SB 124 Proponent Testimony:

Thank you for the opportunity to discuss an issue that is very important for the protection of our unincorporated communities.

After a 4+-year battle to protect our rural residential and agriculture neighborhood from the intermodal and logistic park encroachment of a city whose downtown is nearly 7 miles away, we are thrilled that the legislature is willing to hear about the problems with current statutes that have hindered our ability to protect our community.

As it stands, KSA 12-520(g) is pretty clear that a city may not use a narrow corridor in a unilateral consent annexation with a property owner to access non-contiguous land.

However, in a case right now with the Attorney General vs. The City of Edgerton, the judge is making statements that if a city has a reason for a narrow corridor other than to access non-contiguous land, that it is legal since the legislature did not use words like "primary" (see ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT at end of testimony)

He states, "The second sentence does not say that if a "purpose" was to enhance future annexations that the annexation is unlawful, only that the city must demonstrate some "tangible value and purpose other than" to justify future annexations. . . In other words "a" purpose beyond enhancements to annexations would be sufficient."

This seems like a direct opposition to the legislative intent for an interpretation in this manner. If that were the legislative intent, then it would be clear that any city could violate the first sentence and use a narrow corridor for the intent to access non-contiguous lands by merely making up another reason as to why else the land might be valuable.

The City of Edgerton is doing just that – by claiming the land also has tax value and therefore has a value "other than" connecting for future annexations. All land has tax value when used in this context, which would negate the first sentence in every application of the law.

On December 8, 2020, the main intermodal developer purchased a 40-acre tract near 199th & Gardner Road and then convinced the seller to also subdivide a narrow corridor across their 40-acre tract to the east (that was not for sale,) so that the developer could access Gardner Road. Johnson County approved the subdivision and **added the narrow corridor tract** to the sold 40-acre parcel.

On the same day, the developer also purchased a home on the East side of Gardner Road that backed up to a series of approximately 700 acres that was also owned by the developer. (that had been an unincorporated island, surrounded by rural residential homes on all sides since 2017.)

On December 10, 2020 the City of Edgerton did a consent annexation with the new owner/ (the city's main developer with the development agreement for the intermodal) and annexed the

40+acre tract (with narrow corridor) and the home, providing no maps to the City Council. The mayor then called a special meeting for the following week on December 17, 2020.

On December 11, 2020, the developer submitted rezoning applications for the nearly 700 acres (that were now contiguous to the December 10th annexations but were not yet in the city limits) to rezone from rural residential / agricultural to logistics parks zoning.

On December 17, 2020 the City of Edgerton annexed the 700 acres into their city using 12-520(g) consent annexation, without alerting the city council of the potential narrow corridor violation. The City Administrator, Mayor, and Developer promoted the annexation, and it was approved by the City Council without dispute because there was no public hearing about it.

We believe the city used a narrow corridor to circumvent the public hearing by the County that would have been required for an island annexation of the 700 acres. This move effectively shut out all damaged neighboring property owners from having due process and a right to object.

Not only did the annexation tactics take away the damaged neighbors' voices and right to a public hearing, but what was to ensue with the rezoning tactics also further alienated and harmed the residents. The City of Edgerton would go on to approve the rezoning requests to logistic parks, with plenty of questionable tactics and maneuvers going on behind the scenes. Although the Golden Criteria were addressed by staff (and rebutted by Protect Rural JoCo,) they all referenced the city's intermodal miles away and ignored the adjacent neighboring unincorporated residents who were being harmed.

One City Council member stated (when residents spoke in opposition until after midnight) that "It sucks to be you. I'd fight it too if I were you, but Edgerton doesn't get a million opportunities to make a million dollars," as he voted yes to the rezonings.

Mayor Donald Roberts repeatedly tells the unincorporated residents that they are not members of the city and that he has to listen to what his city residents want.

Unincorporated residents have no voice because they cannot vote in the city's elections, they cannot serve on the council or planning commission, and the City's Home Rule takes away any authority (protection) from the County (once the island annexation was circumvented and the unilateral narrow corridor was put into play.)

Residents tried to get the Attorney General Derek Schmidt involved during the time around the rezoning hearings in early 2021, but his office claimed to multiple residents that he was not their attorney and they would need to hire their own attorney. (one sample reply is included)

The residents took both the rezoning to court and the narrow corridor annexation to court in two separate cases in Johnson County. For the rezoning hearing, the judge retired and was replaced by one that eventually ruled that the City could decide however they chose on the rezoning, and that it was only a requirement that they held the hearing and presented the Golden Criteria. The unreasonableness of the rezoning was no longer a factor, according to that judge. Under those

premises, why even make cities jump through the hoops of presenting the Golden criteria if an unreasonable rezoning per the Golden Criteria cannot be overturned in favor of those damaged by the rezoning? The original Golden Supreme Court case was in regards to an office building in a residential neighborhood, and it was deemed important enough; yet this intermodal park in the middle of a residential neighborhood was no longer significant in the eyes of the court.

For the annexation case, Judge Vano claimed **he could "see the illegality," but the residents did not have standing** per 12-538 (since it was silent on a 12-520(g) violation, claiming only 12-520 1-6 were covered under 12-538) (see court transcript and Sentinel article quoting the decision),

What happens in a situation like this is exactly what Judge Vano referenced in his opinion – that it's difficult for justice when a situation is political and a timely response is needed before a rezoning. The citizens appealed the annexation standing decision, and Derek Schmidt's office agreed to join the appeal on an amicus brief as a friend of the Plaintiff's.

Eventually in 2023 after his election, Attorney General Kris Kobach's office filed their own case against the City of Edgerton for the narrow corridor violation. It is that case where the current judge is seemingly reading into the legislative intent and undermining the illegal narrow corridor language by creating a method for all cities to violate a narrow corridor, as long as they claim any other reason for the use of the narrow corridor other than intent to access non-contiguous land.

The aggressive annexation tactics by cities are setting unincorporated homeowners up for their property rights to be violated with no recourse or remedy.

Kansas' unincorporated lands are an asset to the entire State. Rural life is important, and property owners should have a way to protect their investment and rights from these land grabs and cities "planting their flag" without regard for those who were there first and who object.

We respectfully request help in this matter to clean up the ambiguous language in KSA 12-520 and 12-538. The legislature needs to protect homeowners from rogue cities and make it clear for the judges to see the legislative intent, without giving unintended legal loopholes that harm the people with no recourse or remedy.

Sincerely,

Jennifer Williams, homeowner

President, Protect Rural JoCo (residents of approximately 20 square miles of unincorporated Southwest Johnson and Northwest Miami County affected by the aggressive annexation and rezoning actions of the City of Edgerton)

These 2 forty-acre parcels were originally separate parcels. The owner listed the west 40 for sale, but the east 40 was not for sale. (left picture from sale listing)

NorthPoint representatives told the seller they were putting in large lot residential homes.

During negotiations, buyers negotiated and convinced the seller to subdivide approximately 7 acres of the 40 east acres, that ended with a narrow corridor touching Gardner Road. (see pic on right)

NorthPoint started another affiliate, TreadStone Acquisitions, in December 2020, for the purchase of these parcels (all others prior were in the name of cattle companies)

Treadstone also negotiated to purchase the one home on the east side of Gardner Road, (in white) in a manner that blocked Gardner from naturally advancing their southern border, cutting off contiguous land on the SW diagonal of this intersection of county vs city land.

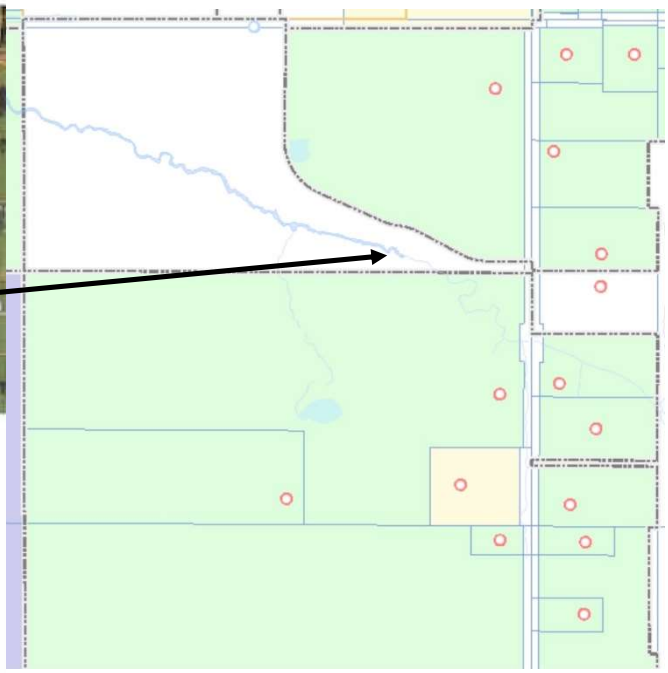
The east residential lot was purchased substantially above market-value, with a long-term leaseback to the seller for free. This strategic move connected the nearly 700 acres to the city by "consent", although we believe it to be illegal since it used a "narrow corridor" as forbidden in 12-520(g).

All unincorporated residents along Gardner Road in this half mile section had a handshake agreement to protect each other with a "if you buy one of us, you buy all of us," stance to prevent 3-acre lots with homes being "surrounded and drowned" by the intermodal (land buyers only who do not pay citizens fair market value for their homes and are not required by the city to use eminent domain to buy properties at fair market value for a proper planned development.

$1,200,000 - 40 acres

Under Contract

19920 Gardner Road , Gardner, KS 66030 - Johnson County



December 2020

Narrow corridor section was NOT for sale. Buyer negotiated for it to be included in purchase of West plat.

$1,200,000 - 40 acres

19920 Gardner Road , Gardner, KS 66030 - Johnson County

Location of Narrow Corridor Property. It was not included in Edgerton's annexation photo in Dec 25th legal notice. The "narrow corridor" property never had its plat photo published in any legal notice.

				Thursday	Friday	Saturday
					4	5
6	7		9	10 **Purchased "narrow corridor" property plus contiguous property on East side of Gardner Rd with intent to access 7 non-contiguous properties between Gardner Road and Moonlight Road** **Annexed both properties at Edgerton City Council meeting on date of purchase** **Called Special meeting for Dec 17th**	11 **NorthPoint applied for rezoning and paid $250 per property for 7 properties that were non-contiguous prior to Dec 10th purchases. These properties were not annexed into Edgerton at that time and would not be until Dec 17th meeting where "consent annexation" was used**	12
13	14	15	16 **Gardner News published Ord. 2057 on Dec 10th in small legal notice with no property map or details**	17 **Special meeting annexing 7 properties into Edgerton.** **These properties already had rezoning permits applied and paid for from Dec 11th but this knowledge remained hidden**	18	19
20	21	22	23 **Residents received rezoning notice on 7 properties**	24	25 **Gardner News published Dec 17th annexation notice with Edgerton stating no known rezoning at that time (Dec 11 & 23)**	26
27	28	29	30	31		

STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION AND ANTITRUST DIVISION

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-3751 • FAX (785) 291-3699
TOLL FREE IN KANSAS (800) 432-2310
WWW.INYOURCORNERKANSAS.ORG

February 5, 2021

Jennifer Whitlow
31700 W. 217th Street
Spring Hill, KS 66083

Re: Supplier: City Of Edgerton
Our File Number: CP-21-000502

Dear Mrs. Whitlow:

We appreciate your taking the time to alert this office to the problem you encountered with City Of Edgerton. This office is responsible for enforcement of the Kansas Consumer Protection Act (KCPA), and we are only authorized to act within the guidelines of the KCPA. Because the situation described in your complaint does not fall within our jurisdiction, this office is not able to help.

You remain free to independently pursue your claims either on your own or with the help of an attorney. For referral to a licensed Kansas attorney you may call 1-800-928-3111. Please remember that the law may limit the time for legal action, and that the cost of a private attorney would be your responsibility.

While we understand that this is not the outcome you hoped for, and though we are unable to take action regarding this problem, we appreciate you taking the time to bring this problem to our attention, and hope you are able to soon find the help you need.

Sincerely,

N. Walsh

N. Walsh
OFFICE OF ATTORNEY GENERAL
DEREK SCHMIDT
Consumer Protection/Antitrust Division

When residents tried to get the Attorney General to pursue the narrow corridor violation in 2021, their office said they were not responsible for Consumer Protection claims for the neighbors - ignoring the narrow corridor complaints

ahead.

MR. PATTERSON: Okay. It's 21CV02318.

THE COURT: 2138?

MR. PATTERSON: Yes.

THE COURT: Okay. Where I am really having a problem here is I can see the illegality and it sounds similar to that -- is the Neosho County case that Mr. Luckman cited? But there was nobody bringing that challenge -- with standing to bring that challenge.

If it's a legislative function and they've done it wrong -- it's like -- it's like the legislature adopting statutes that cover more than one subject. They are out there, but if nobody is challenging them, they are out there and they are doing whatever. People are following those different laws under one act that reached out and did multiple topics or multiple subjects.

In this case, if this is an illegal annexation but the State is not challenging it, then your plaintiffs are not within the annexed land and it's certainly not a city. Your -- your LLC project or Protect Rural Johnson County is not a city --

MR. PATTERSON: Yeah.

Page 19 from court transcript – Protect Rural JoCo et al vs. The City of Edgerton

Judge Vano states he sees the illegality of the annexation but believes Statute does not give him authority to allow residents to have standing to challenge the illegal annexation, per 12-538 being silent on 12-520(g)

THE COURT: Well, I think the -- the *Layle* case and the *Creegan* case made some good law.

I don't know. I just don't see that I can create standing if this legislature isn't making that clear and I really think your citation to 12-760 out of the zoning statutes, I don't think that applies in this case and in terms of the legislative function of the -- what's it called -- the unilateral annexation by the City, as a legislative function. Whereas zoning, in particular, I think is considered to be quasi judicial --

MR. PATTERSON: It may very well be.

THE COURT: -- when they make zoning decisions.

MR. PATTERSON: (Nods head.)

THE COURT: So I'm -- I'm in agreement with the City though this looks like something that should be reviewed, but without the challenge by the State I don't see the standing. The unfortunate side of that is the passage of time of how long it will take time to get this reviewed elsewhere and maybe your -- your review in the other case on the zoning appeal might go somewhere but I'm -- I just don't see that there is standing. If there is no standing for these

Page 25 of court transcript Judge Vano references legislature isn't making it clear

Judge cites “illegality” of City of Edgerton annexation

Author: David Hicks–July 18, 2022

A lawsuit brought by a group of Johnson and Miami County homeowners against annexation of adjoining property by the City of Edgerton was thrown out for lack of standing, but the judge agreed with their premise and suggested they seek remedy from Attorney General Derek Schmidt.

10th District Court Judge James Vano issued the decision against Protect Rural JoCo. From the trial transcript, Protectrural060722, he found legal standing in such a case is available only to injured parties, such as those whose property was taken, the state legislature (since annexations are considered legislative actions), or the state attorney general. Since none of those conditions were met by the homeowners, the judge found his court did not have jurisdiction to rule. However, in an interesting twist, Judge Vano agreed with the group’s central tenant; that the city’s action violated Kansas Statutes:

“I can see the illegality”, he remarked in court.

The case involved Edgerton’s December 2020 annexation of seven properties, some 770 acres, for the development of Logistics Park Kansas City. The manufacturing and distribution center is bordered by I-35 and 215th Street from north to south and from east to west by Homestead Lane and Moonlight Road. The area will be heavily traveled by large trucks, another concern for the plaintiffs.

image courtesy of Gardner News

But Protect Rural JoCo organizer Jennifer Williams charges the method Edgerton used to annex the properties is the focus of her group's protest:

"Our case is against the illegal narrow corridor Edgerton used to jump across Gardner Road to annex and rezone over 700 rural residential acres."

She charges Edgerton used an "end around" on transparency and public accountability:

"Had they not used the narrow corridor to access the island, they would have been obligated to comply with KSA 12-521, which would have required a public hearing with the county and extensive reporting, including how this will harm neighboring property owners."

Although disappointed by the outcome of their case, she says her group is optimistic by the judge's finding in dismissing the suit:

"During the June 7th oral argument hearing to discuss standing, Judge Vano said something very important. He stated it IS a narrow corridor and a violation of the law, but the law does not give us standing nor him permission to change the statute to give us standing to bring the lawsuit, so he was forced to dismiss it. He said only the Attorney General has standing. We can appeal but the admittance that it was a violation is HUGE because Edgerton and others on Johnson County's staff and BOCC always claimed it was legal."

Indeed, Kansas Statute 12-520 (g) reads:

" (g) No city may utilize any provision of this section to annex a narrow corridor of land to gain access to noncontiguous tracts of land. The corridor of land must have a tangible value and purpose other than for enhancing future annexations of land by the city."

As he dismissed the case, Judge Vano pointed the homeowners in the direction of Topeka to find redress:

"Whereas, I think that's a function for the state since the city is a creation of the legislature"

Edgerton Mayor Donald Roberts took exception to the charges of illegality:

"The City of Edgerton has always scrupulously followed the legal requirements for annexation and zoning of properties in its jurisdiction. It has been transparent in its actions, and it has openly and fairly addressed every legal issue presented in the appropriate

Safety concerns are also on the minds of area residents. Mark Hall lives in Spring Hill:

"The narrow county roads in this area have no shoulders and are not built to handle the heavy truck/trailer traffic tearing up these roads at taxpayers expense.
More importantly it is dangerous for those of us living and driving these roads everyday."

Joyce Ghaisarnia, like Williams, lives in Miami County:

“Several years ago, millions of dollars were spent to build an exit on Homestead off of I-35 expressly for semi-truck traffic to access the intermodal in Edgerton KS. However, there is so much truck traffic where the trucks take Gardner Road from I-35 to 207th. Gardner Road is a narrow 2 lane paved road with no shoulders. It is not intended for heavy truck traffic.

“When Edgerton did repair work on 207th west of Gardner Road last October, there was absolutely no signage put up to let the truck traffic know the road was closed. Nor were any detour signs posted so that traffic could be directed to the appropriate streets to access the warehouses on 207th. Subsequently, I ended up with a semi-truck driver driving into my yard because he could not make the 90 degree right hand turn at 217th and Waverly Road.”

Protect Rural JoCo has contacted Attorney General Schmidt and urged his intervention in this issue but they have not yet received a response.

Referenced Court transcript link:

https://sentinelksmo.org/wp-content/uploads/2022/07/Protectrural060722.pdf

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL COURT DEPARTMENT

STATE OF KANSAS EX REL., KRIS KOBACH, ATTORNEY GENERAL	)	
Plaintiff,	)	Case No. 23CV4059
	)	Chapter 60; Division 7
v.	)	
City of Edgerton	)	
Defendant.	)	

ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

If the object of the CfA involves other purposes in addition to the enhancement of an annexation, it is not prohibited. This is a mixed question of fact and law. If the legislature wanted to insert words like "primary" or "sole" next to "purpose," it could have done so. Instead, it establishes a much lower bar to allow only something "other than" enhancing annexations. That, in essence, is what the City must show at trial. The summary judgment record is insufficient.

The State also adds a temporal requirement in K.S.A. 12-520(g), that further implies a requirement that the consent annexation occur at the time of annexation. In fact, there is no such requirement, and a court should read the statutory language as it appears. *State v. Gray*, 306 Kan. 1287, 1294, 403 P.3d 1220, 1226 (2017).

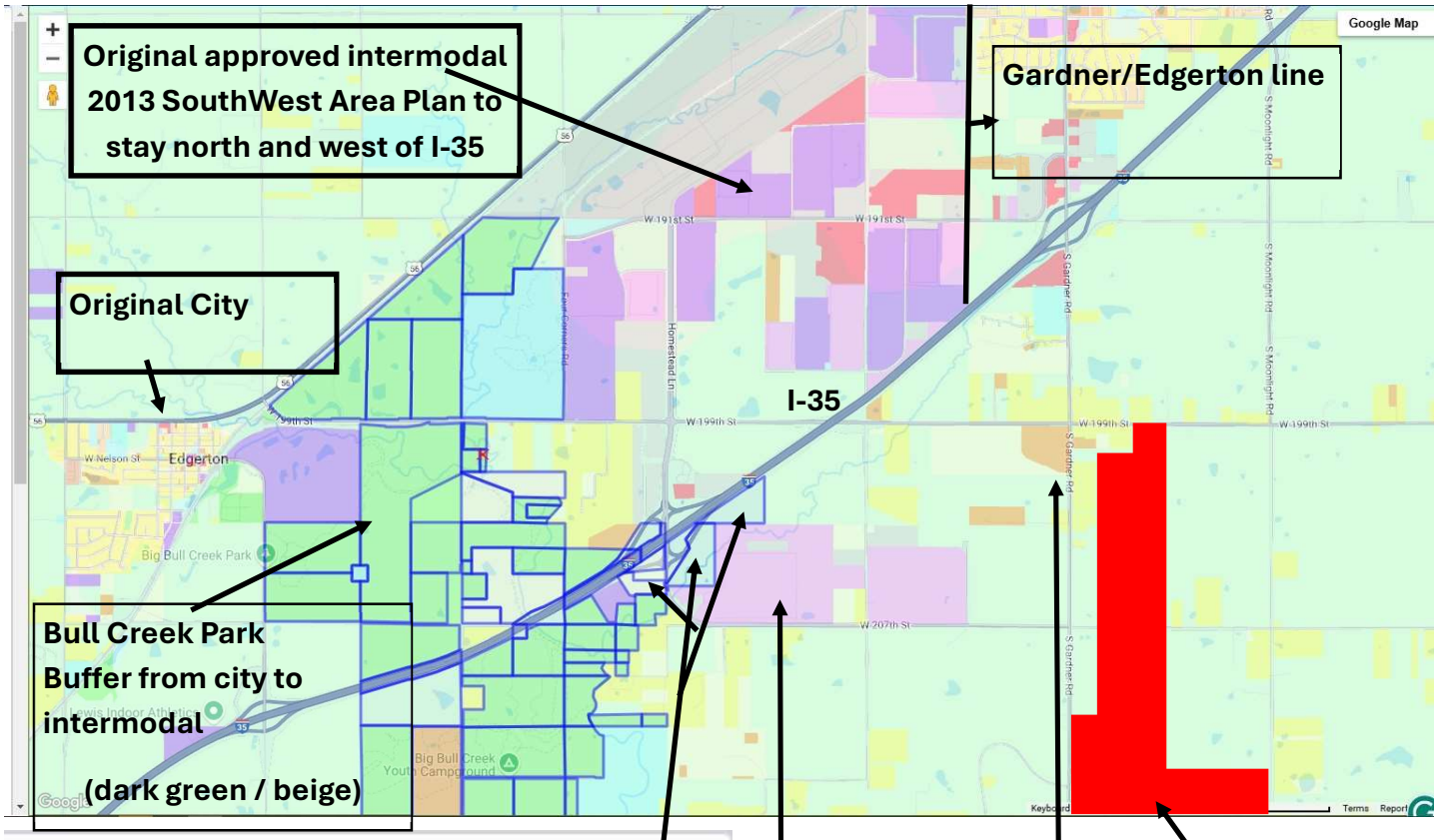
Clerk of the District Court, Johnson County Kansas
09/23/24 02:39pm MM

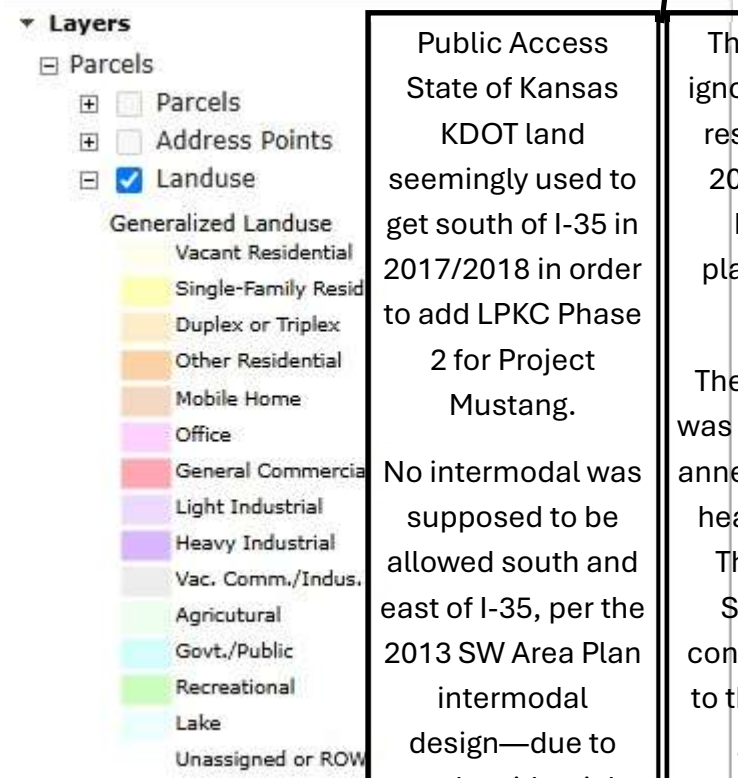
The first sentence generally prohibits city authority to annex land to gain access to noncontiguous "tracts" of land if it is achieved through a "narrow corridor." The term "narrow corridor" is not defined and, by itself, is vague. It is only after the determination that a "narrow corridor" exists and connects to a non-contiguous "tract" that there is further clarification in the second sentence which seems to provide an except and otherwise would be more accurate to say, but if there is a "narrow corridor," then it is permissible if it has "a tangible value and purpose *other than for enhancing future annexations of land.*" (Emphasis added.) This interpretation is the only way this provision makes sense because if all "narrow corridors" were prohibited, then the second sentence would be superfluous.

Primarily, most of the State's facts seek to establish that the development plan and future annexations were *the plan* long before the domino annexations which occurred through related owners/entities going back to 2017 and 2018, long before the CfAs that occurred in December 2020, such that the State argues that these *were the purpose* to enhance "future annexations."

The second sentence does not say that if a "purpose" was to enhance future annexations that the annexation is unlawful, only that the city must demonstrate some "tangible value and purpose other than" to justify future annexations. *United States v. Bailey*, 444 U.S. 394, 405, 100 S.Ct. 624, 62 L.Ed.2d 575 (1980) ("In a general sense, 'purpose' corresponds loosely with the common-law concept of specific intent, while 'knowledge' corresponds loosely with the concept of general intent."); BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "purpose" as "[a]n objective, goal, or end"). In other words, "a" purpose beyond enhancements to annexation is sufficient.

Clerk of the District Court, Johnson County Kansas
09/23/24 02:39pm MM





Public Access State of Kansas KDOT land seemingly used to get south of I-35 in 2017/2018 in order to add LPKC Phase 2 for Project Mustang.

No intermodal was supposed to be allowed south and east of I-35, per the 2013 SW Area Plan intermodal design—due to rural residential, conservation areas for Hillsdale Lake and the Hillsdale Watershed

The City of Edgerton ignored all surrounding residents during Dec 2017 / January 2018 Project Mustang planning hearings for Kubota.

They claimed the land was annexed by consent annexation, so no public hearing was required. They possibly used State Land for this contiguous connection to the west side of I-35

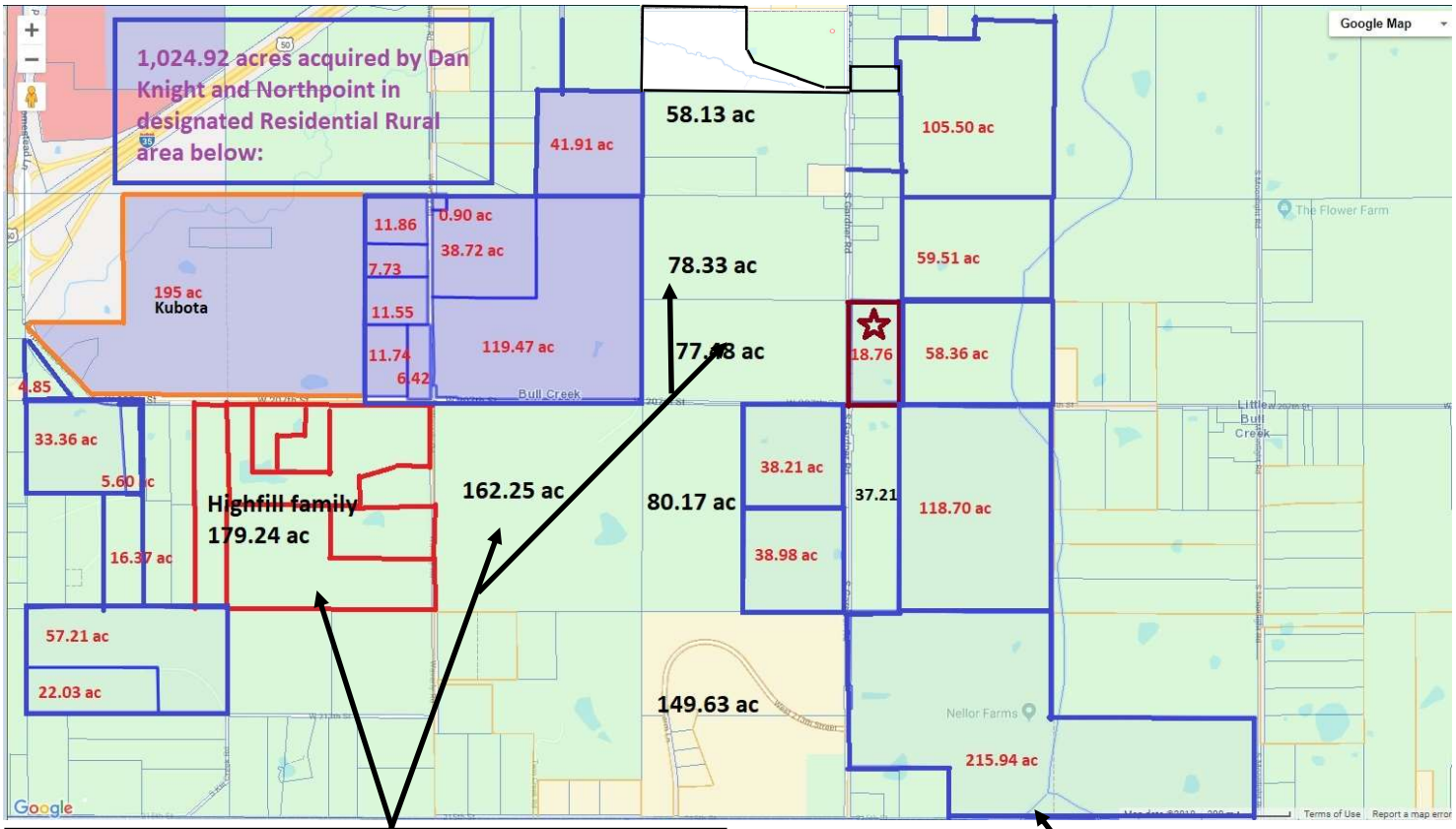
They rezoned to intermodal, despite opposition, claiming it would not harm neighbors, but make their land worth more.

Narrow Corridor

Nearly 700 acres non-contiguous land, connected in December 2020 by narrow corridor for leapfrog rezoning, despite opposition from neighboring rural and ag property owners.

The city was trying to accommodate the developer for a Walmart Distribution center with almost 12 million sq. ft of warehouses.

The developer & city were trying to get contiguous access for years



Immediately after the 2019 Project Mustang rezoning, a local real estate agent listed a large group of properties for sale, at the intermodal price per acre set by the County Appraiser for the new intermodal developments. (over $60,000 per acre, when the developer paid on average $15,000 per acre)

The developer refused to pay the commercial rate for those parcels. They preferred to capitalize on the raw farmland rates for property they owned and then use the city status of Edgerton to find a connection to rezone.

The developer told one owner, per testimony that "they could sit over there and rot for all he cared" because they were finding a path to the nearly 700 acres they also owned, nearly 1.5 miles east, between Gardner Road and Moonlight Road.

Those adjacent parcels are still for sale today, over 7 years later and Edgerton does not make the developer fully develop one area before leapfrogging miles away.

Nearly 700 acres was also purchased from various sellers, during the 2017 Dan Knight / NorthPoint transactions, but this land had no contiguous points to the city limits during Project Mustang.

One family is on record at Edgerton meetings, stating Dan Knight lied to them regarding the use for the nearly 60 acres they sold off the family farm, in the backyards of 3 of the family members. They were told it would be a large lot rural residential development.

The City and the Developer were on the 2013 SW Plan Committee that forbid intermodal development, yet they did not follow the plan. Instead they used this unfair competitive advantage and "public private partnership" to purchase the land "under the radar" and then use the city status to annex and rezone – even though JoCo denied an LP rezoning in 2019 because it was incompatible with the neighboring properties.