

**CITY OF HESSTON
CITY COUNCIL MEETING**

MINUTES of November 13, 2017

Council Meeting No.11

The regular meeting of the Hesston City Council was held on Monday, November 13, 2017 at 6:00 p.m. in the City Council Chambers of the Hesston Municipal Building.

PRESENT

Council members Larry Fuqua, Susan Swartzendruber and Clare Moore, City Administrator Gary Emry, City Attorney J.T. Klaus and City Clerk Jason Thrasher with Mayor David Kauffman presiding. A quorum was present.

ABSENT

Council Members Brad Unruh and Jason Jones

OTHERS PRESENT

Petitioner Jim Graber of Graber Grain Farms, Mr. Graber's attorney, Josh Boehm of Cottonwood Law Group, Mr. Graber's daughter Sara Hasty and son-in-law Will Hasty.

Constituents/interested parties: Nelson and JoAnn Kilmer, Chris Roth, Erica Stoltzfus, Lu Willems, Darren Anderson, Dr. Arron Fast, and Richard Drake.

Also present were Parks department employee Jim Schmidt, Golf Course Manager Grady Pauls, Police Chief Doug Schroeder and Jackie Nelson with the Hesston Record.

CONSENT AGENDA

Clare Moore moved to approve the consent agenda. Larry Fuqua seconded. Motion carried 3-0.

CONSTITUENCY COMMENTS

Mayor Kauffman asked for constituency comments. Hearing none, he continued the meeting.

PUBLIC HEARING

PETITION TO VACATE – GRABER FARMS, LLC

At 6:00 p.m. Mayor Kauffman opened the public hearing.

All persons present were offered the opportunity to address the Council. A complete transcript is attached as Exhibit A.

At the conclusion of the public hearing and having heard all discussion, Council Member Larry Fuqua made the following motion: "Having considered the evidence, I would determine that the statutory requirements set forth in the Kansas state law or Kansas statute have not been met. I believe that there are private rights of the neighboring people who live close by who will be affected. I think that public will loss, will suffer the loss or inconvenience of the three dead end streets, possible loss of property values. And for those reasons I move that we do that. We do not grant the petition." Clare Moore seconded. Motion carried 3-0.

City Attorney J.T. Klaus explained to the Council that he had consented to allow Mr. Graber's attorney, Josh Boehm, to record audio of the meeting. Mr. Klaus requested he be provided a copy of the recording and Mr. Boehm agreed.

NEW BUSINESS

GOLF COURSE – MAINTENANCE BUILDING FENCE

Golf Course Manager Grady Pauls was present to discuss his request to hire American Fence Company to build a fence around the east side of the golf maintenance building.

Clare Moore moved to accept the bid from American Fence Company in the amount of \$5,715 to build a fence around the maintenance building at the golf course. The funds would come from the Golf Course Maintenance Fund. Larry Fuqua seconded. Motion carried 3-0.

POLICE DEPARTMENT – HARVEY COUNTY DRUG TASK FORCE

Police Chief Doug Schroeder was present to brief the Council on the Harvey County Drug Task Force Agreement. The item was referred to staff to be reconsidered at the December Council meeting.

SET JULY 4, 2018 FIREWORKS DISCHARGE DATES

Larry Fuqua moved to set July 1st –3rd from 8:00 a.m. to 10:00 p.m. and July 4th from 8:00 a.m. to midnight as the dates and times for the sale and discharge of fireworks in the city limits of Hesston. The permit fee to sell fireworks was set at \$500. Clare Moore seconded. Motion carried 3-0.

BOARD AND COMMITTEE EXPIRING TERMS

This item was reviewed with the City Council with no action taken.

OTHER BUSINESS

ANNUAL CONTINUING DISCLOSURE FILING - PBC

This item was to inform the City Council that that filing of the Recreation Commission 2017 Audit to the EMMA (Electronic Municipal Market Access) website was completed as required.

EXECUTIVE SESSION

At 7:35 p.m. Larry Fuqua moved to enter into an executive session for a period not to exceed 15 minutes to discuss matters relating to attorney client privilege involving potential litigation. The participants in the session being the Mayor, City Council, City Administrator, City Clerk and City Attorney. Susan Swartzendruber seconded. Motion carried 3-0.

The executive session ended with no binding action taking place during the session.

At 7:50 p.m. Clare Moore made a motion to exit the executive session. Susan Swartzendruber seconded. Motion carried 3-0.

ADJOURN

At 7:50 p.m. Larry Fuqua moved to adjourn the meeting. Susan Swartzendruber seconded. Motion carried 3-0.

Recorded by
Jason Thrasher
City Clerk

EXHIBIT A
City of Hesston, Kansas
Public Hearing on Petition to Vacate Graber Grain Farms, LLC Property
November 13, 2017

Mayor Kauffman: Do I need a motion to open the public hearing?

City Attorney: No, Mr. Mayor, you can open the public hearing.

Mayor Kauffman: So, um, I'll call the Graber land de-annexation. We're here for a public hearing, which is a public hearing on the exclusion of certain unplatted farming land from the City limits. This is a request to exclude the following property legally described below, of which I am not going to read, I'm just going to say, as set forth in the Petition, so it's quite lengthy. But it's approximately 50 acres to the east of town. I do have a few ground rules for this discussion. It's important to present all your facts, so a summary can be made by the note takers. As you step up, if you can please give your name and your address and tell us who you are. We will allow Mr. Graber to speak first and then we'll have other public comment as well. All right. Before we proceed with the hearing, I'll ask the City Council if any of them intend to disqualify themselves from the hearing discussing and voting on this Petition request.

(No response)

Mayor Kauffman: According to the City Clerk, a Notice for this hearing was published in the Hesston Record on October 19th, which was at least 20 days ago, prior to this hearing. Unless there is evidence to anyone of the contrary, I'll declare that proper notification has been given if there's no objections to that.

(No response)

Mayor Kauffman: I will now ask the City Council if anyone has received any verbal or written communications prior to this hearing which they would like to share with the membership.

(No response)

Mayor Kauffman: Okay, with that being said, I'd like to call Mr. Graber, Jim Graber, and his counsel and daughter.

Mr. Graber: My counsel will speak first.

Ms. Hasty: I'll just hand out some pictures here, then the business card please.

Mayor Kauffman: Thank you.

Female voice: Thank you

Mr. Boehm: Mayor and Council, thank you for having us here this evening. I would like to introduce myself. My name is Josh Boehm. I am an attorney from Hillsboro, Kansas, and I represent Graber Grain Farms, LLC. Regarding the Petition tonight, we just ask that you listen to the evidence presented to you by Mr. Graber, that you thoroughly consider that evidence and the request contained in the Petition filed. We ask that you fairly and equitably apply state law to this matter, specifically, Article 12 or Kansas Statute, excuse me, 12-504, 505, 506, and 507. We will also request if there's been a written objection filed with the City prior to today's hearing.

Mayor Kauffman: Repeat, I'm sorry

City Attorney: He's asking whether or not any written objections have been filed with the City and I don't believe the City Clerk has received any.

City Clerk: No

Mr. Boehm: Mr. Graber will lay out the reasons that this Petition should be granted more thoroughly, but we do believe that the Petition must be granted on the grounds contained within the statute, and that there is no grounds for the City to deny the Petition of the same. So, with that, I'll let Mr. Graber speak. Thank you.

Mayor Kauffman: Thank you.

Mr. Graber: Thank you for allowing this. I am going to try and be as short as possible. The, I, I just, just in public here, I just want to thank all the people who are back here supporting me and also thank all of the people in the community who have emailed and phone called me. I found the support overwhelming after the article came out in the paper and I was not quite expecting that. For those who don't know, I don't know if anybody doesn't, but I'm Jim Graber. I have lived in the community all of my life. I went to the Hesston schools all my life, two years at Hesston College. Ruby taught at Hesston College for 26 years, that's my wife and she's sick tonight. And my daughter Sara has also lived on our farm and, all of her life. And, she and Will, her husband, Will Hasty and Sara Graber, or Sara Hasty, I'm sorry, can't get used to that, they are the successor farmers. This is a family farming operation, and they are succeeding into this farming operation. The hearing tonight is simply about our Petition to vacate the land we bought. Just, just, the, we cannot talk about taxes tonight because that's not supposed to use, this is my tax bill I got today, incidentally, on that land. I would love that to be one sheet. That's part of what this is about, was simplify this thing. We in the business of farming. There's no use for all that. Uh, the vacating the property and that's what the, what the hearing tonight is all about, may not reduce any of this amount, but it would sure simplify it. We want to take care and farm this land simply the best way we can and take care of it. One wonders whether this land should have ever been annexed in the first place. This was farm land, it has been farm land the whole time, and we simply want it to be farm land at this time. However, granting us this would not totally eliminate it and seal it up for future deals. We are not interested in that at this time, but just, just want to make that little point clear because if, uh, it could, it could, in fact, be undone at this point. Now, if we get pushed down the line far enough, maybe it won't, maybe that won't be the same statement, but it's, it's just there. The City has, and we've been over this so many times, I hate to repeat it, but the City has no services, no streets, and no utilities on the land. It's strictly farm land and so far, in all of our meetings here, that has never been disputed. Granting this Petition to withdraw the farm land from the City would be very inexpensive and simple compared to the next steps that we would go to if you don't. The statute in law on de-annexation is clear that the taxes may not be used as a reason to deny this Petition to the Council and, of course, I've, I've been a little bit distressed that, that that part of this all got left out when it was given to the paper and stuff, that this is all about that and then they're wrong, it's not. And I really, I simply pray that the City would show us some good faith tonight, so we can work out a decision. I have a great deal of faith in J.T. and I really think that any other issues could, apparently, could probably be worked out. But, this is very important to us, the Petition to remove this land or to de-annex it. If, in fact, your decision would be no tonight, uh, probably someone else would end up deciding what the decision, final decision would be. And, for just the people here, I know you all know this, uh, uh, just a short history, the City was once offered this land for free before we bought this and they declined this. Also, after

we bought it and found out we'd been deceived, as J.T. said, nobody said anything, that it should have, and uh, we wanted to cooperate with the City and we offered to pay 100% of the specials, uh, that was really weren't for our land, uh, 25% upfront, the rest as soon as development started and if there was no development in seven years, we would go ahead and pick them up. We offered to keep this in the city limits and open for future growth. The City, of course, voted this down with an indication that the City wasn't, there was no counter offers, there was nothing, we're simply not interested in development or interested in this land in that way. Future development on this land is severely damaged because the specials were, like a Ponzi scheme, where they were taken from one property and overcost was costing too much and put over on our property and it had nothing to do with anything that was put on our property. Now, I don't know if we, in fact, if there ever was development and if, in fact, there was, there was new streets run, or there was streets run and utilities run, of course, a whole new set of specials would be placed on that, so, I don't know if this is the practice and that would happen where these, these specials then get, oh, they're too high, so let's put them on somebody else's property. Uh, I don't personally like that kind of Ponzi scheme but that's what happened here. And that's how we got hooked. We bought it as farm land, the City doesn't want it, so please let us out of the City so we can do what we want to do and do best. Uh, Hesston City already gets an amount that's three times the value of all the crops we can produce. I didn't say the net, I said of all the crops we can produce. Uh, they are already getting three times of that amount. So, it is a tremendous burden on us. Your decision tonight does not alone change that. As long as it remains in the City limits, we continue to have to farm in fear of threats that the City can force streets and that was just in the paper, again by the City Administrator, that we can force streets in there at any time and pave over your farm land and then charge you for the cost of doing it. That would be devastating to us. That is probably one of the main reasons we're standing here tonight is, this is our livelihood, and living in that fear, going out there and producing with that land and doing the long term investments we have to develop it and then suddenly have the bulldozers charge in and place streets in at our expense, is one that we probably couldn't handle, uh, is just, just a devastating blow. This is our livelihood. It will be Sara and Will's livelihood at some time and that is one of the biggest reasons we are standing here. We do not want to continue to live in the shadow of that fear. The author and journalist who presented in Hesston two weeks ago, for the Hesston community read, the Blue Revelations, made me promise to call her right after the meeting tonight. Cynthia Barnett said that this is exactly what she was talking about in the ethics of water quality. Putting in empty streets over rain absorbing farm land decreases water quality. She was so disappointed that a community that valued her ideas enough to make her book a community read would even allow this. She wants to do what she can to help. The land is precious to us. We bought it with good hard earned money and we own it. We have grid sampled it. We have put trace minerals and other nutrients on that are long-term fifteen year stuff. We will be good neighbors to the surrounding community. We will add the natural beauty of the crops we raise plus we cover crop, we take care of the soil. There's possibly that there will be sunflowers and canolas out there. And if I had a house there on the edges or around, I would love to sit on my patio and look over beautiful fields rather than worry about what kind of neighbors could be moved in on us. Just to give an example, our house is along the interstate there and we realized that a lot of people go by, our farm is there, and a lot people look at that and we often wondered if we could just add some visual enjoyment as they do. So, we have planted over 500 trees and put in ponds and people who go by on the interstate that know us often comment and people who don't know us and suddenly are introduced, comment about us. So that is a little bit of a 20 year history of what kind of neighbors we'd like to be. Uh, it would break our hearts to have our land simply paved over and to have that kind of threat live over us. We are interested in preserving the land and

keeping it top notch, the top notch farm land it is. It is some of the best farm land in Harvey County. It has a productivity rating of 51. For farmers that means something. This is not land that should be paved over and developed. Every person makes a decision as to what an important value you need to make your stand on. This is my hill to stand on, my hill to die on. None of us in the room want to spend the next three years or as long as it takes in the legal system. Keep it simple. Free us from the City limits, so we can have more money, more time to spend on things that are really meaningful. Thank you. I'll be happy to entertain your questions later.

Mayor Kauffman: Thank you Mr. Graber. Are there any questions now for, uh, from the City Council or staff to Mr. Graber or his attorney?

City Attorney: I just, I just don't want to forget, we need to let all of the public speak before we close the public hearing and ask questions.

Mayor Kauffman: Right. Um, alright, um, as far as public comments go, are there any members of the public who wish to speak on the case and as you do, please stand, state your name and address, and we'll try to keep it to maybe five minutes per person, if we can, since we do have so many people in the room tonight.

Mr. Anderson: I guess if nobody is going to speak, I'll speak. My name is Darren Anderson. I live at 229 S. College Drive. And, uh, I apologize for coming in late. I'm a little nervous, obviously, the press sent this set. From what I've read about it, it doesn't sound like this is a very common occurrence, so I don't know all of the legal ramifications or even if this is allowed, um, to, to make this change. I'm also concerned about the other developments around town. Obviously, we've got the South Meadows, the West Embers development, if all of the sudden those current property owners decide that they don't want to pay specials anymore, what that does to the existing property tax owners. Obviously, the City, the schools, the rec commission, all of those entities have to generate revenues, and a lot of those come from property values. Hesston, obviously is growing, which is a good thing, um, I'd like to see that trend continue and we're kind of running out of space to do that. And while I do understand the value of good agricultural land, I also understand that a house is probably going to generate a whole lot more in revenue for municipalities than just ag land. So I'm a little concerned about that for those reasons. Um, obviously, with the, uh, the current projects in the City, it's increased our, um, our taxes, but I'm okay kind of sharing those costs and then also not, in a sense, having the City stuck with the bill for the original platting, as well as the original infrastructure just to have three dead end roads kind of on the east end of town. Thank you.

Mayor Kauffman: Thank you, Darren.

Willems: I am Lou Willems. I live at 302 Park Road, here in Hesston. And, uh, I would speak to the fact that the specials were assessed through the property by the land owner at the time they were done. It was done in good faith. Uh, the specials, uh, what I read in the paper, if the land comes out of the City, the collections of those specials become a little less easy to do or whatever and my concern would be that the citizens of this community would end up having to pay those specials where it was intended to be on the property out there. And I think as a result, I think it would be fair to the citizens of the community that you would deny the Petition.

Mayor Kauffman: Thank you. I want to give everybody a chance. So,

Mr. Boehm: Your honor, if I may briefly comment again, just in closing, if there's no other comments I guess. Again we would just request that the City follow the state statute 12-505. Again, there's been no showing that the public will suffer a loss or inconvenience other than the funding, which is specifically excluded by statute for any determination of public loss or suffering and that unless there's a showing or an objection by someone with proper standing, of which none has been received prior to the hearing and none have been presented here today for the purpose of the hearing, that the governing body shall order the vacation, exclusion, or both. That's what we are asking for, essentially, the exclusion of this property from the City for the vacated plat and it would revert to Harvey County agricultural land. Thank you.

Mayor Kauffman: Yes, let's go back here real quick.

Roth: I am Chris Roth and I live at 19 Parkview Road. I would like a clarification. I do not understand the comments that were made that the City could go out and start building roads on Mr. Graber's property at will. So, could we clarify that kind of a statement and that kind of an action?

Mayor Kauffman: Can you comment, J.T.?

City Attorney: When the public hearing is over, if you all want to ask me that question, I'll answer it because I don't know, but I don't think the City told the newspaper that.

Mayor Kauffman: Ms. Roth, we'll come back to that in just a short time if that's all right?

Roth: So it can be done, it can't be done or you can't answer that at this point?

Mayor Kauffman: Within a couple minutes, we'll answer that, if that's all right, after the public, after the public hearing. So, if there, are there any other comments or questions. And so, I need a motion to close the public hearing, J.T.?

City Attorney: You can entertain a motion, make sure no one else wants to speak.

Mayor Kauffman: Anyone else to speak before we close the public hearing.

Mr. Graber: Can, can I respond and put a question too?

Mayor Kauffman: Sure

Mr. Graber: Just a question about, I appreciate everybody's comments, but about the precedence, is there any other land in the City that actually has specials put over from other property when it would have a double special on, is the question. Is this the only land that would be, so we are unique in that sense? Okay.

Mayor Kauffman: Yes, sir, as far as I know.

City Attorney: No

City Clerk: I don't know that that is correct

City Attorney: I don't, I don't believe the question is correct, but I can address it when you,

Mr. Graber: Ok

City Attorney: when we're done with the public hearing.

Mayor Kauffman: All right, so does anyone else wish to speak and then we'll come back to a couple of questions? Not, is there a motion

Council Member Fuqua: Are we, um, once the public hearing is over, will there be questions from the Council then?

Mayor Kauffman: Yeah, then we'll have questions, yeah.

City Attorney: After the public hearing, the discussion will be solely by the bench. You can ask questions, but there won't be any more public right of comment once the public hearing is closed. So, we want to give everybody a chance now.

Mayor Kauffman: Right, so after this portion is done, the City Council will have the opportunity to ask questions back and forth a little bit, but there won't be any more public comments, if that makes sense. So, is there a motion to go ahead and close our public hearing?

Council Member Fuqua: So moved

Council Member Moore: Second

Mayor Kauffman: We have a motion and second, all those in favor, say aye.

In response, Council Members Schwartzendruber, Moore, Fuqua: Aye

Mayor Kauffman: All those oppose, nay.

No response

Mayor Kauffman: Okay, so we'll close the public comment section of our proceeding tonight. Um, does anyone have any written communications or petitions from the public?

(No response)

Jason, has anything been received?

City Clerk: Okay

Mayor Kauffman: Okay, um, and then let's see, Mr. Graber had a question for us which J.T., would now be an appropriate time to answer that question?

City Attorney: Sure. You want me to try to answer both questions that's been asked. Jason, do you have a, do you have a picture of this property?

City Clerk: Yes

City Attorney: Google, something, actually, do you have something that shows where the utilities are?

City Clerk: Yes, yeah, in the packet I put a utility map and then also a map that I got off of the Harvey County website.

City Attorney: Can you put that on the screen?

City Clerk: Yeah, pretty close. Okay, that's the utilities.

Council Member Schwartzendruber: I'm sorry, Jason what page is that on?

City Attorney: Alright, so I'm a little

City Clerk: 58

Council Member Schwartzendruber: 58, thank you.

City Attorney: I'm a, obviously, it's never as much fun to play stump the band when you're on the receiving end of the question. But, um, so, um, I'm going to tell you what my best recollection of this is even though I wasn't the City Attorney, we were involved as Bond Counsel, I think when this was originally done. Am I right about that? Is this one I would have served on?

Council Member Schwartzendruber: Uh, huh

City Attorney: Okay, so, I'm estimating this property was annexed into the City limits in 2001. So more than 15 years ago. And what the City received at that time would have been a Petition, and you correct me if I'm wrong, Jason, but would have been a Petition.

City Clerk: It was before my time too. Just to be clear.

City Attorney: Okay, a Petition for landscaping to build an entryway to the development and a Petition for drainage to create the xeriscape drainage for the development and that Petition would have been spread against all of the lots, which are in phase one, as well as the then unplatted tract in phase two, and separate Petitions would have been received for the streets, the water, and the sewer, all of which would have been assessed only against the lots that were being developed.

City Clerk: Yes

City Attorney: So, in answer to the question, and to be very clear, I don't think that's an uncommon practice, and I don't know that this is the only place in town. I'm sure there are other, obviously, all these lots that don't have a house on them are undeveloped and have special assessments on them. And so, I don't know the answer to that question, but I don't believe it's a double special. I don't, that's what I wanted to be clear about in the form of the question. I think he asked the question in good faith, but it does, I don't think it's a double special assessment. So, for that, what I understand the City has done, is yellow gas?

City Clerk: Uh huh, yes

City Attorney: So, the City has extended gas lines all the way through this property into the right-of-way so that this property can be connected. The gas coming from West Dutch Avenue. Green is sewer?

City Clerk: Yes

City Attorney: So, the City has brought up the sewer line for the development of all of these properties, including three locations along the edge of this property, for future growth. And then the City has contracted for and through the special assessments, brought the water down from West Dutch Avenue to serve this location and to bring water, municipal water, to the right-of-way on the edge of this property. Am I reading this right?

City Clerk: Yes

City Attorney: Then, I think these are the fire hydrants the City has installed for the development of this property, which would include development farther east. The specials that I understand

were spread against this property, however, were for the landscaping of the entrance way and storm drainage. That's what the specials were for, because the City requires that when you pave streets, there can't be any additional runoff. So, whether through retention or detention, water storage has to be created because I believe, as Mr. Graber pointed out, the streets are not permeable like the soil is, so the water needs somewhere to go. So, those are the facts, as I understand them, and this is the opportunity to correct something that might be my mistake, but somebody said it's unplatted and that's not true. The property has been platted and all of the streets have been dedicated to the City. And, I'm trying, including this additional ingress and egress that was intended off of West Dutch Avenue. I think it's notable that there are no cul-de-sacs on the end of these streets. So, there's no private property right to create the necessary space you would see here for a cul-de-sac. That is the property as I understand it. So, I think that addresses the, are there any other properties that have double special assessments, and I think what he meant was, undeveloped land that has specials on it. And, I don't know the answer to that question for the rest of the City, although I know, because we know that there are undeveloped lots that have specials on them.

You had one question about understanding the City's desire or attempt to pave streets, and I want to try and answer that question. So these streets are all dedicated. They belong to the City of Hesston. They've been dedicated by plat, and to be clear, that's not the question tonight as I understand it, is to whether or not to vacate the plat, but rather to just take the entire property out of the City limits and I am not a good enough lawyer to tell you whether or not that will vacate the plat. But, certainly, the streets were dedicated to the City of Hesston, if a plat exists and if the county in it comes into the City limits, there's a statute that says the county becomes city streets that I believe as somebody mentioned tonight already. Exclusion from the City is a little less common. So, off the top of my head, I do not know the answer to that question. However, I do know, that when this property was platted, the owner asked the City to reassign the special assessments from the entire property and put them on a per lot basis so that every lot in the development has a smaller special assessment on it. And I don't know, what is there about a 120

City Clerk: 122, I think.

City Attorney: There's a 122 lots in here. So that special for the landscaping and drainage would have been divided by 122 and assessed to the lots at the property owner's request, and, if I did it, the property owner would have indemnified the City, if anything ever goes wrong with that in its entirety, for agreeing to reassess those on a per lot basis as they specifically requested. So, what the City has done here is what the developer has asked and requested and as far as I know, there are no assessments that weren't specifically asked for or weren't assessed. But, I don't, again, I wish to point out, that's not the question tonight, I'm just trying to answer the question that was asked. And so, the question tonight is, and the statute has a four prong test, as I recall it, is whether or not this property should be excluded from the City limits. And to make that determination, the City has to determine that the statutory notice was given, and, as far as I know, it was published and I think we've done that. The second question is, are there any private property rights adversely affected under the statute. The third question is whether or not there's any public loss or inconvenience by virtue of excluding the property from the City. And the fourth thing I think you need to look at is just injustice, what's just, under the circumstances, what's fair, having the Petition been requested. So, off the cuff, I've tried to answer the two questions, but I will answer any more questions the Council has to the extent I can answer.

Council Member Moore: There was the question that Chris had.

Mayor Kauffman: Let me answer that. That was the second question.

Council Member Fuqua: Well, I'm not sure it was answered clearly at all.

Council Member Moore: No, that wasn't the question.

City Attorney: Oh, okay. You're right. Thank you. She asked, could we force the streets in. This property owner actually petitioned for all these streets to be built and for all of these to be extended. But, when the developer started experiencing difficulty sometime around what, 2008, they asked the City to hold off and I think the City did hold off because the City typically would not force somebody to have streets who didn't want them, even though they've been dedicated and they're properly owned by the City. So, we do, in fact, I think, have the petitions to build those streets and to extend the water, sewer and to special assess these lots for all of that. But, to my knowledge, even though those have been declared advisable and an ordinance has been put in place to order those improvements to be made, as a courtesy to the property owner, the City hasn't let bids on that or proceeded with that or, as far as I knew, was threatening to do that.

City Administrator Emry: No

City Attorney: But those documents have all been received. The prior owner asked for all of that. The City just hasn't done it, and I think that was the answer to the question that you were asking.

Council Member Fuqua: So does a new ownership of the property not change that?

City Attorney: The property is platted, I mean, if you go to the, if you go to the Register of Deeds, or if you receive Title insurance on the property, none of that will change. The same way as if this person sold their house. If it had, the new owner would own the house and the land and be responsible for the taxes, but also have the service of the utilities.

Mayor Kauffman: Thank you, J.T. So this will be the part of the proceeding where the City Council can ask any questions to the Grabers, or J.T., or the Grabers' attorney. And if I can, can I ask a question or two to Mr. Graber?

City Attorney: Yes

Mr. Graber: Sure

Mayor Kauffman: Um, so my first question is, we, uh, why don't you just farm the land, as opposed to asking to de-annex the land. I mean, we have no problem with that, so why don't you just farm as you wish to?

Mr. Graber: Well, you know, in looking in long term developments, and, incidentally, I am the new owner, and I am asking the City, just like the old owner, you can go back and say the old owner asked for this and we gave it to you and all this. But, I'm the new owner. There's a lot of reasons. We do a lot of things on our land that's fifteen year stuff. Uh, we kind of have to, when we put that investment in, we have to be able to do that freely. And that's one of the reasons. The other reason is the terrible hassle that we have, uh, and you know,

Ms. Hasty: Can I answer some of this, just, like, I mean

Mr. Graber: Sure

Ms. Hasty: I answered the other day. So when we go into the FSA office, like, if we want to sign up for a program, we technically do not own those roads, just as I said, so we have to manage that differently than as if we just owned it as a piece of farmable land. And my understanding and intention was to have the vacation as part of this, like, that was absolutely intended because that's a very important part of this. And then, the tax bills as you saw, like, we don't care if it's a big bill, but one paper would sure simplify things and that goes along with a lot of different paperwork that we do. We have to deal with a lot of different pieces in the current state, whereas, if we could get it down to just one or, you know, all of that just one.

Mayor Kauffman: Sure. Okay, I have a couple of more questions, so both of you, thank you, go ahead.

Council Member Moore: My question is if we vacated as a City, you're still going to have platted parcel, is that right?

Ms. Hasty: No

Council Member Moore: And you're still going to have, have all of those individual tax statements, right?

City Attorney: Well, they haven't asked to vacate the plat. To be clear, that would be a different process. They've asked to just vacate the City limits, um, and so, there will be a legal question as to what happens to the plat. They haven't asked that the plat be vacated and so I can't answer that question because that's not what they've petitioned for or asked and that will be a completely different process that would start with the Planning Commission. And, typically, when someone requests a vacation of a plat, it's because they have a new plat that they're substituting and recommending for adoption.

Mayor Kauffman: The, the

City Attorney: That's got to be clear, that's not what they're asking for.

Mayor Kauffman: Right

City Attorney: The Petition is to exclude it from the City limits.

Mayor Kauffman: The next question I have, please don't take it the wrong way, because I don't mean it to sound disrespectful to either one of you. But, understanding your reasoning for wanting the de-annexation, and the issues that you have with the land, why did you buy this piece of land? I mean there's a lot of land available all around the city

Mr. Graber: Uh huh

Mayor Kauffman: and so on, why would you buy a piece of land that has all of these restrictions and, uh, so on?

Ms. Hasty: Sure, so, we always knew that vacating was an option and we knew that it was platted. Um, when I went in to, like, kind of check out the land, I had, like, a bid of where I would go up to, and, um, I checked if there were any ordinances on the land and there were not and then I checked to make sure it was in the agriculture tax rate and it was. Um, and I did not know about the special assessments because it is generally assumed that there will be ordinances on the land, and actually, when I went back to the Register of Deeds office, she was very surprised that there were special assessments. So, that did up the price. Now, whether that was

necessarily a bad business decision, we don't know yet because, like, as long as it is as productive as the productivity rating says, and we're able to farm it without a whole lot of extra hassle, it'll still work out for us. But,

Mayor Kauffman: One last question. Uh, and then I let the rest of the Council go. I got a call from another farmer who was interested in buying the land, but did find out about those special taxes and didn't bid on the land because of that. So, what would you say to the other potential bidders who didn't buy specifically for the reason that there were those taxes on there?

Ms. Hasty: Well, I would just assume then that they added that into part of the cost. And so, like, we might have had a higher original cost in our head that we were willing to pay too.

Mr. Graber: Can I answer something here too?

Ms. Hasty: Sure

Mr. Graber: We, she tried what we knew and she didn't find out. And like J.T. said, somebody should have said something. Somebody should have said something. When you bought your house, Dave, did you ask if Graber Grain Farms had a lien to grow crops on your front yard? Some of these things you just don't think to ask.

Mayor Kauffman: Sure

Mr. Graber: So, granted, we, we never said that maybe wasn't a mistake, but it was a mistake also for everybody standing there not to say a thing and let it be covered up. And then, the insulting the next day when they said we got them on the line for these, this, this is not about this.

Mayor Kauffman: Right, but, and please understand my line of questioning isn't to, those things happen, and I'm not trying to make anyone, you know, but I, speaking for the rest of the citizens of Hesston, I've got to kind of just figure that line of questioning. So, what other, what other questions would the Council have for the Grabers or their attorney?

Council Member Moore: I guess my question would go back to Gary in, in some ways, and it has to do with, would the City proceed to build streets and sewers and all that kind of stuff if the property owner said they didn't want to have that done?

City Administrator Emry: No, I would not recommend that to you.

Council Member Moore: And I wouldn't think that the Council would approve of something like that. But, the question then beyond that is, if the property owner doesn't request and the City doesn't want to go ahead and put streets and sewers and all that kind of stuff in, we're not, nothing is going to happen to that property to impede you from farming it, is that correct?

Ms. Hasty: Well, and we would certainly like to trust that that's the case and that's fine, but there's still the issue of the City owns that property so that does affect us farming it and signing up for different programs and, um, just the way that we are able to present our land to different government programs and the FSA office. And, as well as just, potential other buyers. But,

Mayor Kauffman: Sara, again, I don't mean to sound bad, but did you take that into consideration when you made your bid on the land?

Ms. Hasty: The platting?

Mayor Kauffman: Well, the fact that you had all these restrictions?

Ms. Hasty: Oh, well yes, but for the price I bid, it was very good.

Mayor Kauffman: So you knew you were taking a chance?

Ms. Hasty: Yes, like a sheriff's sale, we understood there was more risk. We did not understand how much could be withheld out of the sheriff's sale. That's absolutely granted, but I would still say with everything we know now, and all of the decisions and research that we've done about the past decisions that have been made with the City regarding this piece of land, I think that we could have very easily looked at it and made a wise business decision to go ahead and purchase it.

Mayor Kauffman: Sure

Ms. Hasty: But we do think that it's in the best interest and can, we can really reach the full potential of the land if we're able to farm it. And to do that effectively, we need to definitely have it vacated, which is a step that we intend to do if it's not in there currently and get it out of the City limits.

Mayor Kauffman: Thank you.

Mr. Graber: And then let me just ask though too. We didn't know about the other. We didn't know it. Nobody said anything. They were sitting there smiling. We didn't know that part. It would have affected our business decisions somewhat.

Mayor Kauffman: Sure, absolutely

Mr. Graber: We were snookered, there's no question.

Council Member Moore: I do have one other question. How, if we, if this property were too vacated, be vacated, and someone beyond the property wanted to be annexed into the City, how will this affect the value of their annexation and their potential to get annexed into the City? You know, let's say, if there was a huge continued growth, some growth that took place that meant that it was optimal to annex properties to the east, how will that impact or impede that process?

City Attorney: Jason, do you have a map of the City limits?

City Clerk: Yeah

City Attorney: This really isn't fair because I just sit here and ask Jason if he has things.

City Clerk: That's right.

City Attorney: You guys keep asking me questions. I just make it his problem. And I want to say, Jason, I wish everybody could do what you just do.

City Clerk: Okay

City Attorney: Okay, so I'm thinking the City limits is demarcated in red?

City Clerk: Yeah

City Attorney: Okay. So if adjacent land wanted to develop or annex, the process would be by asking the City whether or not they could be in the City limits. Petitioning for annexation and the City accepting and allowing them in the City limits. That process for continuous annexation is consensual, but, it's actually a very good question because the process for annexation is different

if it's not attached. So, if this property, assume with me for a minute, isn't in the City limits, and these people, I'm guessing it's a rural development, got to where they needed to be in the City limits for purposes of the provision of City water or City sewer, then the process would be different because that would be an island annexation, which is legally more significant, and typically requires the County's governing body's consent, which is not required for adjacent annexations. The test is whether or not it touches the City limits and is attached. So, if you were to vacate and take this out of the City limits after sixteen years, then the surrounding properties would no longer attach and would have a little different and probably a prolonged process, and it wouldn't necessarily be guaranteed that they could be in the City limits just by virtue of the City Council agreeing.

Council Member Fuqua: The I have a, just a comment to make, I know one of the, one of the things that we need to consider is will the public suffer any loss or inconvenience if we were to approve the Petition. I believe that they would. I think this original development was a part of the plan that the City was planning to grow. I think that we all assume that over the next however many years, the City of Hesston is going to continue to grow. The City has utilities that are already there. If I were, uh, one of the people who had purchased one of those homes out there, I think the original intent would have been that yes, this is going to be a part of a larger development and that didn't work out, doesn't mean that it won't work out sometime down the road. Um, you would have thought that a larger development would have improved property values, so to have dead end streets forever, does that, I don't know for sure, but does that, uh, decrease the property values that are there. I think it might. Uh, another thing, I just want to make a comment, that I, I know that the intent is to farm the ground, uh, however, twenty years from now, if the City continues to grow and there are no specials left on that ground and some developer comes along and wants to pay a pretty price for that, I wonder if Mr. Graber would want that land to be coming back into the City at that time. I do think that there are some, uh, loss of, that the public would suffer loss and inconvenience.

Mayor Kauffman: Other questions or comments?

Council Member Swartzendruber: That was exactly my thought, Larry. Especially since the first time you guys came to us, it was, with, it was going to be, it would be developed in future.

Mr. Graber: We were offering, you asked that,

Council Member Swartzendruber: And so, that's

Mr. Graber: at 100% and everything. We wanted to try to cooperate. You said no.

Mayor Kauffman: Okay, so, I think we've asked the questions that we need to ask as a Council, and so, J.T., um, reminded us that there's four items to consider here as we think about this. Did we have legal notice? Will the rights, uh, will private rights be injured or endangered? Will the public suffer any loss or inconvenience? And then, just to think about justice for the Grabers and for, for all the citizens that pass through. So, that being said, is there a motion either one way or the other to grant the exclusion or to not grant the exclusion?

(No Response)

Mayor Kauffman: J.T., help me out.

City Attorney: Or other questions.

(No Response)

City Attorney: Well, I think that, I think the statute requires you to have a public hearing and I think the statute requires you to answer the petitioner.

Mayor Kauffman: So what do we need . . .

City Attorney: I think if there are additional facts you need and/or additional information you wish to have before you make that decision, I think it would be lawful to table the item, but, I think otherwise, it'll ultimately be, and quite frankly, in deference to the petitioner, should be answered. Since you asked and there was a deafening silence, I think not taking any action, quite frankly, is probably actionable.

Council Member Fuqua: So you're saying that it cannot die for lack of a motion. Is that what you're saying?

City Attorney: I think the issue can die for lack of a motion, but I think you have to decide the factual circumstances that support that decision.

Council Member Fuqua: You mean those four items?

City Attorney: Yeah, I mean, I think if those four items weigh in support of de-annexation, and you believe those facts support that, then I think that you're duty bound under the statute to exclude the property. I believe this may be one of those cases when shall means may, but that's not what the statute says. The statute says if you find all four of those matters weigh in the petitioner's favor, then you shall exclude the land. If you don't find that they weigh in favor, then I think you're free to deny that request.

Council Member Moore: Is a non-motion a denial?

City Attorney: No, but it, it's just simply inaction. And I think that, potentially, a court could order you to make a decision because the request has been made, or in the alternative, it might make it for you. I don't know what a court might do. I don't pretend to know what a court might do.

(No response)

Mayor Kauffman: Well, all right, if no one wants to make a motion,

Council Member Moore: Have we, uh, have we covered all four of those questions?

Mayor Kauffman: I think we have. Let's go through them one more time. Uh, due and legal notice has been given. We definitely decided we were okay there. Will private rights be injured or endangered? And you spoke to that, Larry?

Mr. Graber: Nobody showed up tonight to say that either. They, you know, the land owners adjoining had that, they're the only ones who could talk and they could have objected.

Mayor Kauffman: So, other land owners showed up, but not the adjacent land owners.

Mr. Graber: Right, and they're the only ones who have standing about this right now.

Mayor Kauffman: Is that correct?

City Attorney: No

Mayor Kauffman: Okay, I would think that all the citizens of Hesston would have standing in that.

City Attorney: He's, I think what he's saying is on the vacation of the street or an easement if an adjacent land owner objects, then you're prohibited from excluding

Mayor Kauffman: Okay

City Attorney: or vacating the property. And the statute's a little confusing on that point because it combines easements with the City limits. So, in a for instance, if somebody came and wanted you to vacate a road and somebody on the other side of the road objected and said no, I need that road, you would legally not be permitted to vacate the road.

Mayor Kauffman: Okay, thank you. Then the third item was will the public suffer any loss or inconvenience? And the fourth item was in justice to the petitioner, should the exclusion be granted and we talk about just fairness there. So, I believe those were the four points that we have.

Council Member Fuqua: I'll attempt a motion. Having considered the evidence, I would, uh, determine that the statutory requirements set forth in the Kansas state law or Kansas statute have not been met. I believe that there are private rights of the neighboring, uh, people who live close by who will be affected. I think that public will loss, will suffer the loss or inconvenience of the three dead end streets, uh, possible loss of property values. And, uh, for those reasons I move that we do that. We do not grant the petition.

Mayor Kauffman: We have a motion. Is there a second?

Council Member Moore: Second

Mayor Kauffman: Motion and a second. Is there any more discussion or questions? If not, all those in favor say aye.

Response: Aye

Mayor Kauffman: All those opposed, nay. So that passes three to zero.

City Attorney: Mr. Mayor, I received kind of an unusual request before the meeting. The petitioners' attorney, you probably noticed it because it's conspicuous, asked whether or not he could tape record the meeting and so I wanted you all to know that I told him he could. I would ask him to make sure he preserves a copy of it and/or provides me a copy of that in the future.

Mayor Kauffman: No problem. Thank you for coming. I know this is a difficult situation and I know that we will be talking again soon.

Mr. Graber: And we'll be proceeding. Thank you.