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2025 Aug 18 PM 3:23
CLERK OF THE JOHNSON COUNTY DISTRICT COURT
CASE NUMBER: 23CV04059
PII COMPLIANT

Court:	Johnson County District Court
Case Number:	23CV04059
Case Title:	In the Matter of
Type:	ORD: Order Originated by Judge Judgment and Order

SO ORDERED,

/s/ Honorable David Hauber, District Court Judge

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.	)	

JUDGMENT AND ORDER

This is a *quo warranto*[1] de-annexation action filed by the Kansas Attorney General, Kris Kobach, against the City of Edgerton pursuant to K.S.A. 12-520(g),[2] over the addition of multiple tracts of land that ultimately will expand the existing intermodal logistics park development.

The Summary Judgment Order and Bench Trial

The Court previously issued a summary judgment order on September 23, 2024, Doc. 162, that denied the parties' cross motions but otherwise preserved its uncontroverted facts pursuant to K.S.A. 60-256(d). A significant number of motions and pretrial matters then preceded the bench

[1] A *quo warranto* action, filed pursuant to K.S.A. 60-1203, allows the attorney general to challenge actions by corporate entities, including municipal corporations, that the state contends are unlawful. Jurisdiction for such an action challenges the alleged exercise of unlawful municipal authority. *State ex rel. Schmidt v. City of Wichita*, 303 Kan. 650, 656, 367 P.3d 282 (2016) (citing *State v. Leavenworth*, 75 Kan. 787, 791, 90 P.3d 237 (1907)).

[2] This provision is an exception to "consent" annexations in K.S.A. 12-520(a)(7). It provides: "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."

trial of this matter which was conducted from June 25-27, 2025. The parties submitted proposed findings of fact and conclusions of law and the matter is now ripe for adjudication.

The Court outlined the facts and law associated with this controversy in its prior order, which bears repeating for context. This is a *quo warranto* action which is an extraordinary and extreme remedy intended to protect the public. *State ex rel. Ferguson v. United Royalty Co.*, 188 Kan. 443, 461, 363 P.2d 397, 409 (1961). The court has a measure of discretion in such proceedings. *State ex rel. Beck v. Allen County Com'rs*, 143 Kan. 898, 902, 57 P.2d 450, syl. 3 (1936); see also *Gas Service Co. v. Consolidated Gas Utilities Corp.,* 145 Kan. 423, 65 P.2d 584 (1937). But it cannot ignore a valid and applicable statute. *State ex. rel. Fatzer v. Kansas City*, 169 Kan. 702, 717, 222 P.2d 714, 726-727 (1950).

The Legal Background to this Controversy

Two applicable statutes exist. The first is the right of cities to annex adjoining properties by consent. K.S.A. 12-520(a)(7) appears under the section heading "Conditions which permit unilateral annexation; exceptions; ordinance, severability of ordinance where annexation invalid; limitations." The operative provision for unilateral consent annexation is as follows:

> (a) Except as hereinafter provided, the governing body of any city, by ordinance, may annex land to such city if any one or more of the following conditions exist:
>
> ***
>
> (7) The land adjoins the city and a written petition for or consent to annexation is filed with the city by the owner.

The power of consent annexation, however, is limited by an exception which appears in subsection (g). It qualifies the right to consent annexation by excluding those annexations which involve a "narrow corridor of land to gain access to noncontiguous tracts of land" unless that

corridor has "a tangible value and purpose other than for enhancing future annexations." K.S.A. 12-520(g).

The Background to this Controversy

Noteworthy history to this case is one brought by private landowners who objected to subsequent rezoning of the annexed tracts from rural to intermodal logistics park zoning. That legal challenge fell short, however, because they had no legal standing to object to such annexations as was determined in *Protect Rural Joco LLC v. City of Edgerton*, 2023 WL 5498999, 534 P.3d 120 (Kan. Ct. App. August 25, 2023). Here is a brief description of that controversy:

> In December 2020, the City of Edgerton (City) passed Ordinance 2057 to annex two tracts of land totaling around 47 acres (Property I) into the City's limits. The City passed Ordinance 2058 a week later, which authorized the annexation of another 600[sic][3]-acre parcel (Property II). The owners of all annexed properties consented to these annexations.
>
> In May 2021, Appellants petitioned in the district court, challenging the City's annexations. Protect is an association of property owners and residents in Johnson County. According to their petition, the Bannisters live in Johnson County and own property within 1,000 feet of the annexed properties. The Morgans and Winslows also live in Johnson County and own properties adjacent to the annexed properties.

Additionally, it must be noted that the developers of the various tracts of annexed land had sought to rezone the same from rural residential to logistics park zoning immediately almost immediately after getting annexation approval. That resulted in another lawsuit, *Craven v. City of Edgerton*, Johnson County Case No. 2021-CV-01587, which was dismissed by agreement on December 1, 2022. An attempt to de-annex property to undermine existing rezoning determinations is not a proper consideration here. The sole issue before this Court is whether the consent annexations violate K.S.A. 12-520(g), not whether the rezoning was appropriate.

[3] Property No. 2 is only 4.7 acres, 4.67 acres, to be precise. The court of appeals was likely referencing tracts 3-9, to constitute the 600-acre tract for possible annexation. The petition (Doc. 1) refers to Ordinance 2057 as containing both Property No. 1 and 2, and Ordinance 2058 containing tracts 3-9, which has a total size of 633.52 acres. The Court will adopt the petition's description of Ordinances 2057 and 2058.

FINDINGS OF FACT FROM SUMMARY JUDGMENT

As noted above, the Court preserved for trial the factual determinations it made on the cross-summary judgment motions pursuant to K.S.A. 60-256(d)(1), which both parties agreed would reduce the amount of evidence needed at trial. Here are those facts which retain the same numbering from the summary judgment briefing.

1. The City of Edgerton is a municipal entity organized and operating pursuant as a city of the third class.

2. In December 2019, Treadstone Acquisitions–Fund VII, Inc. (hereinafter "Treadstone VII") in support of a possible purchase of land, from Gail Ann Wilson, Pete Oppermann of Oppermann Land Design, created a "concept plan" for a property at 199th and Gardner Road in Johnson County, Kansas.

3. The concept plan contemplated the construction of different areas of property development into commercial, multi-family housing and residential developments, with platted streets and park areas.

4. In 2019 the 80-acre parcel at 199th and Gardner Road owned by Ms. Wilson was offered for sale under a listing agreement on or about November 22, 2019, and Wilson and Treadstone VII then agreed on a purchase of about 46[4] acres of that parcel.

5. Treadstone VII agreed to pay $1,380,000, or, roughly, $30,000 per acre.

6. Ms. Wilson retained 34 acres from the 80-acre tract, and any subsequent survey of the same would reflect a legal description for the same.

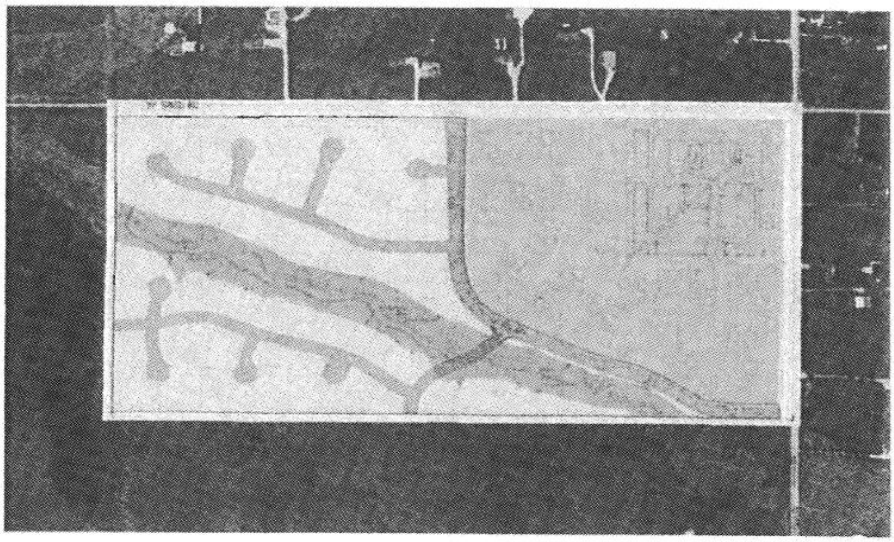
[4] There is some discrepancy as to whether Treadstone VII obtained 46 or 47 acres from this transaction. It is immaterial at this point. AIMS lists the property at 46.93 acres.

7. Exhibit A to the real estate contract contained a "depiction of the property" showing the concept plan overlaid onto a property map, showing the division of the property, with a dividing line being the eastern edge of a platted road extending from 199th street to Gardner Road.

EXHIBIT A

DEPICTION OF THE PROPERTY

TAX ID: 2F221511-3001
SITUS ADDRESS: 19920 Gardner Road, Johnson County, Kansas



Approx. 46 acres outlined in red at the Southwest corner of 199th and Gardner Rd

8. On or about December 4, 2020, Treadstone Acquisitions —Fund VIII, Inc. (hereinafter "Treadstone VIII") submitted two "Consent for Annexation Forms. One form was for the surveyed description of the property obtained from the Treadstone VII/Wilson transaction, which the State has designated as "Property 1."[5]

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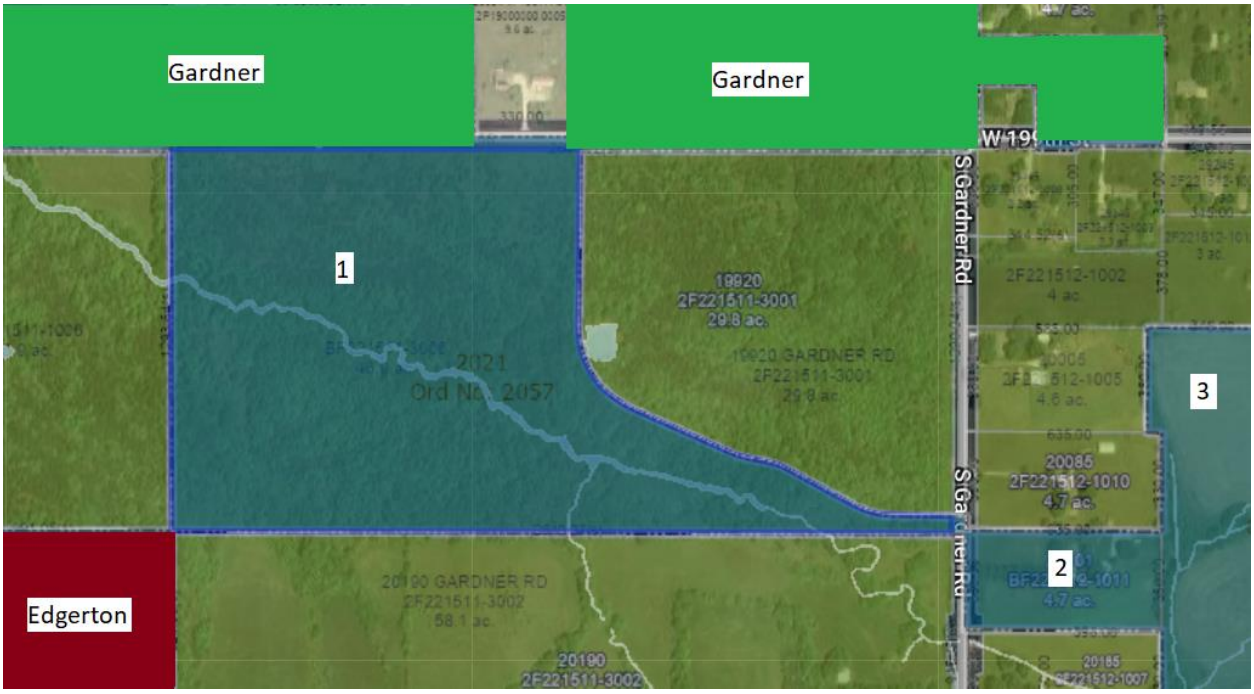
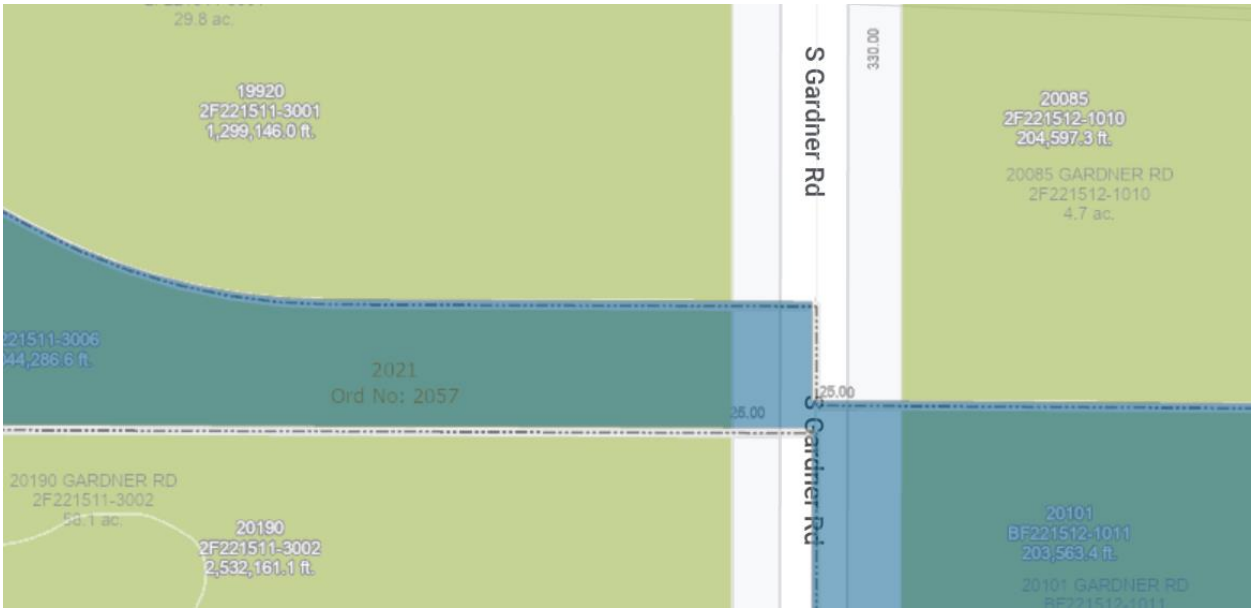
9. For reference, the following is a map of Property 1 and Property 2.

[5] The controverted nature of the facts presented accounts for the lack of numerical sequence in the facts presented herein.





10. On December 10, 2020, the Edgerton City Council passed Ordinance No. 2057, approving the annexation of Properties 1 and 2.

11. The ordinance required the City to receive ownership verification of the tracts and further required the City engineer to provide updated legal descriptions provided by the landowners, with the same to be inserted in the final ordinance.

12. After confirmation, the final ordinance was published on or about December 16, 2020.

13. Before the December 2020 sale, the county appraiser determined that the appraised value of the Wilson 80-acre tract was worth $24,350, reflecting $855.37 in real estate taxes due.

14. After the sale, in 2021, the appraised value of the retained Wilson acreage was appraised at $84,440, with a tax due for that year of $1,091.45.

15. At the same time, the tract now held by Treadstone VIII (Property 1) was listed by Johnson County as having an appraised value of:

- 2021= $395,490.00
- 2022=456,980.000
- 2023-$522,600.00

16. These tax values resulted in total tax increases and amounts to the City as follows:

Year	Appraised Value	Yearly Increase	Total Tax	City Tax Rev
2021	$ 395,490.00		$ 6,937.56	$ 1,419.64
2022	$ 456,980.00	13.46%	$ 7,838.16	$ 1,627.26
2023	$ 522,600.00	12.56%	$ 8,889.30	$ 1,865.87

17. Property 2 was never subdivided, or its single residential use was not substantially altered, so its values for taxation purposes did not sharply increase after annexation:

Year	Appraised Value	Yearly Increase	Total Tax	City Tax Rev
2021	$ 360,370.00		$ 6,012.14	$ 1,239.68
2022	$ 416,450.00	13.47%	$ 6,753.35	$ 1,421.15
2023	$ 434,870.00	4.24%	$ 6,992.10	$ 1,487.95

18. The City had appraisers Keller Craig & Associates, LLC, appraise Property 1 as of December 10, 2020, with a market value as a vacant property of $940,000.

19. Keller Craig & Associates, LLC also appraised Property 1, reflecting a potential value for a single-family subdivision in the concept plan as worth $4,300,000.

20. Keller Craig & Associates, LLC separately appraised the elongated portion of Property 1 that extends to Property 2 as being 60-feet wide on Property 1[6] (and extending into Property 2), as having a value of $18,000.

21. Columbia Capital Management, LLC provided estimates of a projected 20-year tax revenue generated from Property 1, based on different development scenarios, with the vacant property bringing revenue of $87,541, while a fully developed property would result in $276,984.

22. By comparison, Columbia Capital Management, LLC calculated the projected 20-year tax generation of a hypothetical 60' by 2,640' extension of Property 1 annexation to produce tax revenue of $1,606.00.

23. Columbia Capital Management, LLC calculated the projected 20-year tax generation of Property 2 and determined the total revenue to be $38,487.00.

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81.[7] Northpoint CEO Hagedorn testified that a residential subdivision next to industrial development is not an incompatible use. Northpoint has built homes next to its business park properties throughout the United States, as the use for warehousing is low impact—it is generally quiet and results in less traffic. Northpoint has seen a hundred plus homes next to its industrial areas in Gardner, Kansas, showing that these homes sell to residents.

[6] The appendage shape of Property 1 measures approximately 60 ft. north to south at its far eastern edge, 1,236 ft. east to west, and is approximately 7-acres. The connection between Property 1 and 2 is 13.2 ft.

[7] These facts stemmed from the State's uncontroverted facts.

82. Northpoint purchases property with the specific intent to realize value from the real estate and would not obtain valueless land for connection. The purpose of the purchase of Properties 1 and 2 for Northpoint was not to connect to Properties 3-9, but to obtain property for a residential use because residential development was important to the City. The issue was that the property owner wanted to retain part of the property adjoining the last paved intersection in Johnson County for commercial development. Northpoint acquires property for different uses including multifamily uses and other types of real estate.

83. The City, prior to 2020, had contracted with ElevateEdgerton! for economic development services, which included work on marketing and development for residential development. This was known in 2020, as Mayor Roberts was involved in the Johnson County Community Housing Study, assessing the need for city quality housing. The city has prepared several studies and planning documents, noting the need for residential housing options.

84. City officers, being experienced in property development, note that every development—residential, commercial and industrial—has areas that are reserved or undeveloped for purposes such as stormwater drainage, access roads, utilities and greenspaces, or because topography renders some areas undevelopable. The city imposes buffering requirements and setbacks to protect neighbors and create compatible properties despite differing uses. The property overall retains value, in some part, because the property has undeveloped or infrastructure-related parts which enhance value for the proposed use.

85. The City requires compliance with the 2018 International Fire Code for city developments which requires more than one connection to a fire apparatus access road.

86. The City has used road rights-of-way, private easements, platted utility easement corridors and eminent domain to place utility pipelines and facilities outside of city limits to connect to City territory.

FACTUAL FINDINGS STEMMING FROM TRIAL

Whether there is a "Narrow Corridor"

1. Plaintiff's expert witness, Dr. William Kirkham, P.E., testified that a narrow corridor is different than a corner-to-corner touching of parcels.[8]

2. Essentially, he testified that normal parcel shapes are rectangles and squares and that tips of triangular parcels tend to be unusable because of the narrowing area. Most of his testimony, offered as a civil engineer who has to interpret annexation laws sought to define the concept of a "narrow corridor" through various types of real estate, parking stalls, easements, utility corridors and driveways.

3. The Court does not find Dr. Kirkham's testimony to be helpful, particularly when he strays from disputed questions of development into whether the shape of Property 1 constitutes a narrow corridor, which is a question of law. Most of his testimony was critical of building in or across a riparian zone [where the appendage to Property 1 is located]. He testified that he regarded the only reason for purchasing Property 1 was a connection to Property 2 for purposes of

[8] The Court includes this expert testimony here only because it may be applicable to questions of tangible value and realistic development potential. Whether a "narrow corridor" exists, however, is ultimately a question of law for the Court. Dr. Kirkham is not a legal expert. In this *quo warranto* action there is a mixed question of fact and law at stake along with the limitations of expert opinions in K.S.A. 60-456(b). While opinion evidence may be admissible on ultimate issues to be decided by the trier-of-fact, K.S.A. 60-456(d), there is nothing in Dr. Kirkham's civil engineering or development background that is useful on what constitutes a narrow corridor. Typically, an expert may not apply the law to the facts of the case to form legal conclusions. *United States v. Jensen,* 608 F.2d 1349, 1356 (10th Cir.1979)); *Frase v. Henry,* 444 F.2d 1228, 1231 (10th Cir.1971). Nevertheless, an expert may refer to the law in expressing his opinion. *Specht v. Jensen,* 853 F.2d 805, 809 (10th Cir.1988). The only useful testimony offered by Dr. Kirkham is in the realm of the development potential of Property I, not whether its configuration constitutes a "narrow corridor" as contemplated by the legislature. Whether a strip of land has tangible value is a question that is separate and apart from the question of whether it constitutes a narrow corridor.

annexation. Cross-examination consisted of issues of fire codes, road entrances to service the potential development of Property 1 or access it for fire engines and the fact that the City does not regulate "X" flood zones that includes the area where the creek runs through the tract's appendage.

4. The State also called a series of witnesses to the stand, including council members Clay Longanecker (noting the area in question looked like "a little finger"), Ronald Conus (noting his concern about it being a narrow corridor)[9] and Joshua Beem (who recalled nothing about any discussion of a narrow corridor prior to the annexation vote).

5. Likewise, Mayor Donald Roberts was called as a witness; he testified thathe did not consider the question of a narrow corridor. Much of the State's direct of the mayor's testimony was to underscore his contacts and relationship with the developers of the acquired properties, which were the Northpoint entities.[10] Despite this relationship, there is no evidence the mayor sought to influence the council's approval of the annexations.[11] No council member recalled any such contact. The testimony also established that the City ordinarily relies on consent annexations as a "governance policy," and rarely exercises its power to involuntarily annex property. Consequently, the consent annexation process is typically not adversarial and requires no advance public notice of the same.

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[9] Mr. Conus is noteworthy as he served on the council from 2017-2021 and then again from 2023 to the present. He voted for the pertinent ordinances at stake but later filed a complaint with the attorney general, registering his concern that the annexation (and rezoning) violated the law. In that respect, he became an advocate against annexation because it lead to the rezoning. All the witnesses against rezoning, at this stage, were aware of the need to describe the configuration of Property 1 as a "narrow corridor" but doing so does not make it so.

[10] A related entity to Northpoint is Treadstone. The Court regards them as interchangeable because the common members or owners in the corporate entities that stand to profit from the various acquisitions.

[11] The Court is not even sure it matters whether council members believed the consent annexations would expand the city's tax base and potential development for an expansion of logistics businesses. Short of corrupt influences that lead to a council member's vote, of which there is no evidence, this is irrelevant.

6. The city administrator, Elizabeth Linn, testified to the same. She also testified that the city gauges the consent application at the time of application. She said she was aware of the narrow corridor rule of K.S.A. 12-520(g) but never regarded it as applicable. Consequently, the discussion never came up at the council meeting. In the meeting minutes, she is noted as follows:

> Ms. Beth Linn addressed the council. She stated the city has received two consents for annexation from property owners requesting to be inside city limits. Kansas Statute 12-520 states that the governing body of any city, by ordinance, may annex land into such city if that land adjoins the city and written petition for consent for annexation. She stated this property is contiguous to property within the City of Edgerton corporate city limits.

The Court asked Ms. Linn a series of questions on her direct examination in the City's case, about the considerations of city staff leading up to the city council meeting. This followed a series of questions about governance policies, namely, that staff conduct their due diligence, make recommendations, and the city council then broadly approves annexations, usually consent annexations. She testified that the *Mulvane* case was raised internally and that she only asked the city engineer whether Property 1 and 2 were adjoining. She did not discuss with the council the possibility of any narrow corridor existing and did not regard the different shape of Property 1 to be one. She considered it to be a corner touch. In that regard, out of all the annexed parcels, Property 1 has a corner touch to Property 2, Property 7 corner touches to Property 9 and Property 10 corner touches back to Property 1. The only disputed property alleged to be a narrow corridor is Property 1.

Irrelevant Testimony that the Court Disregards

7. The State also sought to present testimony from various neighbors which the Court disregards as irrelevant, to impugn the honesty and motivations of developers in how they obtained the land that was annexed. One such witness was Connie Pearce Mayberry, whose family sold its farm in 2018 after a developer representative's pitch that it was considering developing 5-acre

estates, but then learned he had "lied" to them when the developer sought rezoning for the logistics park several years later. Another was Michael McGuire who "heard" about the annexation and had signed up for email notifications of meetings but did not see them on the agenda until after the fact. He recalled finding out about various neighbors and "Mrs. Wilson" selling their properties at some point.[12]

8. The Court also notes that the State sought to impeach one of the developer's representatives, Daniel Knight, a broker who was involved in the listing the Wilson property and having the Opperman Land Plan developed for the site purchased by Treadstone. That impeachment involved a separate court case and judgment against him about embezzlement of funds from one of his principals. It offers little evidentiary support related to the narrow corridor issue. Historically, the Knight testimony provided background on the listing of the Wilson property, a land concept development plan Exhibit 153, (which has not been undertaken), and how the 80-acre, resulted in its present configuration after the sale of the western 47-acres.

The corridor of land must have a tangible value and purpose

9. The factual disputes here *assume* that if the "finger" or "appendage" or "toe" that touches Property 2 (and then links all the other annexed properties), is a "narrow corridor," then any justification for the same must further show some "tangible value and purpose" other than serving as a connection to justify annexations.

10. The City council approved the consent annexations without any discussion. There was nothing to suggest any potential development plans might be considered.

[12] This kind of testimony, the Court presumes, was intended to suggest some due process violation by failing to notify the public of the pending annexation request, which was added to the agenda at the meeting. Consent annexations, however, are unilateral, as described by the statute, and do not require advance notice to the public. K.S.A. 12-520(a)(7) requires no advance notice as exists in other statutory annexation provisions which do not apply to consent annexations. *Bd. of Cnty. Commissioners of Saline Cnty. v. City of Salina*, 414 P.3d 1239, 2018 WL 1545842 **4, 9-10 (Kan. Ct. App. March 30, 2018).

11. The City presented testimony from Dan Merkh, city public works director, who established that a right of way can be typically 50' and the smallest roadway typically allowed would be 28'. He was not consulted about any of the annexations.

12. Likewise, Zachary Moore, city development services director, testified and described similar roads on Kill Creek Road, Exhibits 403, 404, 413, within the Logistics Park Road, presumably to demonstrate such widths could be used to run roads and utilities from Property 1 to the other annexed properties.

CONCLUSIONS OF LAW

The essential issue here is whether the odd-shaped appendage or portion of Property 1 creates a "narrow corridor" that violates K.S.A. 12-520(g), which provides:

> [1] ***No city may utilize any provision of this section to annex a narrow corridor of land to gain access to noncontiguous tracts of land.*** [2] The corridor of land must have a tangible value and purpose other than for enhancing future annexations of land by the city.

(Emphasis added).

The first sentence generally prohibits cities from annexing land by consent if it gains access through noncontiguous "tracts" of land described as a "narrow corridor."

The term "narrow corridor" is not defined. It is vague. And only after making this determination, *if it is a 'narrow* corridor', does a court have to consider the second sentence to allow an annexation from a narrow corridor if that corridor has a "tangible value and purpose other than for enhancing future annexations of land by the city." The Court never reaches that second sentence here, because it finds Property 1 was not a narrow corridor as the legislature intended.

The "Narrow Corridor"

The State has approached this case as an unreasonable exercise of the right to annex property by consent, underscoring the profit motives of the developer, its purportedly close

relationship with the City and the manner in which the approval process involved little discussion and notice to the general public.

As the court of appeals noted in *Protect Rural Joco LLC v. City of Edgerton*, 2023 WL 5498999 *1, 534 P.3d 120 (Kan. Ct. App. August 25, 2023), consent annexation under K.S.A. 12-520(a)(7) does not require the other public notice provisions in compulsory annexation cases. Such annexations must be considered along with "the power of a municipality to alter its boundaries by annexation [which] is vested absolutely and exclusively in the legislature, and this power is therefore completely controlled by statute." *Dillon Real Estate Co. Inc. v. City of Topeka*, 284 Kan. 662, at *3, 163 P.3d 298, 301 (2007). As noted in *Bd. of Cnty. Comm'rs of Cnty. of Sumner v. City of Mulvane,* 43 Kan. App. 2d 500, 511, 227 P.3d 997, 1005, *rev. denied* (2010), the term "adjoin" is defined in K.S.A. 12–519(d)(1) as: "[T]o lie upon ***or touch*** (1) the city boundary line." Emphasis added.

The only question before the Court is whether subsection (g) is triggered by the configuration of Property 1, which notably has a foot or appendage sufficient to allow a roadway or right-of-way easements to cross over into Property 2. It plainly touches Property 2, but is it a "narrow corridor?"

A plain language statutory interpretation is preferred. *State v. Brosseit*, 308 Kan. 743, 748, 423 P.3d 1036, 1040 (2018); *State v. Ryce*, 303 Kan. 899, 906, 368 P.3d 342, 349 (2016) (quoting *University of Kan. Hosp. Auth. v. Board of Comm'rs of Unified Gov't*, 301 Kan. 993, 998-99, 348 P.3d 602, 606 [2015]), *affirmed* 306 Kan. 682, 396 P.3d 711 (2017). "Courts take the legislature at its word, unless there is ambiguity, because the legislature, unlike the judiciary, is one of the branches of government charged with development of public policy on behalf of the electorate, and because judicial deference to clear statutory language leads to long

term predictability and stability in state law." *O'Brien v. Leegin Creative Leather Products, Inc.*, 294 Kan. 318, 348, 277 P.3d 1062, 1082 (2012).

In determining legislative intent, a court first must examine the words used and then give such common words their ordinary meaning. *Montgomery v. Saleh*, 311 Kan. 649, 654 466 P.3d 902, 908 (2020); see also *Padron v. Lopez,* 289 Kan. 1089, 1097, 220 P.3d 345, 352 (2009). Ascertaining legislative intent requires abiding by the language lawmakers used. *Gannon v. State,* 298 Kan. 1107, 1143, 319 P.3d 1196, 1221-1222 (2014) (quoting *Wright v. Noell,* 16 Kan. 601, 607, 1876 WL 1081 [1876]; *State v. Looney,* 299 Kan. 903, 906, 327 P.3d 425, 428 (2014).

However, "when faced with an ambiguity, courts must attempt to ascertain legislative intent and in doing so may look to canons of construction, legislative history, the circumstances attending the statute's passage, the purpose to be accomplished, and the effect the statute may have under the various constructions suggested." *Brosseit* at 308 Kan. 748, 423 P.3d 1040, citing *State v. Quested*, 302 Kan. 262, 268, 352 P.3d 553, 557-558 (2015).

"'In construing statutes, the legislative intention is to be determined from a general consideration of the entire act. Effect must be given, if possible, to the entire act and every part thereof. To this end, it is the duty of the court, as far as practicable, to reconcile the different provisions so as to make them consistent, harmonious, and sensible.' " *In re Protest of Smith*, 272 Kan. 1396, 1404, 39 P.3d 66, 72 (2002) (citing *In re Marriage of Ross,* 245 Kan. 591, 594, 783 P.2d 331 (1989)).

The provisions relating to annexations by cities are numerous. But one aspect of the act on annexations is the definition in K.S.A. 12-519(d), which defines "adjoining" a follows:

> "Adjoins" means to lie upon ***or touch*** (1) the city boundary line; or (2) a highway, railway or watercourse which lies upon the city boundary line and separates such city and the land sought to be annexed by only the width of such highway, railway or watercourse.

(Emphasis added.)

"The power of a municipality to alter its boundaries by annexation is controlled by statute, and while the City has the discretion to exercise that power, it must be done within the confines of the statutes." *McDowell v. City of Topeka*, 239 Kan. 263, 266, 718 P.2d 1308, 1312 (1986). City ordinances are presumed to be valid, but judicial inquiry into its validity is permissible. *State ex. rel. Fatzer v. Kansas City*, 169 Kan. 702, 717, 222 P.2d 714, 727 (1950). When reviewing a city municipal function, such as when it exercises its power to annex property, it is the primary judicial function to ensure that such municipal action is within the scope of the legislative authority granted to the city. *State ex rel. Jordan v. City of Overland Park*, 215 Kan. 700, 215 Kan. at 708–09, 527 P.2d 1340, 1347–48 (1974).

Ordinarily, if property is adjoining, it can be annexed, which is true in all annexations, consent or otherwise.

In *City of Lenexa v. City of Olathe*, 233 Kan. 159, 660 P.2d 1368 (1983), and *Bd. of Cnty. Comm'rs of Cnty. of Sumner v. City of Mulvane,* 43 Kan. App. 2d 500, 511, 227 P.3d 997, 1005, *rev. denied* (2010), both cases hinged on whether annexed properties adjoined the relevant city boundaries.

> This leaves as a final issue for our determination whether tract II adjoins tract IB. Appellant argues "adjoins", under [a prior version of] K.S.A. 12–520(g), requires contiguity with the city boundary of a "substantial nature" because the land requirements for providing services to an annexed area would require more than mere touching. In support it cites several out-of-state cases. In settling the question, we need look no further than Kansas law. K.S.A. 12–519(d) provides: " 'Adjoins' means to lie upon or touch (1) the city boundary line." Also, in *State, ex rel., v. Bunton,* 141 Kan. 103, 40 P.2d 326 (1935), we spoke to the issue in Syllabus ¶ 1, stating: ***"The word 'adjoining' as used in R.S.1933 Supp. 72–605 has its usual and ordinary meaning, that of being contiguous or touching."*** See also *Smith v. City of Garden City,* 6 Kan.App.2d 826, 635 P.2d 1271 (1981). It is well settled words in common usage should be given their natural and ordinary meaning in construing a statute. *Coe v. Security National Ins. Co.,* 228 Kan. 624, 630, 620 P.2d 1108 (1980); *Stephens v. Van Arsdale,* 227 Kan. 676, 684, 608 P.2d 972 (1980). It is

> undisputed tract II touches tract IB ***at one point***. We hold tract II and tract IB are adjoining tracts.

City of Lenexa, 233 Kan. at 16 (Emphasis added).

There is little question here that Property 1 adjoins Property 2 because they touch as that concept is defined.

If that were the only issue in this case, it would be dispositive. But the State's position is that the unusual shape of Property 1 constitutes a "narrow corridor" because it is 13' wide at its narrowest touchpoint, even though it widens considerably toward the western portion of the 47-acre tract. But even if the touchpoint is a narrow connection, the State also has to prove it is a "corridor" within the intent of K.S.A. 12-520(g).

A dictionary meaning of "narrow" is something "of slender width" and "of less than standard or usual width."[13] Corridor is defined as a "narrow passageway or route" or "an area or stretch of land identified by a specific common characteristic or purpose."[14] Admittedly, the stream bed within Property 1, is a slender portion of "land" within that tract, but that configuration resulted from Mrs. Wilson's desire to retain something that she believed would be prime development land bounded by two primary roads. She is still waiting to develop the same and has listed the property at a much higher price per acre than she sought in selling Property 1.

> Morever, it is difficult, if not impossible, to find a case in which the court, in so many words, has stated that the shape of the territory to be annexed is a factor. However, the proposition that the shape of the territory is a factor to be considered finds some support in the statement of some courts that "shoestring," "strip," or "corridor" annexation violates the requirement that territory to be annexed be contiguous, since at least part of the court's adverse reaction to such annexation lies in the fact that the inclusion of long, ***narrow strips of land*** results in territorial shapes that deviate considerably from the model rectangles or squares.

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[13] Narrow/MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/narrow (accessed Aug. 12, 2024).

[14] Corridor/MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/corridor (accessed Aug. 13, 2024).

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> In fact, an analysis of those cases in which territory to be annexed has been held not to be contiguous where the territory contained a narrow strip indicates that the shape of the territory does not, of itself, result in a holding of lack of contiguity. However, those cases do indicate that the shape of the territory often provides a "red flag" which causes the courts to closely examine the territory in the light of the other factors discussed herein. In this regard, it is of interest to note that some courts, in attempting to determine whether territory containing a narrow strip is contiguous, have said that whether the annexation of the territory will be upheld depends in part on whether the strip contributes to the development of the territory or whether its sole function was to connect another tract with the municipality.

49 A.L.R.3d 589 (Originally published in 1973) (emphasis added).

And that is the rub in this case. The "foot" or "appendage" is not a series of anything, much less a gerrymandered assembled "strips" of land, as it was in the *Mulvane* case, which lead to the enactment of K.S.A. 12-520(g). Rather, the appendage is nothing more than the result of the 47-acre tract with a 7-acre portion beyond the mostly rectangular piece, being 60 feet wide, north to south and roughly 13 feet at its eastern most point. One would have to artificially carve this portion of one tract out of it to pronounce it as a prohibited "narrow corridor." Over scrutinizing a specific portion of one tract is not what the legislature had in mind when it enacted K.S.A. 12-520(g) to address the result in *Board of County. Comm'rs of Cnty. of Sumner v. City of Mulvane*, 43 Kan. App. 2d 500, 503, 227 P.3d 997, 1000, *rev. denied*, 291 Kan. 910 (2010). There, the city allowed strips, with little value, roughly 100–foot–wide, running, end-to-end for 5 miles to reach a casino that desired to be annexed. The county sought to contest this contiguity, but the court determined the county had no legal standing to object to the same.

A mere two months later SB 214 passed which created the post-*Sumner* version of K.S.A. 12-520(g). Legislative history shows that Senator Abrams explained that "strip annexations, aka snake annexations have been tightly controlled and illegitimate annexations are and always have

been contrary to Kansas law" and that "valueless snake annexations serve no good public policy". KS S. Jour., 2010 Reg. Sess. No. 57. This was followed by concurrences for the "explanation of vote" by Senators Kelsey, Lynn and Umbarger. Nothing about this case shows any snaking series of properties or strips, much less running for miles.

Rather, there is one odd-shaped configuration that follows a creek bed whose prior owner wanted to keep the more regular shaped piece of land development. The legislative history to K.S.A. 12-520(g) references narrow corridors as "island annexations," "shoestring annexations," "snaking annexations," "strip annexations," or "corridor annexations". KS S. Jour., 2010 Reg. Sess. No. 57; KS S. Jour., 2015 Reg. Sess. No. 86. There is no "corridor" here, only a streambed in the same tract.

The legislature sought to avoid gerrymandered annexations with tiny connections to each other through far flung strips of land, not a singular shaped appendage within one tract of land. Looking back at legislative comments for the bill, the example used by Senator Abrams during the legislative session was "if a city tried to annex a strip of property 100 feet wide and 5 miles long that snaked through the countryside without tangible value," then it would be invalidated. KS S. Jour., 2010 Reg. Sess. No. 57.

Usually, the cases involving abusive annexations practices by municipalities are obvious.

> This controversy presents the dispositive first-impression issue of whether a city's annexation of several noncontiguous tracts of land located along a 7–to–10–mile–long highway corridor, which are connected to the city by a 3–foot–wide strip of land that touches the city limits at its northern boundary and extends perpendicularly alongside the highway, is a reasonable application of the statutory contiguity (or adjacency) standard.

In re De-Annexation of Certain Real Prop. from City of Seminole, 102 P.3d 120, 128 (Okla. 2004).

In contrast to this case, which contained no testimony about the City's intent to grab a series of properties for intermodal logistics use, the Oklahoma case demonstrated municipal intent.

> The deposition testimony of three City councilmen and the assistant city manager indicates the 3–foot–wide strip in question was needed to connect to the municipality the other tracts along the highway corridor. One City official described the strip as "an umbilical cord to tie it together." Two City officials stated they knew of no other use for the strip. When asked whether a water line could be laid under the strip, another City official answered "probably not."
>
> The individual tracts standing alone would clearly not meet the statutory definition of contiguity (or adjacency). Not only are they located several miles from the city limits, some of the tracts are situated a number of miles from each other. The narrow 3–foot–wide strip provides the only link between the city's boundaries and the individual tracts owned by the protestants.

102 P.3d at 131–32.

No similar facts or testimony, for that matter, exist here. There was no discussion of the agenda item that sought a consent annexation. There was no recommendation, no discussion of the benefits of such annexation or about the purpose being future development.

The Court cannot say that the mere shape of Property 1 constitutes a narrow corridor within any remote legislative intent to reverse the result of the *Mulvane* case. If the legislature wanted to expand the definition of a "narrow corridor" to include odd-shaped contiguous properties, it knew how to do so. If it wanted to ensure that the touching was "substantial," it also could have done so. It was aware of similar corner touching cases and it has not acted to require more than the existing definition of adjoining tracts.

In short, when the legislature allows cities to expand by consent annexations with the only requirement being that they not involve narrow corridors, it becomes incumbent upon the Court to refrain from declaring invalid the exercise of such municipal authority through a *quo warranto* action. It is apparent that this case was filed to reverse a rezoning of annexed properties which is not the function of this Court.

Accordingly, the Court concludes that the State has failed to prove that the annexations covered by the challenged ordinances constitute a narrow corridor annexation within the meaning of K.S.A. 12-520(g). Because the parties have spent significant time and efforts to address the second sentence of this statute, the Court will address the same.

Tangible Value and Purpose

The second sentence of K.S.A. 12-520(g) allows a city to approve a narrow corridor annexation in the event it can demonstrate there is some a "tangible value *and* purpose other than for enhancing future annexations." Emphasis added. Under persuasive authority from other jurisdictions which have addressed this issue, the courts have suggested this shifts the burden of producing evidence on the municipality once a narrow corridor is proven.

In re De-Annexation of Certain Real Prop. from City of Seminole, 102 P.3d 120 (Okla. 2004), involved a connecting strip that was three-feet-wide over a ten-mile stretch, a classic "shoestring strip." *Id.* at 124. There, the court noted that the presumed validity of city annexations, upon challenge, shifted the burden of producing evidence to show a tangible value and purpose for an annexation that appears unreasonable. *Id.* at 131.

> For statutory contiguity to be met where a narrow corridor is used to gain access to discontiguous tracts of land, the corridor itself must have a tangible municipal value or purpose at the time of annexation.[footnote omitted] The contiguity requirement is not satisfied by means of a territorial appendage that connects several remote tracts of land to the annexing municipality, but has little relationship to a beneficial municipal purpose. This method of annexation does not coincide with legislative intent. We note that courts are generally loath to find one territory to be contiguous to another where the only link between the two is forged by a narrow corridor.

Id. at 131. This showing requires that it be evident from the time of annexation.

Rather, as noted above, the Court believes the legislature intended to show a series of land strips strung together with little purpose other than to achieve a connection with little value associated with the various strips of land, by themselves.

A reasonable interpretation of the second sentence of K.S.A. 12-520(g) would require the City to show, ***at the time of annexation***, the twin requirements of both tangible value of a connecting tract and that it serves some purpose beyond being a conduit for annexation. Under a shifting burden of evidence production, the City would then be required to show how the consent annexations, *at the time of approval*, could demonstrate such a tangible value and purpose. This is a conjunctive requirement. But, based on the City's emphasis of its "governance policies" to essentially leave that issue to staff and automatic approval, it cannot point to any record that it even considered a recommendation that might have advocated either the value or the purpose of approving such annexations.

It is impossible for the Court, then, to evaluate whether there was any tangible value and purpose from a non-existent contemporaneous record. The City's effort in that regard primarily exists in its counsel's arguments after-the-fact. Concepts of development are not considerations that were actively considered by the city council. Even depositions later about what any given council member might have thought, without being voiced, lack any evidentiary heft.

> "When the validity of an ordinance is questioned, the only proper evidence of the action of the council is the journal of their proceedings, which they cause the clerk to keep." A city speaks through its ordinances; and when the city acts in accordance with the relevant statutory grant of power, which it is presumed to do, motives should not be questioned. Instead, the focus should be on the result of the proper legislative action and whether or not there was a rational connection between the action taken and the supporting evidence.

City of Lebanon v. Goodin, 436 S.W.3d 505, 517 (Ky. 2014) (footnote citations omitted).

Likewise, the "what ifs" presentation of evidence that typified both the summary judgment and bench trial in this matter explored mostly irrelevant questions of the potential extension of utilities, emergency access roads and rights-of-way to develop Property 1 or connect it to Property 2 through a 13-foot touchpoint. This is not the caliber of evidence needed in such cases.

The word tangible is defined as "capable of being perceived especially by the sense of touch".[15] The word "tangible" in caselaw is "'descriptive of such things as having an objective, material existence; perceptible by the senses of sight and touch; possessing a real body.'" *Bd. of Cty. Comm'rs v. McGraw Fertilizer Serv.*, 261 Kan. 901, 906, 933 P.2d 698, 703 (1997) (quoting *In re Tax Protest of Strayer*, 239 Kan. 136, 142, 716 P.2d 588 (1986)).

Whether the City perceived the value of the annexations it readily approved is unknown. Value is defined as "the monetary worth of something" and "relative worth, utility, or importance."[16] The State argues that the City only values the land for its tax value and that some portions of the land would be unusable, eliminating much or all of its tangible value. The Court need not decide this question.

> Courts have repeatedly held that when the only purpose the corridor serves is to create the requisite contiguity, such a subterfuge cannot support incorporation or annexation. *Ridings v. Owensboro,* Ky., 383 S.W.2d 510 (1964). *See also Middletown v. McGee,* 39 Ohio St.3d 284, 530 N.E.2d 902 (1988); *Mount Pleasant v. Racine,* 24 Wis.2d 41, 127 N.W.2d 757 (1964); *Clark v. Holt,* 218 Ark. 504, 237 S.W.2d 483 (1951). Proponents failed to offer any tangible evidence which would refute the presumption that incorporation of the corridor is merely to connect Robards and West Robards as opposed to having some municipal value or purpose. *Ridings,* 383 S.W.2d at 512.
>
> *Ridings* requires that ***there [must] be a concrete and tangible municipal value or purpose existing at the time incorporation or annexation***[17] of the corridor of territory is sought. *Id.* Any other analysis would permit a finding of contiguity in virtually any case in which such a service *could be* provided.

[15] Tangible/MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/tangible (accessed Aug. 14, 2024).

[16] Value/MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/value (accessed Aug. 14, 2024).

[17] Okalahoma statutes showing contiguity require a showing of purpose at the time of annexation. *Williams v. Town of Salina*, 114 P.3d 482, 485 (Okla. Ct. App. 2005). In that declaratory judgment case, the court found the city "did not produce any evidence that annexing the bridge would provide a tangible value or benefit to the municipality beyond merely connecting the annexed property to the town. This is still in dispute and, that being the case, summary judgment was not warranted." 114 P.3d at 486.

> Accordingly, mere speculation that such services might be provided is not a sufficient basis for a finding of contiguity in an incorporation or annexation case. *See Merritt v. City of Campbellsville,* Ky.App., 678 S.W.2d 788, 791 (1984) (finding contiguity between unincorporated territory and incorporated territory by way of corridor in which water mains were located).
>
> When such a tangible step as, for example, the laying of water mains occurs, at that point and no sooner might it be appropriate to permit a finding of contiguity between the corridor and the territory for which annexation is sought. *See id.* (noting that, unlike the barren corridors in *Ridings,* municipal use had already occurred). If a municipal value or purpose occurs in the corridor, then a finding of contiguity may well be warranted as in *Merritt. Id.* If, however, only a barren corridor exists, there is no contiguity. *Ridings,* 383 S.W.2d at 512.

Griffin v. City of Robards, 990 S.W.2d 634, 640–41 (Ky. 1999) (emphasis added), *see also Missoula Rural Fire Dist. V. City of Missoula*, 950 P.2d 758 (Mont. 1997) (legitimate governmental purpose in annexing streets to contain city sewer and access city streets).

The Court infers that our legislature, which provided no guidance as to any burden-shifting approach, would likely intend that the evidence tangible value and purpose in cases of narrow corridors must be demonstrated at the time of municipal approval, rather than be subject to the temptation of retroactive manipulation to justifying a corridor annexation.

The difficulty here, again, is that the approval process was devoid of any such evident consideration. The State calls this a lack of transparency. The City says this is a matter of governance policy. Either way, the bare record of approval is insufficient to justify a narrow corridor if it existed.

The bottom line is that if the State *had proven* a narrow corridor existed, for which it had the burden of proof, then the burden of producing evidence to show the requirements of tangible value and purpose would have shifted to the City. But that never happened.

Without a showing of a narrow corridor annexation, however, the presumption of municipal legitimacy is evident under the ordinances that adopted consent annexations of pursuant

to K.S.A. 12-520(a)(7). The State has failed its burden to show an exception to this rule under K.S.A. 12-520(g).

For the foregoing reasons, the Court hereby dismisses the *quo warranto* petition and renders judgment for the defendant City.

IT IS SO ORDERED.

8/18/25 /s/ David W. Hauber

Date DISTRICT COURT JUDGE, Div. 7

NOTICE OF ELECTRONIC SERVICE

Pursuant to KSA 60-258, as amended, copies of the above and foregoing ruling of the court have been delivered by the electronic filing system and automatic notification electronically generated upon filing of the same by the Clerk of the District Court to the e-mail addresses provided by counsel of record in this case. Counsel for the parties so served shall determine whether all parties have received appropriate notice, complete service on all parties who have not yet been served, and file a certificate of service for any additional service made.

/s/ DWH