

Call To Order:

The regular meeting of the Lansing City Council was called to order by Mayor Mike Smith at 7:00 p.m.

Roll Call:

Mayor Mike Smith called the roll and indicated which councilmembers were in attendance.

Councilmembers Present:

Ward 1: Dave Trinkle and Gene Kirby
Ward 2: Andi Pawlowski and Don Studnicka
Ward 3: Jesse Garvey and Kerry Brungardt
Ward 4: Tony McNeill and Gregg Buehler

Councilmembers Absent:

OLD BUSINESS:

Approval of Minutes: Councilmember Brungardt moved to approve the special meeting minutes of January 12, 2017 and the regular meeting minutes of January 19, 2017, as presented. Councilmember Garvey seconded the motion. The motion was approved, with Councilmember Kirby abstaining from the vote.

Audience Participation: Mayor Smith called for audience participation and there was none.

Presentation

COUNCIL CONSIDERATION OF AGENDA ITEMS:

Request to Purchase Trucks: Councilmember Buehler moved to approve the purchase of 2, 1-ton trucks with snow plows from Henry Martens Chevrolet Buick GMAC as bid. Councilmember Trinkle seconded the motion.

- Councilmember Trinkle asked do they have electric windows.
 - Parks & Recreation Director Jason Crum replied yeah they do.
- Councilmember McNeill asked Jason this was already approved right. I mean what line item?
 - Councilmember Garvey stated I think it was I remember talking about it.
 - City Administrator Tim Vandall replied this would come from the Equipment Replacement fund, this would be part of that lease/purchase package we'll do.
 - Councilmember McNeill stated alright.

The motion was unanimously approved.

Legal Services Agreement for Project 52-U-2113-01: Councilmember Kirby moved to authorize the Mayor to execute the agreement with the Law Firm of Morrison, Frost, Olsen, Irvine & Schartz, LLP for services on Project 52-U-2113-01. Councilmember Garvey seconded the motion.

- Councilmember Pawlowski stated I don't recognize the name, have we used these people before?
 - Public Works Director Jeff Rupp replied no, I think they are connected with the consultants on the second item.
 - Councilmember Pawlowski stated ok.

The motion was unanimously approved.

Right of Way Acquisition Services for Project 52-U-2113-01: Councilmember Kirby moved to authorize the Mayor to execute the contract with SMH Consultants, P.A. for services on Project 52-U-2113-01. Councilmember Buehler seconded the motion. The motion was unanimously approved.

Request for Rezone of 24481 139th Street: Community & Economic Development Director Stefanie Leif stated good evening Mr. Mayor and City Councilmembers, the application before you as the Mayor outlined, there was a public hearing held on January 18th by the Planning Commission. There were four Planning Commission members there that evening, so three were absent. The motion that did pass was to recommend denial to the City Council. So there were three that were in favor of that denial and one that was opposed. The one that was opposed had really wanted more information and was more interested in continuing it to another meeting, but primarily the concerns were regarding traffic in that location and possible impacts on the neighborhood. This information is in your packet as well, I just wanted to show you where this property is. If you go South on K-7 to McIntyre Road, 139th Street is right here and this property is where it says Emmanuel Baptist Church in this location. It is 9.85 acres, it is currently zoned rural residential 2.5, it was annexed in the early 2000's and the City kept the County zoning at that time. It was not rezoned at that time to a zoning district that is actually part of the City, and the interest is to rezone it to commercial business B-3. In your packet I did include a list of permitted and conditional uses in a B-3 zone, so just keeping in mind an application that would be approved for B-3, any of these uses would be allowed. The authorized agent was interested in doing a nursery and lawn care business on this property, but a B-3 zone would allow any uses that are in that list; so just kind of keeping that in mind. Just a couple of things that came up from the Kansas Department of Transportation that the Planning Commission discussed at length. We do have some comments from KDOT; 139th Street is actually

completely in KDOT right-of-way, so the right-of-way actually extends all the way right up to here, so their interest in this of course that the business would be accessing off of 139th and so they would like to have a change of use permit as well as a traffic impact study. The traffic impact study can be in really any range depending on what the final use is, so that is something where they would need more information from the applicant on before making a decision before granting a change of use permit. So with that, I'll turn it over to some comments from both the applicant and folks that are here tonight.

- Mayor Smith stated once you raise your hand and come forward, give us your name and your address if you'd like to address this issue, I'd appreciate it. Who would like to go first?
- Larry Dunn of 14026 McIntyre Road voiced his concern with the impact of a commercial entity that could turn into any one of one-hundred different uses after a rezone to B-3 was granted. He also addressed his concern of run off from the business into the lake.
- Tom Darnell of 14008 McIntyre Road stated that he is in favor for what Mr. Jensen has planned for the property. He also stated that across from his home is a commercial business and he has had no issues with that being there.
- John Stalec of 14060 McIntyre Road stated that as a truck driver, he has major concerns with delivery trucks and trucks pulling lawn equipment being able to turn safely from 139th onto McIntyre without backing up traffic or becoming a safety issue. He also mentioned concerns with runoff. He also mentioned his concern that if the rezone is granted to B-3 any business can go in there, and while a nursery is ok, a liquor store is not.
- Les Yother of 14124 McIntyre Road expressed his concern regarding property values with having a commercial business in a residential area, along with his concerns of run off and the traffic impact.
- Ron Barry vice-chairperson on the Planning Commission addressed some of the concerns the Planning Commission had that aided in their decision to recommend denial of the request. The request is to rezone the entire 9.85 acres to a B-3 zoning. If approved as a B-3 any of the allowed types of business could be conducted at that location, not just the intended use by the Authorized Agent. The Comprehensive Plan was considered by the Planning Commission, which called for an extension of the MSOD, and the Future Land Use map identifies the area as single family residential; also the concern with spot zoning arose. He also addressed that City sewer would not be close enough to connect to, so the property will have to be on septic. The traffic study was a concern with the Planning Commission and what type of impact it would have as well as the impact it would have on the KDOT K-7 Corridor Master Plan. It was also mentioned that 139th is a chip & seal road, so there was concern over stability or problems in the future. The Planning Commission also considered the traffic impact to residents. He also mentioned that no information was provided nor was a study done regarding water run off.
- Austin Reynolds of 24417 139th Street expressed his support of the rezone and feels the impact will be very minimal and that the positives outweigh the negative. He also mentioned that if a special permit very specific to what Mr. Jensen wants to do could be done so the if he does sell the property nothing unwanted would go there, he'd been in favor of that as well.
- Julie Sentman of 24511 139th Street expressed her support of the nursery going in. She mentioned that she didn't see any major impact with traffic in that area. She agreed that it would beautify the area and be an asset.
- John Jacobson speaking on behalf of Kevin Jensen expressed that the Future Land Use map calls out the majority of the area in question as commercial and office, while the parcel in question is called out to be residential. He also mentioned that he didn't feel there would be any impact to the K-7 Corridor Management Plan and it is viewable on the KDOT website. He mentioned that the authorized agent is planning on using the existing structure. He addressed run off and advised that since there will not be an exponential increase in structure, so there would not be an exponential increase in impervious surface, except for the parking lot, and that would be required to follow the zero increase run off policy the City has. He advised that Mr. Jensen has secured the services of GBA to address the Traffic Impact Study. He also mentioned KDOT has reviewed this based on the land use element and has determined in their preliminary study that there are no geometric improvements they are going to recommend. He may have to widen his entrance to the site. He also advised that Mr. Jensen is willing to commit to that study and spend the funds necessary to get that completed if that is part of the situation.
- Fred Nason brother of a resident on the same road of the property expressed that he did not feel there would be any issue with trucks accessing 139th street. He expressed that there is plenty of room.
- John Stalec of 14060 McIntyre Road re-stated that with his experience with truck driving and doing truck rodeos, that there is no way to button-hook the turn onto or off of 139th street.

Councilmember Garvey moved to remand the application to the Planning Commission with a recommendation that it is re-noticed as a rezone to a B-3-P (B-3 Planned Overlay District). Councilmember Buehler seconded the motion.

- City Attorney Gregory Robinson asked are you directing them to look at all options with an emphasis on the zoning that you specified or is that the only thing you want them to look at.

- Councilmember Brungardt asked what's your rationale, Jesse.
 - Councilmember Garvey replied there were only four people on the Planning Commission at the meeting and I believe there will be more discussion if it is sent back to them.
 - Councilmember Brungardt stated something to think about it, if we have a quorum here and two of us aren't here we don't go back and discuss.
 - Councilmember Garvey replied I was at that meeting Kerry and I listened to the discussion at that meeting and I've heard the discussion here tonight and I think it needs to go back. That's just my opinion, if you're not in favor then vote no.
- Councilmember McNeill asked is there a way we can do a conditional use for this land and then if they sell the property or something, change it back to residential. A lot of good folks came up and said hey I've seen this landscaping place, I've seen the plan, and I know the person, and that's great, but as soon as the tavern moves in there, which is also on the list, folks are going to be a little upset that there is a tavern there that stays open until two in the morning, with drivers coming in and out. There is a whole bunch of different things on that list, I have no problem with the landscaping place going in there and most of the majority of the residents don't, but we're supposed to look to the future of that land use not just what could go there today. That's my angst with approving that part unless we can do it on a conditional use.
 - Community & Economic Development Director Stefanie Leif replied I think that is a very good question, and in my opinion I don't think there is a way to do a conditional use permit the way it is right now, and Greg and I have talked about this, in my opinion there isn't, we never rezoned it to a City zoning district during the transition from annexation to the City, we kept the County zoning, but that same County zoning district does not actually exist in our zoning code, so we don't really transfer the regulations. Once it's annexed into the City the City regulations guide it and we don't have City regulations that actually guide it, so in order to do a conditional use permit you need to have a use that is in that list of conditional uses, so in this case if it was zoned R-1 which is residential it's a more restrictive residential zone, if this landscaping and lawn care was listed as a conditional use, then we could definitely go about it that way and they could apply for a conditional use permit. But because it is in this sort of middle ground, and I don't know if Greg wants to respond at all on it, but that planned overlay district is really where I was coming from if the City did want to allow this particular use, they would be very limited to an approved plan, so they would have a development plan that would go before the Planning Commission for a public hearing and then come before the City Council, and it would be very specific to their use. Now ten years down the road and they are no longer in that location and they want to sell it to somebody else, then that new business would have to come in and amend that plan and get a new plan, and that's the way I understand the code and I feel like that would be the best tool to use if that was a use that you wanted on this particular site.
 - Councilmember Garvey asked the Council would have to approve that new plan.
 - Community & Economic Development Director Stefanie Leif replied correct.
 - Councilmember Pawlowski asked the Planning Commission approves it first then sends it back to us.
 - Community & Economic Development Director Stefanie Leif replied right.
- Councilmember McNeill stated you say that we didn't put anything new there, that it was zoned like the County had it, however we've been in several discussions on the current Comprehensive Plan that says its zoned residential, right? In the Comprehensive Plan it shows that it's residential, so every time somebody comes in here and wants to put a, if it was zoned commercial in the Comprehensive Plan and we say eh, we don't really want to go commercial, then they could sue the City and say hey.
 - Councilmember Garvey stated aren't we in the middle of reviewing the Comprehensive Plan and making changes in places that were wrong.
 - Councilmember McNeill stated it's been approved, Jesse, it's been approved, that was the way we approved it, right, because we didn't always agree on everything that is was zoned at. That happened to us already, that's how we got another apartment complex up there that was A-1 but it was not in our Comprehensive Plan as being rezoned. Not that one it was another one, sorry, different property.
 - Community & Economic Development Director Stefanie Leif stated the Comprehensive Plan is a guiding document, you can still make decisions that are not in conformance with it, but the best situation in that case is to amend your Comprehensive Plan to truly reflect, but it is a guide it is something that the City puts a lot of time into with the hope that we're following it as we make decisions.
- Councilmember McNeill asked but you can't change back is what I'm saying. If we say we're going to let that be rezoned, then later after he sells it and we say oh no just kidding, because we don't want something else that we don't want in there to go in there.

- Community & Economic Development Director Stefanie Leif replied the City can always initiate a rezone on a property, but unless that property owner wants that rezoned it's a pretty tough fight to get that to happen. But you can change zoning just as the application before you now, but it is pretty tough once it is that way.
- City Attorney Gregory Robinson stated ultimately you have to make a decision in this body to what it is you want to do. Do you want control or do you want no control. If you allow a zoning that allows a thousand uses then you're going to lose that control, because if that business folds up, moves away, whatever, it is then subject to be sold to be used for whatever the property owner permits. It still have to come in for its plans and all those types of things, but you're going to lose the ability to say no we don't want that there, as long as it meets the requirements and meets all the underlying development, infrastructure and those types of things. But if you want control and you're going to allow what we refer to as spot zoning, so to speak, in my opinion it's better to do that through conditional uses, special uses things like that so where you still retain the control, so if it gets out of hand and gets out of control and it doesn't conform to what you were told it was going to be for, then it can either expire, you pull it at the end of the term; special use, that's what Stefanie and I are going to look into to see if special use is more appropriate, if it's allowable, because then you have more control because you can pull it. Whereas we talked before with Mr. Kaup is if it's conditional use it can go with the land, it can go for the full five years, so your exposure for control is expanded outward and makes it delayed for action, however, special use it's perhaps that you're going to be able to more responsive to any problems that you may receive so that's what Stefanie and I are trying to look at to see what would be the appropriate thing. It kind of boils down to what kind of control you want, whether or not, because in some respect if we go with this overlay, and Stefanie and I talked a little about this, is that are you then technically really starting to do spot zoning. You are doing an overlay on a 9.85 acre tract, then what happens in the future use, what if the use just the north of it has a more appropriate business for what you want to zone it or what the Comprehensive Plan calls for, but now you've spot zoned it with an overlay on it, that now doesn't really make that applicable sitting next to each other, so then you start playing leap frog with properties because of something we're overlaying onto something and again, that's the kind of answers we've got to get solved so you can look at and say we want to go this route.
 - Councilmember Pawlowski asked are you saying that the B-3-P we aren't even sure that can be done.
 - City Attorney Gregory Robinson replied no I believe that it probably can be done, but ultimately as the legislative body you have to determine is that what we want to do.
 - Councilmember Pawlowski replied but is there a better option?
 - City Attorney Gregory Robinson responded that's what she and I are going to talk about whether or not that would be a conditional use, whether it would be a special use, and we still have to work out some issues with the County zoning right now, because right now it's at 2.5 residential zoning, so I want to speak with some other folks and Stefanie to see; we've never rezoned this can we then adopt, or look at what the County would do. Can we go through and adopt a process where you're a County zoning but you're a City property we're going to look at this and apply the County rules to it because this is zoned County right now, so I'm going to look at it and get those kind of answers so that Stefanie and I can then recommend to you folks and the Planning Commission, it's obviously you guys' choice at the end of the day.
- Councilmember Pawlowski asked but do we need to table it or just send it back to the Planning Commission to look at.
 - City Attorney Gregory Robinson stated I think that was kind of what the motion was, the only reason I butted in...
 - Mayor Smith stated we've got a motion on the floor and we need to answer that first.
 - Councilmember Brungardt stated I'd like to hear what Greg's got to say.
 - Councilmember Pawlowski stated we might want to amend it.
 - City Attorney Gregory Robinson stated what I was going to say was the only reason I butted in was because I didn't want it to go back perhaps and be handcuffed to simply go back and discuss B-3 Overlay. Do you want the Planning Commission to look at all options that it can then recommend to this body for either adoption, rejection, whatever.
 - Councilmember Buehler stated you made the motion, so is that what you want?
 - Councilmember Garvey stated I want all options.

Councilmember Buehler withdrew his second.
 Councilmember Garvey withdrew his motion.

Councilmember Garvey moved to remand the application to the Planning Commission for review of any options.
Councilmember Buehler seconded the motion.

- Councilmember Kirby stated I'm going to throw out there because I agree with Kerry, it seems like to me, they didn't get what they wanted so now we're going to say there wasn't enough people at the meeting and that's not the way we operate here.
 - Councilmember Buehler stated half the people here were for it, half of the residents, half of the people here were not for it and there are still a lot of questions.
 - Councilmember Kirby stated but that's my point, I didn't get what I wanted there were only four people there, so I want another bite at the apple, that's what I'm hearing.
 - Councilmember McNeill stated sending it back to the Planning Commission gives time for our staff as well to look at other options. Again, if there is some way that we can do it, in my view, in a kind of special use where I think most of the folks here wouldn't mind having there but probably wouldn't want a bar down the street or something, and if it becomes a big issue, you can pull a special use permit or then we can say at the fifth year it ends, that's what I need to know if we can do that.
 - Councilmember Trinkle asked we're not giving them anything we're just looking for more options.
- Councilmember Pawlowski asked Stefanie is there some way to see, that thing has been annexed for what ten years, and it still carries the County zoning which is another issue, and obviously nobody knew until you started looking at it, can that be fixed too?
 - Councilmember McNeill stated it will be rezoned in the UDO.
 - Councilmember Pawlowski replied I'm not talking about just that parcel, because it's the whole area.
 - Community & Economic Development Director Stefanie Leif responded yeah, pretty much everything that was annexed in in the early 2000's. We have in our zoning code where it says that properties do annex in and keep their County zoning, but really how that usually works is it is kind of a transition so it comes in with a zoning district, so you're not annexing something in that doesn't have any regulations. Typically that's rezoned to something that the City wants it to be zoned to, a lot of times you rezone it to really you're most restrictive zone, so it may be R-1 or A-1, something that doesn't allow a whole lot on it. That would be something that we would have to talk to all the owners of the properties and let them know what is going on, unless we rezone it to something that exactly matches what the County zoning is which is an option if we're looking at something that would be more dense there than what they currently have or any other changes, we'd have to talk to the owners.
 - Councilmember Pawlowski stated this is probably going to be the only time this happens.
 - Community & Economic Development Director Stefanie Leif responded it's hard to say, as these other properties potentially come up.
 - Councilmember Pawlowski replied I mean it's been ten years and it's just happened now, but who knows.
 - Councilmember Studnicka stated but wasn't the whole point of our Comprehensive Plan when we approved it and then the next step was we were going to line our zoning codes and rezone to the land uses that we wanted, we haven't done that yet.
 - Councilmember Pawlowski stated I think that's what she's working on now.
 - Community & Economic Development Director Stefanie Leif replied yeah with the UDO we started working on that this year.
 - Councilmember Studnicka stated so by remanding this back to the Planning Commission will we be able to explore special uses or whatever so the City retains control of this.
 - City Attorney Gregory Robinson replied Don how I envision this is we will look at all of those options, put those basically in a memo once the Planning Commission makes its findings, we can make all those options available and known to the Council, so perhaps you give direction or you go to adopt it and say no we want this one, we like this one, if we're going to do this we'll do this. Obviously we're not going to push up to you and say we recommend you do this because this is one of these issues that is simply here's your facts, you're the body, you make the decision.
 - Councilmember Studnicka stated I understand but what I'm saying is I agree with Mr. McNeill down here on the end of the dais, if we do a special use permit or whatever, and then Mr. Jensen or whomever decides I'm not going to have a nursery anymore and I'm going to do something else and that goes away and that reverts back to its current zoning, so we won't have to worry about a bar going in or another car shop or something like that.

- Councilmember Pawlowski stated or a freight terminal.
 - City Attorney Gregory Robinson stated again, it kind of goes back to my comments about what kind of control you want to have. If you rezone it to whatever, it's just a zoning, if you want some control with conditions or special uses then that is in your area of decision.
- Councilmember Pawlowski stated I talked to Austin earlier today, I told him that part of what we have to think about is the future use not just the current use of what they say because of unintended consequences that happen when we do things like this because we've been down this road many many times, so our concern has to be for the current property owners not the maybe property owners, right, I mean that's our responsibility; is to the residents who live there, and the other thing that I hear that wasn't mentioned was we've had lots of trouble with the intersection at Gilman that we've talked about many times over the years, this intersection is only a half mile down the road but it's faster traffic. Gilman, the traffic is supposed to be going fifty, at McIntyre the traffic is supposed to be going sixty-five and we've had people in here over the years talking about wanting a light at Gilman, we've never been able to get it, we'll have people in here talking about wanting a light a McIntyre next. Those were some of the other comments made at the Planning Commission meeting.
- City Attorney Gregory Robinson stated if you guys do approve to send it back to the Planning Commission, there was a comment made in reference to the K-7 Corridor Management Plan, if you want and maybe have some discussion about that and about how much you want to adhere to that.
 - Councilmember Pawlowski stated KDOT hasn't adhered to it.
 - City Attorney Gregory Robinson stated that's my point, it seems like the City of Lansing is the only one that raises its head to say no, we've got this corridor plan where you drive up and down K-7 and they are violating this MOU and Corridor Plan seems like every day. So how much and how much longer do we want to adhere to it, if at all, and I think that perhaps some guidance from this body to the Planning Commission because it has been put out here this evening that perhaps we should look at that and you might want to give some guidance as to how much weight you want to give that. I don't want to think that we're handcuffed to this Corridor Plan when we know darn near every other city up and down the thing but Lansing is violating the thing.
 - Councilmember Pawlowski stated in my mind it's not even applicable anymore because like I said, we're the only ones that have paid attention to it and everybody else has violated it and even KDOT.
- Mayor Smith asked anything else, Andi anything else.
- Councilmember Trinkle stated I want to understand what the motion is.
 - City Administrator Tim Vandall replied to remand it back to the Planning Commission for review of all options.

The motion was approved, with Councilmembers McNeill, Trinkle, Garvey, and Buehler voting in favor of the motion, and Councilmembers Brungardt, Studnicka, Kirby, and Pawlowski voting against the motion. Mayor Smith broke the tie voting to approve the motion.

REPORTS:

Department Heads: Department Heads had nothing to report.

City Attorney: City Attorney had nothing to report.

City Engineer: City Engineer Matt Harding advised that he has offered the County to be part of the review process of McIntyre Road. Matt advised that he can make comments, but they may be perceived as from a citizen and not on behalf of the City, but he still intends to comment.

- Councilmember Pawlowski asked about any legal stake the City has in regards to how the Urban Growth Management Area is developed.
 - City Attorney Gregory Robinson replied that he is still looking into the issue.

City Administrator: City Administrator Tim Vandall mentioned that the City is on the County Agenda regarding the savings from scaling back the McIntyre Road Project for Monday at 10 a.m. and advised that if any Councilmember wants to attend, feel free to do so. He stated that news has broken today that LCF is planning some new construction. The details are very scant at this time and we haven't heard anything in regards to utilities. He also congratulated Public Works Director Jeff Rupp for his one year work anniversary with the City.

Governing Body: Councilmember Garvey congratulated Jeff Rupp for making it a year and thanked the residents in the audience for coming to the meeting and adding their valued opinions to the discussion. Councilmember Buehler seconded Councilmember Garvey's sentiments and provided a fun fact, on this day in 1790 the Supreme Court convened for the first time ever.

Councilmember McNeill thanked the residents for providing input on the rezone issue as it is very helpful to hear from the residents on matters like this.

Councilmember Brungardt seconded the sentiments of Councilmember McNeill and told Austin Reynolds it was very cool to see him all grown up and have him participate.

Councilmember Studnicka thanked everyone for coming and participating.

Councilmember Trinkle echoed the comments of Councilmember Studnicka and expressed that he felt sending the rezone item back to the Planning Commission is a good idea to make sure the Council gets all the options laid out and all the questions answered, so a hasty decision is not made.

Councilmember Kirby thanked everyone for showing up tonight and expressed to Jeff Rupp how integral he has been since he's been with the City. He mentioned that a lot of issues have been addressed and resolved since he's been here that were long overdue.

Councilmember Pawlowski congratulated Jeff Rupp and asked Austin Reynolds how he liked the meeting and his opportunity at public speaking. She invited him to come to more meetings.

ADJOURNMENT: Councilmember Pawlowski moved to adjourn. Councilmember Brungardt seconded the motion. The motion was unanimously approved. The meeting was adjourned at 7:57 p.m.

ATTEST:

Michael W. Smith, Mayor

Sarah Bodensteiner, City Clerk