank condition leaves nothing unresolved: the Commission's stated objection is answered, the UDC's requirement is satisfied, and the condition is enforceable.

A denial, by contrast, resolves nothing. DAMAC has committed to locate the tanks below ground in any event. Denying the Site Plan does not change the compliance obligations that attach at construction and permitting; it merely prevents a permitted, code-compliant project from proceeding while leaving the

parties in litigation over a condition DAMAC has already accepted. There is no regulatory purpose served by denial that would not be equally and more efficiently served by approval with a condition. The City's anticipated argument that DAMAC's submission of a new site plan application constitutes an acknowledgment that the original plan was defective, and therefore that denial was proper, is addressed and refuted in Argument Section I.5 below.

III. ARGUMENT

A. Standard of Review: Legality and Reasonableness

1. The Legal Standard

When the City Council reviews an appeal of a Planning Commission site plan decision, the governing standard asks whether the Commission's decision was reasonable, a question of law. *Rodrock Enterprises, L.P. v. City of Olathe*, 28 Kan. App. 2d 860, 863, 21 P.3d 598 (2001). The City's Final Site Plan Appeal Procedure states the same test: the Council "is to determine if the Planning Commission denial was legal and reasonable," and its review asks "only if the actual determination was proper for the reasons given." A planning commission decision is arbitrary and capricious, and therefore 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." *Rodrock*, 28 Kan. App. 2d at 863 (quoting *Johnson County Water Dist. No. 1 v. City of Kansas City*, 255 Kan. 183, 184, 871 P.2d 1256 (1994)); *Golden v. City of Overland Park*, 224 Kan. 591, 595-96, 584 P.2d 130, 134 (1978); see *Board of Johnson County Comm'rs v. City of Olathe*, 263 Kan. 667, 676, 952 P.2d 1302 (1998). A denial unsupported by substantial competent evidence or by a legitimate, code-based rationale falls squarely within that definition, a conclusion the Commission's own members effectively reached at the May 12, 2026 hearing.

Under this standard, the Kansas Court of Appeals confirmed in *Rodrock Enterprises* that approval of a plat is improperly denied where the plat conforms to all applicable regulations and standards, and that a denial must be based on a violation of regulations and standards within the authority conferred by the enabling legislation. At the May 12, 2026 hearing, the City Attorney himself cited *Rodrock Enterprises* and advised the Commission in the same terms, applying that principle to the final site plan application before it. Commissioner Soemer acknowledged the same constraint on the record at the May 12 hearing, stating that even though Commissioners were "uncomfortable with a lot of things," "what is before us, even if they feel backed into a corner, they do not have a statute to lean on to deny or table the application." A denial unsupported by a legitimate, code-based rationale is arbitrary and capricious, and therefore unreasonable as a matter of law, a conclusion the Commission's own members reached in real time.

Two additional dimensions of the standard apply to the arguments in Section B. First, *Evans v. City of Emporia*, makes clear that lawfulness and reasonableness as separate requirements: the denial must have been "legal and reasonable," and an action taken outside the Commission's authority fails the legality requirement without any need to reach reasonableness at all. 44 Kan. App. 2d 1066, 243 P.3d 374 (2010). Second, where a zoning body's decision turns on its interpretation of a zoning regulation, review of that interpretation is de novo and no deference is owed to the body's reading. *Layle v. City of Mission Hills*, 54 Kan. App. 2d 591, 595-96, 401 P.3d 1052 (2017). Both principles govern the analysis in Section B below.

2. The Commission's Decision Was Arbitrary and Capricious

The Commission's June 9, 2026 denial was unreasonable (arbitrary and capricious) for the following independent and cumulative reasons, developed in the sections that follow:

(a) On the reading the Commission's own motion adopted, that Section 5.2(H)(4) governs the Project's tanks, the provision is categorical and leaves no party any discretion over tank location; the question of above-ground versus below-ground placement was therefore never the Commission's to decide, and a denial resting on it was an action taken outside the scope of the Commission's site plan review authority. Article 14 of the UDC confirms that construction-level requirements are regularly administered through separate processes outside site plan review, so the treatment of a technical installation requirement on the site plan drawing is not a site plan error cognizable under Section 10.1(H). The denial thus fails on independent grounds of legality and reasonableness, and, because it turns on the Commission's reading of Section 5.2(H)(4), that reading receives de novo review with no deference;

(b) The amended motion's finding under Section 10.1(H)(8) cannot be sustained: fuel tank location is a plan-content item addressed by the district regulations, not a matter of the plan's "overall development pattern" or an "adopted City policy," and the UDC's conditional-approval mechanism provides the applicable disposition where DAMAC has committed to comply;

(c) The sole stated ground for denial was never identified as a deficiency in the staff report or by City staff at the June 9 hearing, was raised for the first time during deliberations immediately before the vote, and was offered no opportunity for cure, in violation of fair notice and DAMAC's right to a meaningful opportunity to be heard;

(d) The Commission disposed of every comparable plan-content item through stipulation or technical review but singled out fuel tank location, an item DAMAC committed on the record to address, as a ground for denial, without any basis in the UDC for that asymmetric treatment;

(e) The denial was entered contrary to City staff's standing written recommendation of approval, which was never withdrawn or qualified, and contrary to the record evidence; and

(f) The rationale for the denial shifted over the course of the review: from noise (the Commission was advised it likely lacked authority to regulate), to engineering information, to a fuel tank provision not previously identified, and finally, when a motion resting on that provision was ruled improper, to a Section 10.1(H)(8) label attached to the same fuel tank item, reflecting a search for grounds to deny rather than a principled application of the UDC's published standards.

B. Tank Placement Was Outside the Permissible Scope of Site Plan Review

1. On the Commission's Own Reading of Section 5.2(H)(4), No Party Had Discretion Over Tank Placement

The Commission's stated rationale rests on an implicit premise that collapses on itself: that DAMAC made a choice to depict fuel tanks above ground, and that the Planning Commission was entitled to deny the Site Plan because of that choice. Take the Commission's own reading of the Code, adopted in its motions, that Section 5.2(H)(4) governs the Project's tanks. On that reading, the provision permits no choice as to fuel tank location. It commands: "Any exterior fuel tank(s) must be located below ground." The word "must" is imperative. On the Commission's premise, no discretion is conferred upon the applicant, upon City staff, or upon the Planning Commission to vary that outcome; any exterior fuel storage on the Project would be installed underground because, on that reading, the Code makes no other option available at installation.

This has a critical consequence for this appeal. If the provision governs, as the Commission's motions assumed, it eliminates any discretion over tank placement: no submission, no staff review, and no Planning Commission action could alter whether the tanks go underground. On that premise, the question of above-

ground versus below-ground placement was never before the Commission to decide. The City Attorney implicitly recognized this at the June 9, 2026 hearing, ruling that the original motion to deny "does not address the standards for site plan approval outlined in UDC Section 10.1.H and is addressing requirements outlined in the zoning district." That ruling was correct, and it forecloses the denial for a reason beyond what the City Attorney articulated: on the Commission's own reading, it had no authority to approve above-ground tanks, no authority to disapprove below-ground tanks, and therefore no regulatory stake in the depiction question at all. Whatever DAMAC's site plan showed, the installation outcome the Commission's premise dictates could not be changed by the site plan vote.

On the same premise, the only path to a lawful above-ground fuel tank installation in the L-P District would be a formal amendment to the UDC by the City Council, or a variance or equivalent approval from the Board of Zoning Adjustment altering the district regulation for this property. Neither process was initiated, nor was either process before the Planning Commission on June 9, 2026. Hypothetically, if DAMAC had sought approval of above-ground tanks under the Commission's reading (it did not), the Planning Commission would have lacked the authority to grant that relief either. The Kansas Supreme Court's holding in *City of Manhattan v. Ridgeview Bldg. Co.* confirms why: the power to change or depart from a zoning regulation "can only be exercised in conformity with the statute which authorized the zoning," and a city must "strictly pursue the procedure provided by the statute." 215 Kan. at 613. Any relief from a mandatory district standard requires the prescribed procedure (amendment, variance, or equivalent), not a site plan proceeding. The Planning Commission's site plan review authority under Article 10 does not include the power to waive or override district regulations in Article 5. The Commission evaluates the eight Standard of Approval criteria in Section 10.1(H); it has no authority to suspend or modify district regulations that, on the Commission's own reading, are categorical and admit no exception through the site plan process. A decision purporting to deny a plan as inconsistent with a mandatory Code requirement that the Commission itself has no power to waive is not a legitimate exercise of the Commission's site plan authority; it is an action taken outside the bounds of that authority.

Under the same rationale, the depiction of tank placement on the site plan was not a matter the site plan vote could resolve in either direction. If the installation outcome is fixed by the district regulation, the Commission's action on that point, whether approval or denial, had no legal effect on it. The *Ridgeview* court invalidated a governing body's alteration of a plan that bypassed the mandatory statutory procedure, and that holding is directly persuasive here: a departure from a district regulation attempted outside the prescribed variance or amendment route, or a denial that treats site plan review as the vehicle for enforcing that regulation, is equally invalid. 215 Kan. at 610-11. A denial grounded on a requirement the Commission cannot change, administered through a process with no authority to alter that requirement, is not a reasonable exercise of the Commission's regulatory power.

2. Project Details Are Routinely Governed by Separate Regulatory Processes Outside the Site Plan Review

The Commission's rationale treats the site plan drawing as a comprehensive regulatory instrument that must address every Code requirement governing the project and treats any omission from the drawing as a site plan deficiency. Article 14 of the UDC (Improvements and Standards of Design) directly refutes that premise. Article 14 demonstrates that the UDC deliberately routes significant project-level requirements through separate regulatory processes (administered by the City Engineer, the Governing Body, and other authorities) rather than through the Planning Commission's site plan review.

The examples from UDC Article 14 are concrete and cover the full arc of project development. Section 14.5 requires fill areas to be compacted to 95% of standard maximum density with methods subject to City Engineer approval. Section 14.9 establishes detailed water main design standards (pipe diameter, looping,

fire hydrant spacing, KDHE certification) administered by the City Engineer and the Governing Body. Most instructively, Section 14.16 mandates that all newly constructed telephone, electrical, television, and wire/cable lines be placed underground, a categorical buried-installation requirement structurally identical to Section 5.2(H)(4)'s mandate for fuel tanks, yet the site plan is not expected to show wire trenches, cable depths, backfill specifications, or splice locations for those utilities; the general connection points and routing suffice at the plan stage, with construction-level compliance addressed separately.

The pattern running through Article 14 is consistent and deliberate: the UDC assigns numerous technically complex, construction-level requirements to separate regulatory processes (City Engineer approval, Governing Body authorization, state agency certification) because those are the processes designed to address those requirements. The Code's architecture reflects this division of labor. The Planning Commission's Standard of Approval in Section 10.1(H) addresses eight criteria: site capacity, utilities, stormwater, circulation, land planning principles, architectural compatibility, landscaping and screening, and comprehensive plan consistency. None of those criteria calls for a comprehensive audit of every applicable Code requirement that will be administered through other processes by other authorities. The catch-all notice in the staff report (that "[t]he Applicant is subject to all applicable City codes – whether specifically stated in this report or not") confirms the point: the Code itself acknowledges that not every applicable requirement will be addressed in the staff report or the site plan review, and it addresses that reality through the catch-all compliance obligation rather than through denial.

This framework has a direct application to the fuel tank issue. Section 5.2(H)(4) is a district regulation requiring below-ground tank installation, administered through the building permit and inspection process; the provision itself says the tanks "may only be installed once Final Site Plan approval has been received and a building permit has been issued." The installation standard is enforced at the permit and construction stages, where the City Engineer, building inspector, and fire marshal administer IBC, IFC, and KDHE compliance requirements. It is not a site plan review criterion. No party with authority over the mandatory below-ground placement requirement (City Council, Board of Zoning Adjustment, or building official) was a party to the site plan proceedings. The Planning Commission, the only body that acted on June 9, 2026, had no authority over whether the tanks go underground, because that outcome is mandated by the Code and enforced through a separate permitting process by separate authorities.

There was accordingly no site plan error on this point cognizable under the Standard of Approval. The site plan correctly depicted the project for purposes of the eight Section 10.1(H) criteria. Whether the final construction drawings would show the tanks at the approved underground depth, with IBC/IFC/KDHE compliance details, is a permitting and construction question administered through the separate processes the UDC establishes for that purpose, not a question the Planning Commission resolves through site plan approval or denial. The denial was therefore not a legitimate exercise of site plan review authority; it was an attempt to use site plan review to enforce a district regulation through a process that has neither the authority nor the appropriate tools to do so. The standard of review converts this point into a controlling one. The City's own test asks first the lawfulness of the action taken and then its reasonableness (expressly treating legality as an inquiry separate from and independent of reasonableness), and Kansas law deems an action unreasonable when it is "so wide of the mark that its unreasonableness lies outside the realm of fair debate." *Evans*, Kan. App. 2d at 1069. A Commission decision to deny a site plan on the basis of a district regulation it had no authority to administer through site plan review fails both prongs: it is unlawful because it exceeds the Commission's site plan authority, and it is unreasonable because no fair-minded regulator applying the UDC's published standards could conclude that an installation outcome the Commission's own reading fixes, regardless of what the plan depicted, was a cognizable basis for site plan denial. *Layle v. City of Mission Hills* provides the framework: where a zoning body's decision turns on its interpretation of a zoning regulation, review is de novo and no deference is owed to the agency's reading. 54 Kan. App. 2d at 595-96. The *Layle* court held that because the board "misconstrued the plain language of the zoning

regulations," its decision was "not substantially supported by the evidence" and had to be reversed. 54 Kan. App. 2d at 599. That is precisely the posture here: the Commission's denial rests on a legal misreading (treating an installation standard administered through permitting as a discretionary site plan choice) and a decision built on a legally erroneous premise fails review as both unlawful and unreasonable.

C. The Amended Motion's Finding Under UDC Section 10.1(H)(8) Cannot Sustain the Denial

UDC Section 10.1(H), the "Standard of Approval," sets forth eight criteria to which the Planning Commission "shall give consideration . . . in approving or disapproving a Site Plan." As demonstrated in Exhibit A to the Appeal Cover Letter, the Site Plan satisfies each of those eight criteria on the record. The Commission's operative denial motion invoked one of them. After the City Attorney ruled that the initial motion resting directly on Section 5.2(H)(4) "does not address the standards for site plan approval outlined in UDC Section 10.1.H," Commissioner Draskovich amended the motion to deny the application "finding that the submitted plan does not represent an overall development pattern that is consistent with the Comprehensive Plan and other adopted City policies as stated in UDC Section 10.1.H.8, with the inconsistency being the lack of underground fuel storage." Because the City's appeal procedure confines this review to whether "the actual determination was proper for the reasons given," the question before the Council is whether that finding can support the denial. It cannot, for four independent reasons.

First, Section 5.2(H)(4) itself is not a basis for denial, as the City Attorney correctly ruled on June 9 and had advised on May 12: "the UDC does not allow for a reason to deny based on compliance with zoning requirements," and a motion resting on district zoning provisions "imports standards that the City does not recognize for site plans." District regulations are administered through the machinery the Code builds for them: staff's compliance review before the hearing (Section 10.1(C)(2)); approval with conditions and stipulations (Section 10.1(D)(4)); the Commission's power to "require revisions to the Site Plan . . . or any other element" (Section 10.1(K)); the amended Final Site Plan submitted and confirmed by staff (Sections 10.1(C)(2), 10.4(A)); and post-approval code enforcement. The stated ground for this denial therefore stands or falls on Section 10.1(H)(8) alone.

Second, "other adopted City policies" in Section 10.1(H)(8) does not mean the UDC's own district regulations. When the UDC's drafters intended a decisional standard to reach the City's ordinances and regulatory code, they said so expressly, and they did so twice. The conditional use standard requires consideration of "[c]onsistency with the Comprehensive Plan, Capital Improvement Plan, ordinances, policies, and applicable City Code of the City of Edgerton . . ." UDC Section 7.1(C)(13). The rezoning standard is materially identical. UDC Section 8.1(F)(4)(m). In both provisions, "ordinances" and the "applicable City Code" appear as items separate from and in addition to "policies." The site plan criterion, by contrast, reaches only "the Comprehensive Plan and other adopted City policies." The omission is dispositive: the same drafters, in the same code, knew how to make code conformance a decisional criterion, and for site plans they chose not to. The Code's own vocabulary confirms the point: the UDC "is intended to implement the planning goals and policies contained in the Comprehensive Plan 2000-2020 and other planning documents and policies of the Planning Commission." UDC Section 1.3(A). In the Code's usage, "policies" are the planning-level instruments the UDC implements; the UDC itself is an "ordinance" comprising "regulations." UDC Sections 1.1, 1.2. Section 5.2(H)(4) is a district regulation, not an "adopted City policy." Any broader reading would allow criterion (H)(8) to swallow the other seven criteria and the Code's conditions machinery whole, a construction the City Attorney rejected in this very proceeding and one refuted by the Commission's own handling of this application, in which staff approved an acknowledged "deviation from the UDC" (the gravel substation surface) and the Commission resolved an acknowledged UDC non-compliance (the substation photometric plan) by stipulation.

Third, the depth at which fuel tanks are installed is not an "overall development pattern." The Project's development pattern, the adaptive reuse of an existing industrial building within an established logistics park, in a use permitted by right and compliant with every bulk regulation of the district, is unchanged by whether generator fuel tanks sit above or below grade. The amended motion identifies no pattern-level inconsistency; it recites the criterion's language and appends a single equipment detail. A recitation is not a finding. Kansas law expects zoning bodies to state the factors considered and summarize the supporting evidence, precisely so that review for reasonableness is possible. *See Golden v. City of Overland Park*, 224 Kan. 591, 597, 584 P.2d 130 (1978).

Fourth, the record, and the Comprehensive Plan itself, refute the finding. Staff's written report analyzed the use as permitted by right and the plan as compliant with the district's regulations, and the City twice confirmed the use's by-right status in writing: in the Development Services Director's April 3, 2025 zoning determination and in the City Administrator's May 5, 2026 memorandum to the Commission. At the June 9 hearing, the City Attorney framed the decision in terms that negate the finding adopted minutes later: the Site Plan "has been submitted in accordance with existing zoning regulations. This is not a determination about conformance with zoning or the Comprehensive Plan." And the Comprehensive Plan, the very instrument criterion (H)(8) references, endorses this development pattern. Envision Edgerton 2050 identifies Logistics Park Kansas City as "[o]ne of Edgerton's most significant community assets," directs that "[e]very effort should be made by the city to further promote and advance the continued progress of the business park area," and calls the land around LPKC "a logical location for expanded Logistics Park uses"; its Business/Logistics Park land use category expressly includes "warehouse and distribution facilities," the use classification staff assigned to the data center, and provides that "[a]ll business activities are encouraged to be located within the buildings." (Envision Edgerton 2050 Comprehensive Plan (2024) at 32, 112, 118.) No witness, document, or staff analysis anywhere in the record connects the depth of fuel tanks to the Comprehensive Plan or to any adopted planning policy.

Even accepting that the Commission could identify Section 5.2(H)(4) as a plan-content item for purposes of its conditions machinery, a premise Section B.1 above contests, the Code's prescribed response is conditional approval, not denial. A condition of approval is as enforceable as a denial and fully addresses the asserted concern: UDC Section 10.1(A) provides that an approved Site Plan "create[s] an enforceable obligation to build and develop in accordance with all specifications and notations contained in the Site Plan instrument," and Section 10.1(F) requires the applicant's certification binding it to "all specifications, changes, conditions required during Site Plan approval." Where every criterion of the Standard of Approval is satisfied and the open item is one that DAMAC committed on the record to address, denial is not an available remedy under the UDC. This conclusion is consistent with *Rodrock Enterprises*, where Olathe's ordinance, unlike Edgerton's, made conformance with "the applicable zoning district regulations and any other applicable provisions of the code" an express approval criterion, and where the plat's conceded nonconformity with a corridor plan adopted into the comprehensive plan defined the development pattern of the entire project and could not be cured without redesigning it. 28 Kan. App. 2d at 864-65. None of those features is present here.

D. DAMAC Was Denied Fair Notice and a Meaningful Opportunity to Respond

1. The UDC's Review Structure Creates a Legitimate Expectation of Defined, Advance Notice of Compliance Deficiencies

UDC Section 10.1(C)(2) assigns to City staff the function of reviewing the Site Plan for compliance with the Unified Development Code before it is presented to the Commission. This review function exists precisely to provide applicants with advance notice of compliance deficiencies so that they may be addressed prior to the Commission's decision. An applicant who submits a site plan application is entitled

to rely on the outcome of the compliance review the Code prescribes. *See Rodrock*, 28 Kan.App.2d at 863-64, 21 P.3d 598.

The City Attorney recognized this principle at the May 12, 2026 hearing, advising the Commission on the record that the UDC is published so that an applicant may know the rules when it submits, and, in his exact words, "the rug will not be pulled out from under them by having additional requirements added." That statement, drawn from the official minutes of the May 12, 2026 hearing, reflects a fundamental proposition of administrative due process: where a regulatory scheme provides a defined process for identifying deficiencies, a determination made outside that process, without notice or opportunity to cure, cannot be sustained.

2. The Fuel Tank Provision Was Never Identified as a Deficiency in the May 12 Staff Report, the May 12 Hearing, or at the June 9 Hearing

The chronological sequence establishes that the fuel tank location was never identified through the process the UDC prescribes:

- (a) Application submitted;
- (b) Staff review identifying the photometric plan, stormwater report, and floodplain permitting as open items, with no mention of fuel tanks;
- (c) May 12, 2026 hearing: continuance granted solely for generator engineering information, with no mention of fuel tanks;
- (d) DAMAC provides supplemental materials responding to the continuance. Notably, at the May 12, 2026 hearing, a motion to deny on noise grounds had been withdrawn after the City Attorney advised it lacked a valid standard, a motion to table pending decibel readings had been ruled out of order by the Chair on the same basis, and a motion to approve the application had failed 2-2, before the tabling motion passed 4-0, meaning the sole ground the Commission identified as legally available for further action at that hearing was Section 10.1(H)(5) generator engineering information;
- (e) June 9, 2026 hearing: staff identified no deficiency, encouraged the addition of a further stipulation of approval, and made no mention of fuel tanks; and
- (f) June 9, 2026 hearing: fuel tank location raised for the first time during Commission deliberations immediately before the vote.

Fair notice means little if a published provision can lie dormant through the entire staff review the Code mandates and surface for the first time as the basis for denial at the final vote. DAMAC was afforded no opportunity (not a continuance, not a request for revised drawings, not any interim notice) to address the issue before the denial was entered.

3. DAMAC's On-the-Record Commitment Demonstrates That the Item Was Immediately Addressable by Condition

When the fuel tank location was raised during deliberations, DAMAC's representatives immediately committed on the record that the tanks would be located below ground in conformity with Section 5.2(H)(4). The Revised Final Site Plan now depicts the tanks below ground. The denial was thus entered notwithstanding an immediate, enforceable, on-the-record commitment to the precise change the motion demanded. A finding of non-compliance against an applicant who had no prior notice of the issue and who

immediately committed to make the change, without any opportunity to revise the plan, does not satisfy the basic requirements of procedural fairness that govern quasi-judicial administrative proceedings. *See Leffel v. City of Mission Hills*, 47 Kan. App. 2d 8, 22, 270 P.3d 1, 11 (2011); *McPherson Landfill, Inc. v. Board of Shawnee County Comm'rs*, 274 Kan. 303, 305, 40 P.3d 522 (2002).

E. The Commission Applied an Inconsistent and Unjustified Standard to Similarly Situated Items

1. The UDC Provides a Conditional-Approval Mechanism for Plan-Content Items

UDC Section 10.1(D)(4) expressly provides that "[t]he Planning Commission may approve the Site Plan, deny or approve with conditions/stipulations." Section 10.1(C)(2) prescribes the procedure for conditioned approvals: the applicant submits an amended Final Site Plan satisfying the conditions, and staff confirms compliance administratively. Section 10.4(A) likewise directs the applicant to submit revised drawings listing "[a]ll corrections/stipulations outlined during the Planning Commission meeting." The Code thus contemplates a defined pathway for precisely the circumstance DAMAC presented: approval conditioned on below-ground fuel tank placement, an amended Final Site Plan reflecting that change, and administrative confirmation by staff.

2. The Commission Resolved Every Comparable Open Item by Condition or Stipulation

Within this very application, the Commission resolved multiple plan-content items through the UDC's conditional-approval mechanism:

Substation photometric plan: Staff advised the Commission that the substation photometric plan "has been provided but is not compliant with the UDC." That acknowledged non-compliance was resolved through a stipulation requiring conformity prior to issuance of a building permit, which DAMAC accepted on the record.

Stormwater management report: Remaining City Engineer comments were designated for resolution prior to permit issuance as a recommended stipulation of approval.

Floodplain permitting: The floodplain development permit and no-rise certification were likewise designated as stipulations to be satisfied before permit issuance.

Gravel surface at substation: A documented departure from the Code's paving requirement was resolved through staff's technical review with the support of the City's plan review consultant.

Each of these items represented a plan element not yet in conformity with the Code at the time of the relevant hearing. Each was resolved through a condition, stipulation, or technical review. Fuel tank location, an item DAMAC committed on the record to address, was treated differently, without any explanation or basis in the UDC for the distinction.

The Kansas Supreme Court's decision in *Highway Oil, Inc. v. City of Lenexa* confirms that this asymmetric treatment cannot stand. 219 Kan. 129, 134-35, 547 P.2d 330 (1976). In *Highway Oil*, the Court affirmed in favor of the rezoning applicant, holding that where the applicant had met the legal setback requirements and offered to meet any reasonable setback and screening conditions the city might impose, the city's objections amounted to a "sham" and its denial was arbitrary and unreasonable. The parallel to this proceeding is direct: DAMAC met every applicable standard, and the moment the fuel tank issue was raised, immediately offered on the record to meet the precise condition the Code requires. A denial entered notwithstanding that offer, while every comparable open item in the same application was resolved by condition, is no less arbitrary than the denial the Court invalidated in *Highway Oil*.

3. Section 5.2(H)(4) Itself Confirms That Compliance Is Established Through the Approval-Then-Permit Sequence

UDC Section 5.2(H)(4) provides that "[b]elow ground fuel tanks must be shown on Final Site Plans" and that below-ground tanks "may only be installed once Final Site Plan approval has been received and a building permit has been issued." DAMAC does not shrink from the first of those sentences. The Code supplies the mechanism by which a plan comes to show an item identified during the hearing process: approval with conditions under Section 10.1(D)(4), followed by an amended Final Site Plan that "must be submitted" and confirmed by staff under Sections 10.1(C)(2) and 10.4(A). That is exactly how the Commission handled the substation photometric plan in this very application, another element the Code requires the plan to show, brought into conformity by stipulation before certification and permit. The provision's own applicability clause confirms the design: the section "applies to all fuel tanks installed after January 1, 2021," fixing the moment of compliance at installation, an event the provision permits only after Final Site Plan approval has been received and a building permit has been issued. A site plan therefore cannot violate Section 5.2(H)(4) at the approval stage; the regulatory moment the provision addresses has not yet arrived. Conformity with the below-ground requirement is established through approval, an amended plan, and permits, not through denial of the application.

A condition of approval, requiring the below-ground configuration to be reflected in the final construction drawings and confirmed before permit issuance, is fully consistent with, and indeed required by, the structure Section 5.2(H)(4) itself establishes.

F. The Denial Did Not Satisfy the UDC's Decisional Standard

UDC Section 10.1(D)(3) directs that the public hearing on a Site Plan be conducted in accordance with UDC Section 8.1(F)(1) through (3). Section 8.1(F)(3) requires that "[d]ecisions of the Commission shall be based upon facts entered into the record at the public hearing phase of the meeting, the recommendations of the staff, the adopted plan, and the preservation of health, public safety, and the general welfare."

The facts entered into the record concerning fuel tank location at the June 9, 2026 hearing establish that no basis for denial existed. Staff's written recommendation of approval remained before the Commission and was never withdrawn; at the hearing, staff identified no deficiency and encouraged the addition of a further stipulation of approval. DAMAC committed on the record to place the tanks below ground in conformity with Section 5.2(H)(4). The denial runs contrary to both. The adopted plan likewise supports the Project, as shown in Section C above. The denial also fails to identify any consequence for health, public safety, or the general welfare that a below-ground condition would not fully address. Indeed, the purpose of the below-ground requirement in Section 5.2(H)(4) is safety, and DAMAC's commitment to comply satisfies that purpose entirely. The denial thus identifies no residual safety concern that approval with a condition would leave unaddressed.

A decision entered against each of the inputs the Code directs the Commission to consider, and that fails to identify any safety or welfare consequence not resolved by the condition DAMAC accepted, does not satisfy the decisional standard the Code itself prescribes.

G. The Migrating Rationale Confirms the Arbitrariness of the Denial

The trajectory of stated concerns across the two hearings is difficult to explain as faithful application of the UDC's published criteria. At each stage where one basis for hesitation was foreclosed, a new one emerged, until a provision not previously identified in the staff report, or by staff at any hearing, surfaced during deliberations at the final moment before the vote. The Commission had every opportunity during two full hearings, including a hearing at which staff identified no deficiency and encouraged an additional stipulation of approval, to identify any compliance concern. It did not. The fuel tank issue arose only after

the Commission had been advised that noise was beyond its regulatory authority, after DAMAC had supplied every item requested at the May 12 continuance, and with staff's written recommendation of approval still standing. Read together, this pattern reflects a search for a technically available ground rather than a genuine compliance concern:

First, the Commission raised concerns about operational noise at the May 12, 2026 hearing. The City Attorney advised the Commission that a decibel-based requirement would most likely be outside the Commission's purview, and City staff confirmed that no decibel standard exists in the L-P District. As established in DAMAC's June 2, 2026 letter to the City Attorney, noise is not a cognizable criterion under the UDC Section 10.1(H) site plan review standards, and the Commission may not lawfully deny or withhold site plan approval on noise grounds that the UDC does not authorize it to consider. The Commission's own members recognized this at the May 12, 2026 hearing: Commissioner Soemer stated on the record that even though the Commissioners were "uncomfortable with a lot of things," they "do not have a statute to lean on to deny or table the application." And prior to the tabling motion, Commissioner Draskovich moved to deny the application on noise grounds, a motion he withdrew after the City Attorney advised it did not correspond to any applicable site plan review standard. DAMAC nonetheless provided a professional acoustic analysis by Barr Engineering Co., which modeled sound levels at or below 51 dBA at the nearest residence, about the level of normal conversation.

Second, the Commission continued the application at the May 12, 2026 hearing under Section 10.1(H)(5) for engineering information concerning the generators. The official minutes record the tabling motion verbatim: Commissioner Draskovich moved to table the application under UDC Section 10.1(H)(5) "for more site engineering design principles related to generators and noise pollution," and the motion passed 4-0. The scope of the continuance was therefore expressly limited to generators and noise; fuel tanks were not part of the stated basis and did not appear anywhere in the discussion. DAMAC supplied precisely the information the Commission requested: the Barr Engineering acoustic analysis, backup power and generator design information, and documentation of the closed-loop cooling system. No new staff report was prepared for the June 9 hearing; staff's May 12 written recommendation of approval remained the operative recommendation before the Commission, and staff identified no deficiency at the June 9 hearing.

Third, the Commission denied the application at the June 9, 2026 hearing. The ground was raised for the first time during deliberations immediately before the vote, first as a motion resting directly on Section 5.2(H)(4), which the City Attorney ruled did not address the standards for site plan approval, and then, minutes later, as an amended motion recasting the same fuel tank item as an inconsistency under Section 10.1(H)(8). The denial was entered contrary to staff's standing written recommendation of approval, after DAMAC had supplied every item identified at the May 12 continuance, and after DAMAC had committed on the record to relocate the tanks below ground.

A basis for denial that shifts in this manner, from a noise concern the Commission was advised it likely lacked authority to impose, to a single plan-content item that surfaced only at the moment of the vote, after every informational request had been satisfied, reflects a result-driven rather than standards-driven process. The pattern is confirmed by the record of the May 12, 2026 hearing itself. At that hearing, Commissioner Draskovich first moved to deny the application on noise grounds under Articles 5 and 2; the City Attorney advised that those provisions were not applicable standards for site plan review, and Commissioner Draskovich withdrew the motion. A subsequent motion by Commissioner Little to table the application pending decibel readings was ruled out of order by the Chair on the same basis: the request did not correspond to a standard in the UDC. Only then did the City Attorney suggest Section 10.1(H)(5) as a legally defensible basis to gather engineering information about the generators, and the Commission tabled the application on that sole, narrowly framed ground. The fuel tank issue that became the basis for the June 9, 2026 denial was never mentioned, raised, or discussed at the May 12, 2026 hearing. Where a decision-

maker reaches its preferred outcome by sequentially abandoning untenable grounds and alighting on a new one at the eleventh hour, the resulting decision does not represent the faithful application of a regulatory scheme; it represents precisely the kind of arbitrary and capricious conduct, so wide of the mark as to lie outside the realm of fair debate, that the reasonableness standard is designed to correct.

H. Due Process and Equal Protection Claims

1. Procedural Due Process

DAMAC had a constitutionally protected property interest in the Site Plan approval to the extent it met all applicable regulatory criteria. U.S. Const. amend. XIV, § 1; Kan. Const. Bill of Rights § 18. The interest is strongest where, as here, the code makes approval the required outcome once published standards are satisfied, as the City Attorney advised the Commission and as *Rodrock Enterprises* holds. Where a constitutionally protected property interest is at stake, procedural due process requires, at minimum: (a) adequate notice of the grounds on which an adverse decision may be made; and (b) a meaningful opportunity to be heard before an adverse decision is rendered. *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976); *Cont'l Coal, Inc. v. Cunningham*, 511 F. Supp. 2d 1065, 1078-79 (D. Kan. 2007).

DAMAC received neither. The sole basis for the denial, the fuel tank location, was never identified as a compliance deficiency through the process the UDC prescribes for that purpose. DAMAC was afforded no notice that Section 5.2(H)(4) was under consideration as a basis for denial, and it had no meaningful opportunity to address that issue before the vote was taken. Although DAMAC committed on the record to the requested change the moment the issue was raised, the Commission proceeded immediately to a denial vote without affording DAMAC any opportunity to revise or supplement the application in the manner the Code's conditions mechanism contemplates. This sequence (surprise ground, immediate vote, no opportunity to cure) fails the basic requirements of procedural due process in a quasi-judicial land use proceeding.

2. Equal Protection

The Fourteenth Amendment to the U.S. Constitution and the equal protection provisions of the Kansas Constitution prohibit a governmental body from treating similarly situated parties differently without a rational basis. *Jacobs, Visconsi & Jacobs, Co. v. City of Lawrence, Kan.*, 927 F.2d 1111, 1118 (10th Cir. 1991); *Cont'l Coal, Inc.*, 511 F. Supp. 2d at 1084. As detailed in Argument Section E above, the Commission treated DAMAC differently from its own handling of every comparable plan-content item within this very application:

The substation photometric plan, a documented non-compliance with the UDC, was resolved by stipulation. The stormwater management report, not yet in final conformance, was resolved by condition. The floodplain permitting, though incomplete, was resolved by condition. The gravel surface at the substation, a departure from the paving requirement, was resolved through technical review. Each of these items involved a plan element not yet in conformity with the Code; each was resolved through the Code's conditioned-approval mechanism.

Fuel tank location was treated differently. There is no basis in the UDC, in the record, or in any articulable principle of land use regulation for treating an identified plan-content item differently depending on whether it relates to lighting, stormwater, or fuel tanks. The asymmetric treatment of DAMAC's application, without a rational basis grounded in the Code or the record, is inconsistent with equal protection principles and independently confirms the arbitrariness of the denial.

I. Counterarguments and Responses

The City or members of the Commission may raise several counterarguments in opposition to this appeal. Each is addressed below.

1. Counterargument: The Plan Did Not Fully Comply with the UDC at the Time of the Vote.

Response: This argument misunderstands the structure of the UDC's site plan review process. The Commission's authority to approve or deny is not plenary; it is bounded by the eight criteria of the Standard of Approval in Section 10.1(H). Nor does the phrase "shall give consideration to the following criteria" reduce those criteria to a mere floor beneath an open-ended power to deny. The City Attorney and the Chair told the Commission the opposite, on the record. The Chair described the Commission's options as approve, deny with cause, or table for additional information "within those standards." The City Attorney instructed that a motion to disapprove must "list what of those factors has not been met," enforced that instruction by ruling two motions improper for failing to tie to a standard, and summarized the governing rule in the terms this appeal asks the Council to apply: "If no reason can be found that the standards have not been met, then the application complies." More fundamentally, the Commission exercised its conditional-approval authority under Section 10.1(D)(4) throughout this very application (for lighting, stormwater, and floodplain items) without treating those plan-content items as grounds for denial. The Commission cannot selectively invoke denial as the remedy for one identified item while using conditions for all others without a principled basis grounded in the Code. And as the City Attorney advised, an application that conforms to all applicable regulations must be approved; denial requires a specific, record-supported violation of an applicable standard. No such violation was ever established on this record; the amended motion made no such finding, and DAMAC's on-the-record commitment removed any conceivable basis for such a violation before the vote was taken.

2. Counterargument: The Staff Report's Catch-All Notice Does Not Require Approval Subject to Conditions.

Response: If the depiction of an element in a manner that would require adjustment prior to permit issuance were itself a basis for denial, the Commission's own approved stipulations (requiring photometric plan compliance, stormwater management report revision, and floodplain permit acquisition before permit issuance) would have been grounds for denial as well. They were not, because the UDC's conditional-approval mechanism contemplates exactly this: approval of a plan that requires further action before permits are issued, with that action memorialized as an enforceable condition. The catch-all notice confirms that those further obligations extend to any UDC requirement, whether or not called out in the report; it does not create a new basis for denial.

3. Counterargument: The Commission Had the Authority to Seek Additional Information.

Response: DAMAC does not dispute that the Commission was entitled to ask questions or seek additional information within the bounds of the UDC's review criteria. The problem is not that the Commission asked questions; it is that the Commission denied the application on a ground that: (a) was never identified as a deficiency in the staff report or by City staff at the June 9 hearing; (b) is not a criterion of the Standard of Approval; (c) was raised without advance notice at the moment of the vote; (d) was immediately met by DAMAC with an on-the-record commitment to place the tanks below ground; and (e) was handled through conditions for every comparable item in the same application. The legitimacy of the Commission's general interest in the project does not validate the procedural and substantive defects in the basis it chose for denial.

4. Counterargument: The June 10 Site Plan Application Submitted After Denial Is New Evidence That Is Not to be Considered as Part of this Appeal.

Response: The June 10 site plan application depicting below-ground tanks does not present new evidence outside this appeal record; it presents the configuration DAMAC committed to on the record at the June 9, 2026 hearing. DAMAC's on-the-record statement that the tanks would be placed below ground was itself part of the record before the Commission at the time of the vote. The new application implements that commitment in the form the Code contemplates for conditioned approvals. It does not represent a departure from the record; it reflects what the record already established. The fact that DAMAC pursued this implementation through a separate new application, rather than as an amendment within these proceedings, does not alter the evidentiary significance of the commitment itself, which was made before the vote and was therefore before the Commission when it acted.

5. Counterargument: This Appeal Should Be Denied in Favor of Processing DAMAC's June 10 Site Plan Application.

Response: This argument conflates the filing of a separate protective application with an admission of original defect, mischaracterizes the purpose and legal effect of the June 10 application, and, if accepted, would reward the Commission's procedural failure by compounding it. It fails on each of the following independent grounds:

(a) The June 10 filing is not an admission of original non-compliance; it is a protective measure taken for reasons independent of the merits of this appeal. It followed the City's own stated next step: when the Chair asked staff to outline the path forward immediately after the vote, the Development Services Director stated that DAMAC "would need to submit a new application for a Final Site Plan," and DAMAC filed one the next day. The filing was also made to establish a pending application in light of the City's publicly discussed consideration of a moratorium on data center applications, preserving DAMAC's ability to develop the Project regardless of this appeal's outcome. It reflects prudence, not a concession. Nothing about filing a separate application in a separate proceeding acknowledges that the denial of the original application was correct.

(b) DAMAC's position in this appeal has been and remains that the original Site Plan was approvable, at most subject to a below-ground tank condition addressing the only item raised, and the June 10 application is entirely consistent with that position. DAMAC is simultaneously pursuing this appeal, which seeks reversal of a denial it contends was unlawful, and maintaining a protective application that would allow the Project to proceed on an alternative path if needed. The two proceedings serve distinct functions; pursuing both is not an inconsistent position. A condition of approval would have required the final construction drawings to reflect below-ground placement, as Section 5.2(H)(4) itself contemplates in directing that tanks "may only be installed once Final Site Plan approval has been received and a building permit has been issued." The June 10 application already incorporates that configuration. Filing an application that implements the agreed condition is not evidence that denial was required; it is evidence that approval with a condition was, and remains, the correct disposition.

(c) Denying this appeal so the June 10 application can be heard is, in practical effect, an invitation to re-run a process DAMAC has already completed in full: a complete application, two rounds of staff review, two public Commission hearings, every item requested at the May 12 continuance supplied, and a written staff recommendation of approval. The June 10 application, moreover, is not scheduled for hearing and does not appear on the Commission's July 14, 2026 agenda. Requiring DAMAC to restart the entire review cycle as the price of a procedural defect the

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Commission, not DAMAC, created substitutes delay for resolution, and it is not what the UDC's appeal mechanism was designed to produce.

(d) As a matter of Kansas law, the filing of a new application does not constitute a waiver or an admission that a prior denial was legally sound. An applicant may pursue an administrative appeal and maintain a protective application in a separate proceeding at the same time, without those actions being construed as inconsistent positions. *See Reeves v. Board of County Comm'rs of Johnson County*, 226 Kan. 397, 405, 602 P.2d 93 (1979) (seeking a new permit after an adverse decision "neither renders the appeal moot nor constitutes an acquiescence"). The new filing is a separate proceeding that is not part of, and has no bearing on, the original proceedings now before the City Council, and it does not impair DAMAC's right to seek reversal of the denial through this appeal.

(e) Denying the appeal on this ground would further no legitimate regulatory interest. The anticipated argument identifies no compliance deficiency that a condition on this appeal would leave unresolved. The new application and this appeal seek the same outcome: a data center at 31800 West 196th Street with below-ground fuel tanks. Routing the matter through a new Commission proceeding rather than resolving it here would, at best, produce the identical result after months of additional delay and a duplicate administrative process. The near-term, lawful path to that result is the City Council's decision on this appeal, on the record already made and on the terms DAMAC has committed to.

IV. THE RELIEF REQUESTED

For all of the foregoing reasons, DAMAC respectfully requests that the City Council:

(a) Overrule the Planning Commission and approve Final Site Plan Application FSP2026-0002, subject to the stipulations recommended by City staff and the following condition: all exterior fuel tanks shall be located below ground in conformity with UDC Section 5.2(H)(4) and shall be shown on the amended Final Site Plan submitted pursuant to UDC Sections 10.1(C)(2) and 10.4(A), subject to administrative confirmation by City staff prior to certification of the Final Site Plan and issuance of any building permit; or

(b) In the alternative, remand the application to the Planning Commission with the following specific instructions, as the City's appeal procedure contemplates: at its next regular meeting, approve Application FSP2026-0002 subject to the stipulations recommended by City staff and the below-ground fuel tank condition described in paragraph (a), with the amended Final Site Plan to be submitted and administratively confirmed as provided in UDC Sections 10.1(C)(2) and 10.4(A).

V. RESERVATION OF RIGHTS

This brief and the appeal it supports preserve all of DAMAC's rights and positions. Nothing herein waives, limits, or concedes any argument available to DAMAC, including its position that the Final Site Plan satisfied all applicable standards as filed and as supplemented through the hearing process, including through DAMAC's on-the-record commitment to locate the fuel tanks below ground, and that the denial was unlawful. DAMAC reserves all rights and remedies, at law and in equity, including those arising under the due process and equal protection provisions of the United States Constitution and the Kansas Constitution, and including the right to seek judicial review under K.S.A. 12-760 of the Commission's denial and any adverse decision by the City Council. For the avoidance of doubt, nothing in this brief, in DAMAC's statements on the record before the Planning Commission, or in DAMAC's June 10, 2026 application constitutes an admission that the Site Plan as submitted failed to satisfy any applicable standard

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or requirement; DAMAC's willingness to accept a below-ground fuel tank condition reflects its interest in prompt and cooperative resolution of this matter, not a concession of any deficiency. DAMAC has invested substantial resources in a project that is permitted by right, meets every applicable regulatory criterion, and has the support of City staff. DAMAC's strong preference is resolution through the process the UDC provides, and this appeal presents the opportunity for exactly that.

Respectfully submitted,

HUSCH BLACKWELL LLP

A handwritten signature in blue ink, appearing to read 'C. Renner', is positioned above the printed name.

Charles G. Renner
Counsel for DAMAC Digital Solutions Kansas, LLC

APPENDIX

KEY UDC AND STAFF REPORT PROVISIONS REFERENCED IN THIS BRIEF

Notice of City Codes and Permits (Staff Report, FSP2026-0002, May 12, 2026, p. 8 of 9). Catch-all compliance obligation: "The Applicant is subject to all applicable City codes – whether specifically stated in this report or not – including, but not limited to, Zoning, Buildings and Construction, Subdivisions, and Sign Code. The Applicant is also subject to all applicable local, State, and Federal laws."

Applicant/Owner Obligation (Staff Recommendation, FSP2026-0002, Stipulation 1). Provides that the approved site plan "shall create an enforceable obligation to build and develop in accordance with all specifications and notations contained in the site plan instrument" and that "the applicant prior to the issuance of any development permit shall sign all site plans." Cover Sheet Certification. Applicant certification language: "I certify that I have reviewed this SITE PLAN and will comply with all specifications, changes, and amendments herein, and that this instrument creates a legally enforceable obligation to build and develop in accordance with all final agreements."

UDC Section 10.1(D)(4). Conditional approval authority: provides that "[t]he Planning Commission may approve the Site Plan, deny or approve with conditions/stipulations."

UDC Section 10.1(H). Standard of Approval (eight criteria): site capacity, utilities, stormwater, ingress/egress/circulation, good land planning and site engineering, architectural compatibility, landscaping/screening/buffering, and consistency with the Comprehensive Plan.

UDC Section 10.1(H)(5). Good land planning and site engineering design principles (the criterion invoked for the May 12, 2026 continuance).

UDC Section 10.1(K). Appeal to Governing Body: authorizes the appeal of Commission decisions to the City Council within 14 calendar days.

UDC Section 5.2(H)(4). Below-ground fuel tank requirement: "Any exterior fuel tank(s) must be located below ground. All below ground fuel tanks must meet, at a minimum, International Building Code (IBC), International Fire Code (IFC), and Kansas Department of Health and Environment (KDHE) requirements. Below ground fuel tanks must be shown on Final Site Plans and must meet the appropriate code requisite building line and property line setbacks. Below ground tanks may only be installed once Final Site Plan approval has been received and a building permit has been issued. This section applies to all fuel tanks installed after January 1, 2021. Any above ground fuel tanks installed prior to January 1, 2021 which are moved, repaired or replaced, must be located underground and must comply with this section."

UDC Section 10.4(A). Revised drawing submission: directs the applicant to submit revised drawings listing all corrections/stipulations outlined during the Planning Commission meeting.

UDC Sections 7.1(C)(13) and 8.1(F)(4)(m). Conditional use and rezoning standards: each requires "[c]onsistency with the Comprehensive Plan, Capital Improvement Plan, ordinances, policies, and applicable City Code of the City of Edgerton," listing "ordinances" and the "applicable City Code" separately from "policies."

UDC Section 1.3(A). Relationship to the Comprehensive Plan: the UDC "is intended to implement the planning goals and policies contained in the Comprehensive Plan 2000-2020 and other planning documents and policies of the Planning Commission."

UDC Section 8.1(F)(3). Decisional rule: "Decisions of the Commission shall be based upon facts entered into the record at the public hearing phase of the meeting, the recommendations of the staff, the adopted plan, and the preservation of health, public safety, and the general welfare."

Envision Edgerton 2050 Comprehensive Plan (2024). Identifies Logistics Park Kansas City as "[o]ne of Edgerton's most significant community assets"; directs that "[e]very effort should be made by the city to further promote and advance the continued progress of the business park area" (at 112); describes the land around LPKC as "a logical location for expanded Logistics Park uses" (at 118); the Business/Logistics Park category includes "warehouse and distribution facilities" and provides that "[a]ll business activities are encouraged to be located within the buildings" (at 32).

Zoning Determination, City of Edgerton Development Services Director (April 3, 2025). Written determination, issued before this application was filed, that data center use "is currently permitted by -right in . . . the L-P (Logistics Park) District (UDC, Article 5.2)," and that any future data center development "must comply with all requirements of the Edgerton UDC and the Edgerton Municipal Code at the time of development."

Final Site Plan Appeal Procedure (June 29, 2026). Standard of review: whether the denial was "legal and reasonable"; review confined to "the reasons given"; the Council may deny the appeal, overrule the Planning Commission and approve the site plan, or remand with a specific statement of the actions required.

UDC Article 14 (Improvements and Standards of Design). Establishes construction-level requirements administered through separate regulatory processes outside the Planning Commission's site plan review, including: Section 14.3 (Curbs and Gutters: concrete curbs required on all streets, administered through construction standards and City Engineer review); Section 14.5 (Compaction Requirements: fill areas compacted to 95% standard maximum density, subject to City Engineer approval); Section 14.6 (Approval of Subgrade: City Engineer approval required before any base course is placed, with proof-rolling requirements witnessed by the City Engineer); Section 14.7 (Sewer and Water Work Prior to Base Construction: backfill and sequencing requirements for buried utility trenches, including gas and electric lines, administered through construction engineering review); Section 14.9 (Water Supply System: detailed water main design criteria including pipe diameter, looping, fire hydrant spacing, and KDHE certification, administered by City Engineer and Governing Body); Section 14.10 (Lots and Easements: easement requirements for underground utility installations, administered by agencies with jurisdiction); and Section 14.16 (Gas, Wire, and Cable Utilities: mandatory below-ground placement of telephone, electrical, television, and other wire/cable lines, with construction-level specifications administered separately from site plan review). Article 14 demonstrates that the UDC routinely routes technically complex, construction-level requirements through separate processes administered by the City Engineer, the Governing Body, and other authorities, rather than through the Planning Commission's site plan review.

April 3, 2025

To Whom it May Concern:

City staff has been made aware of the increase in interest for Data Centers as a land use in the City of Edgerton along with the Kansas City region as a whole. Data Centers most align with the 'Manufacturing, processing, fabrication or assembly of commodity – limited' use as identified in the City's Unified Development Code (UDC), which may be accessed using this link, <https://edgertonks.org/unified-development-code-2/>. This use is currently permitted by-right in the B-P (Business Park) District (UDC, Article 5.1) and the L-P (Logistics Park) District (UDC, Article 5.2).

Any potential future development of a Data Center within the City of Edgerton must comply with all requirements of the Edgerton UDC and the Edgerton Municipal Code at the time of development.

If you have any questions, please do not hesitate to contact me at zmoore@edgertonks.org or (913) 893-6231.

Best,



Zachary Moore
Development Services Director
City of Edgerton, KS

THE CITY'S COMPREHENSIVE PLAN –
ENVISION EDGERTON 2050 – INCLUDED
BY REFERENCE INTO THIS PACKET USING
LINK BELOW.

[https://edgertonks.org/departments/envision-
edgerton/](https://edgertonks.org/departments/envision-edgerton/)