

**APPROVED
REGULAR COUNCIL MEETING
April 24, 2007
7:00 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I
WARD II
WARD III
WARD IV

COUNCIL MEMBERS PRESENT:

Jim Craig, Jim Meidinger
Loren Johnson, Chuck Warren
Charlie Schwarz, Cheryl Bannon
Mark Staats, George Arnold

Flag salute was led by Council President Cheryl Bannon.

The invocation was led by Pastor Brad Campbell, Grace Harbor Church.

**CONSIDERATION OF
MINUTES**

Minutes of the April 10, 2007, Regular Council Meeting.

Council Member Craig stated that the minutes do not reflect the proceedings that occurred at the last council meeting. In reference to the clean air ordinance, he made a copy of the tape and reviewed it about three times and unfortunately the summarization of minutes needs to be readdressed for the fact that during the process a motion was made, discussion was then ensued. At that time, during the discussion, another amendment was made to the motion, the question was verified that it was an official amendment to that motion, it was seconded, however when the action came up for our vote it in fact was lumped together into one motion. He asks for reconsideration of the minutes so they accurately reflect what occurred during the council. He cannot approve that and he challenges the validity of the process that was used to pass the clean air ordinance at that time. He knows this is a technicality, but it doesn't reflect what they actually did at this particular meeting. He cannot vote to approve the minutes as they are written at this time because they don't reflect the proceedings that took place two weeks ago.

Council Member Meidinger replied that while he agrees with Mr. Craig he believes it was rather confusing the way the motion was made and the second was made, then the revision of the motion, etc. He thinks it gives the council a good lesson on how they should be running their public meetings and they should be following Robert's Rules of Order a little closer. Having said that, he does not believe the outcome of the vote would have changed any, he thinks the intent of the motion and the second was obvious; therefore he is not sure what the legal status of the current minutes are. He asked if minutes could be accepted with a footnote and agreed with Mr. Craig that they are not accurate, but the intent was there.

Kathy Sexton, City Manager stated that she had an opportunity right before the meeting to hear Mr. Craig's concern and she believes, if she is restating it correctly is the concern is, as you all know, we don't do verbatim minutes, we do very detailed minutes and they get pretty long, but they are not actually verbatim. Our clerical staff does summarize, so if there is a desire by the council to take this particular item and do the verbatim to see if there indeed were some things of substance that were left out of the summary minutes we would be happy to go through that tape again and update the document. That is the best she can do. In terms of validity of the action, she thinks the issue is that there was a decision by the chair made that they were ready to vote and the decision by the person making the motion and seconding the motion. She thinks that their intention was to clarify the original motion, therefore it was decided to be considered, as she recalls, an informal type of amendment as opposed to a formal amendment you needed to vote on. That is her recollection, but obviously the council can do whatever they want.

Council Member Bannon commented that as far as verbatim minutes, she is not sure we have enough staff time or enough money to put down every word that is said on this council. We tend to be a lengthy group and we are a group of unpaid volunteers, with the exception of the mayor. In her opinion there are two people in this room that need to have a strong working knowledge of Robert's Rules of Order, one being the attorney and the other being our mayor. What happened at the last meeting passed with neither one of them having a complaint or an issue with it, so in her mind, no one brought it up. It would be kind of like saying you can't go use the library unless you know the Dewey Decimal system. We are up here trying our best to do what we are here to do and no one objected. Not everyone in town may or may not be happy with the ordinance the way it passed, but there was no issue that evening.

MOTION: Bannon moved to approve the minutes of the regular meeting of April 10th, 2007. Warren seconded.

Council Member Craig again stated that the minutes do not reflect, he would be satisfied that the minutes reflect the process that was used during the meeting. The tape is not that long and all it shows is how that particular amendment was brought before the council. It was actually asked if it was an official amendment and the response was yes, and it was seconded. All that has to be done is corrected in the minutes so that the minutes agree with the proceedings of the actual meeting. As the motion stays right now, he will vote not on the minutes until they are corrected.

Council Member Warren advised they had part of this discussion last week and there was some confusion as to whether it was an amendment and ultimately it came to the point that he wanted the motion that he had made to include certain aspects and we got that rolled in to one so that everybody understood what we were voting on, and that is what the minutes reflect. It shows what we ultimately came to and how we came to that decision. He has no problem with the minutes as they are presented.

Mayor Avello asked, to clarify, that this does not reflect anything on the vote that was taken.

Phil Alexander, City Attorney, advised that the motion on the floor is simply to approve the minutes from the last meeting, assuming it's adopted.

VOTE: Craig nay, Meidinger nay, Johnson yea, Warren yea, Schwarz nay, Bannon yea, Staats yea, Arnold yea, 5 yea, 3 nay, motion carried.

PUBLIC FORUM

Mayor Avello advised he would be unable to keep his office hours tomorrow and he can be contacted by phone if need be. He will set an appointment and make every effort to be there.

Darryl Butterfield, 805 Rushwood Ct, representing the Derby Historical Society. During the past year and ½ a large number of volunteers have been renovating some of the rooms, and adding additional display areas with new artifacts for display. Last season was their busiest year for attendance and they are planning to more than double the attendance this season. To do that, they have started this month an extensive membership drive. He invited the mayor and Derby city council to become members of the museum, as well as city employees and every citizen of Derby. An annual individual membership is only \$6.00 and the annual family membership is \$10.00. They are also offering a lifetime individual membership for \$250.00. Memberships may be obtained through their e-mail address; derbymuseum@sbcglobal.net, or at P.O. Box 1054, or contact him by phone at 788-7740. A membership application is also available at the museum. They will be open from 10:00 a.m. to 2:00 p.m. this Saturday, and every 2nd and 4th Saturday of the month through October, possibly, if the weather permits, through November, as well as special events such as Derby Days, Alumni Day, etc. They will also schedule special group tours. He added that this coming Saturday is the dedication of their newest room, the military room.

Council Member Johnson asked if they had a website.

Mr. Butterfield advised they did not.

Council Member Meidinger suggested Mr. Butterfield provide the address of the museum.

Mr. Butterfield stated it is located at Market and Woodlawn, the old red brick school house.

Gary Miller, Vice President Academic Affairs and Research at WSU. Wichita State University is an urban serving research institution, the only one in the regent's system. Part of the great challenge of these universities is to find creative ways to reach out to parts of the greater metropolitan area. We have done that very successfully in the west and in other parts of downtown Wichita. In the fall we will begin offering a suite of general education classes, first in the high school in Derby and later we hope in a facility that we are negotiating right now. Heading that effort will be Associate Vice President for Academic Affairs and Services, Dr. Keith Pickus and Ms. Celia Goering who is the director of the west side center and a resident of Derby. The long term plan is to work with the community to develop a program of education and outreach that fits the Derby area and meets the mission of Wichita State University, as we have done in the west. They expect the program they are starting in the fall will evolve to something that meets the needs of this area and meets the needs of Wichita State University and other areas in the metropolitan area.

Council Member Bannon welcomed them to Derby and commented that there are a lot of people in Derby who have been anxious for this to happen. She looks forward to seeing the curriculum for fall classes and hopes to see some advertising soon.

Mr. Miller explained that will be coming soon. They have started recruiting already and they are getting great support from the high school in this transition period.

Ms. Sexton suggested Mayor Avello go to the podium and welcome Mr. Miller to Derby, since there are cameras present. She followed up by saying everyone is pleased with this announcement and it is something that several have worked on for some time. She appreciates the commitment of Dr. Beggs to the community and everyone on his staff in terms of all of the effort that has gone into thinking about, researching and trying to figure out how to make something like this happen. For a university to expand is a big deal and we welcome them.

Mayor Avello commented that it seems like a long time ago that he and Ms. Sexton sat in her office and discussed this and it is a dream come true.

Robert Mendoza, Director of Public Works and Parks, reminded everyone of the Arbor Day Celebration this Friday, the 27th at High Park starting at 5:30 p.m. He encouraged everyone to attend if they can. They have a lot of interesting things happening and a little bit of a different program this year. There will be a presentation of the awards from the Arbor Day Foundation to the city, the flag and growth awards. There will also be a couple of exhibitions as far as the Prairie Star Planting grant for people who do container planting. This year, instead of planting an Arbor Day tree they will be planting about a 2 ½ ft. tall bare root seedling. We are going to do that because we are giving 150 of them away. They have redbud, bald cypress and burr oaks to hand out to the first 150 at the park. There will also be some events for kids; the moonwalk, the high school honor guard for a flag presentation. They will also be having a barbeque as well, so if nothing else gets you there, free food will be available. He added that on June 9th they will be having their very first Derby Garden Tour; with a \$5.00 ticket, that you can purchase at the Arbor Day Celebration, you will have access to all of the gardens on the tour for that day, beginning at 9:00 a.m. to 6:00 p.m. He added that there will be representatives from Wichita Botanica, Master Gardeners, Master Composters, John Fair Horticultural Center as well as the Koi Club of Kansas will all be on site with their brochures with information on how to participate and get involved. The Park and Forestry Boards' goal is to get people involved in the parks and recreation system here in Derby and he hopes there are some exciting things planned and invited everyone out to High Park.

Chief Jay Reyes, Police Chief, advised this weekend, April 28th, the Community Education Division of the police department will be participating in the Sedgwick County/District Attorney's Community Awareness program that is held annually. This year it will be at Towne East Mall and our officers will be conducting a driving impaired course for people 14 and above. In this event they will be wearing the "fatal vision" glasses that give the illusion of a person driving impaired and they will be able to try and negotiate a small driving course. This will hopefully let them see how dangerous it is to try and operate a motor vehicle under the influence of an intoxicating substance. We did this prior to prom for the high school and it was met with a lot of enthusiasm and appreciation from the students.

Allison Moeding, Director of Economic Development, introduced David Franz, market manager of the Derby Open Air Market, which will be in its' 3rd season this year.

David Franz, Derby Open Air Market, explained this is their 3rd year in Derby and they are very excited about that. They are now involved with the Department of Aging and the Lutheran Social Center. They will be issuing coupons to the elderly and needy to be spent at the farmers market for fresh fruits and vegetables. There are a number of vendors from previous years returning as well as several crafts people. At the start it will be a little bit "iffy" with the freezes we have had, but we should have a great selection of fruits and vegetables as we progress. With the improvements the city has made at the park, visibility has greatly improved and he thanked the city for that. The hours will be, starting May 5th, 7:00 a.m. to 12:00 p.m., continuing through October, weather permitting. Last year they cut the market short about 6 weeks due to the tremendous circumstances with weather, there was no produce left.

Council Member Schwarz stated he bought some zucchini bread last year and it was great. He called later on, in September, and was informed there was no more zucchini. He encouraged anyone who loves produce or this type of stuff to frequent this market, it was great.

Mr. Franz advised that would have been his wife's zucchini bread.

Council Member Warren asked for the location of the market.

Mr. Franz stated it is in the El Paso Village parking lot and they will be doing it a little different this year. They did have a bit of an issue last year with the parking and they were concentrating at the south, more narrow end of the parking lot. This year they will be more at the north end to try and alleviate that issue this year.

PROCLAMATIONS

Mayor declared May 2007 as Bike Month in the City of Derby.

Ben Sciortino accepted the proclamation. Derby is the first city to issue this proclamation and tomorrow Sedgwick County will do the same, followed by Wichita. The month of May, nationwide has been recognized as bicycle month to recognize bicycling as a healthy alternative form of transportation. It is environmentally friendly and saves a couple of dollars. The citizens in Derby are blessed because there are many miles of bicycle paths that are clean and well maintained. With what has been going on between Derby and Mulvane, it appears pretty soon you will be able to bike from Derby to Mulvane, as well as a path along 63rd Street, and from Woodlawn to 63rd Street will become feasible. He mentioned they are trying to develop a "BAD" (Bike around Dairy Queen); they will pick three Dairy Queens and go to each of them for various forms of ice cream.

Mayor declared May 1-7, 2007 as Drinking Water Week in the City of Derby.

Pat Swaney, El Paso Water President accepted the proclamation.

PRESENTATION

Lynne Schall, Wichita State University, Hugo Wall School of Urban and Public Affairs, presented Chief Jay Reyes and Robert Mendoza, Director of Public Works and Parks with their mini MPA's.

ELECT COUNCIL PRESIDENT

Kathy Sexton, City Manager, reminded everyone of the duties of the council president. The council president is a serving council member elected by the members of the council through a secret ballot to serve in the temporary absence of the mayor. The president shall preside at all the meetings where the mayor is unable to be there as well as take on any other duties, ceremonial, etc., whenever the mayor is unable to attend. When occupying the place of the mayor at a council meeting, the council president shall have the same privileges of the other council members and shall not have the ability to exercise the veto that the mayor has. The council president is also tasked with leading the annual performance evaluation of the city manager.

MOTION: Craig moved to nominate Councilman Schwarz for the position of council president. Meidinger seconded.

Council Member Meidinger asked for a reminder as to why they are using a secret ballot.

Ms. Sexton explained that is the protocol the council formally adopted recently in the governing body manual and code of meeting procedure. When the council considered the document a couple of months ago, that is the way it has been done for a long time and the council thought about, at that time, considering whether or not to continue to do that, and there was a little bit of debate on that at that time.

Council Member Meidinger advised that it seems to him, being a public body with public meetings on television; he does not think its right to have a secret ballot on an office as important as the president of the council. He stated he is voting for Mr. Schwarz and it is not a secret. He does not think they should be doing secret business in a public meeting.

Council Member Bannon thanked everyone for the honor of serving as council president for the last year. She got to see things from a little different point of view the night she filled in for the mayor. It takes a lot to keep up with everyone up there, although she enjoyed the "Madame President" all night.

MOTION: Johnson moved the nominations cease and the Mr. Schwarz be elected by acclamation. Craig seconded.

Council Member Warren reminded the council there is a set of rules that they have agreed to and he has a problem with changing the rules midstream. If we want to change the policies and

procedures at some point that is certainly something they can do, but to do it on the spur of the moment is not right.

Mayor Avello agreed. We should do this as we have in the past and then have a discussion on whether we want to change the rules at a later date.

Ms. Sexton reminded the council what is in the Code of Meeting procedures; “adopted rules may be amended by a majority vote of the governing body, the rules may not be suspended by a governing body during any meeting”. If you want to change the rule, make a motion to update the code of meeting procedure, but, by your own rules, you cannot accept the motion made by Mr. Johnson.

Council Member Johnson stated he didn’t really care, but does not think there are going to be any more nominations and asked what they were wasting time for.

Ms. Sexton explained that the motion to cease receiving nominations is fine. When you added on the second phrase to say “vote by acclamation” and you don’t have to take a vote on it mayor, you just say it is an invalid motion. According to the council’s rules, that motion is not in order.

Council Member Warren pointed out that simply because there are no other nominations does not mean that somebody else cannot get votes. You can vote for someone whether they are nominated or not.

Mayor Avello stated he would like everyone to write in on this ballot and then they will discuss how they do it in the future.

Ms. Sexton, after counting the votes, advised the motion failed, 4-4.

Mr. Alexander explained that there is no specific provision dealing with a tie vote on an issue such as this; however, the mayor generally has authority to vote to break ties.

Council Member Craig clarified that the motion was an invalid motion, is that correct?

Ms. Sexton stated that the council was not voting on Mr. Johnson’s motion; there was a previous motion to nominate Mr. Schwarz. There were four votes for Mr. Schwarz and four votes for other people. There are no provisions in the council’s rules to indicate the mayor cannot vote to break the tie on the subject, therefore he can vote to break the tie.

Mayor Avello asked Mr. Craig if he was okay with that.

Council Member Craig stated that he just wanted to make sure that there wasn’t, in essence, it is a 4-something else vote. We don’t know that that is, but four were for Mr. Schwarz, correct?

Ms. Sexton advised that was correct. To help with clarification, it is a secret ballot and she is choosing not to say who the other four votes are for.

Council Member Craig stated that was fine, but do you have to have a majority, or is it just the number of votes that you get.

Ms. Sexton advised you need to have a majority to pass an action of the council.

Mayor Avello clarified that there were two people that were up for president.

Ms. Sexton responded “or more”. She asked Mayor Avello if he wanted to do a secret ballot so his can be counted.

Mayor Avello stated no, he is going to vote for Mr. Schwarz.

Ms. Sexton explained the vote is 4-4. Four of the votes are for Mr. Schwarz; if the mayor votes for Mr. Schwarz then it passes easily.

Mayor Avello advised he is voting for Mr. Schwarz to solve that problem, but he does want to look at the ballots later.

Ms. Sexton explained that they are secret ballots, joking that they will be burned tonight.

Mayor Avello asked Mr. Schwarz if he would accept the nomination and be president of the council.

Council Member Schwarz advised he would.

Council Member Meidinger was still confused on the secret ballot. He questioned if it were a 4-4 vote between Mr. Schwarz and another person, or was it something else.

Mayor Avello pointed out Ms. Sexton can't say because it is a secret ballot.

Council Member Meidinger stated that his point is that if you are going to have a ballot, it appears to him that four is bigger than 2.

Council Member Warren assisted in the explanation that it is not a majority of the council; you need a majority of the council for one person.

Council Member Johnson stated that the term “secret” when you are balloting means that he doesn't have to sign his ballot, correct? It does not mean that we don't know who the votes are for, that's not what a secret ballot is about, who got the votes. You have to divulge the results of the vote.

Council Member Warren advised it is a mute point, Mr. Schwarz is the council president, the rest of it doesn't matter.

(Inaudible) members speaking without their microphones on.

Mayor Avello agreed. Mr. Schwarz is now council president for a year and we will bring this up on a future agenda date and we will straighten out how we are going to do this in the future.

**REAPPOINTMENT OF
WILLIAM M. KEHR AS
DERBY MUNICIPAL
COURT JUDGE**

Phil Alexander, City Attorney presented the staff report and made a correction that it is William M. Kehr.

Background:

- Pursuant to charter ordinance no. 36, the Derby Municipal Court Judge is appointed by the Mayor at the second meeting each April for a term of one year.
- Mr. Kehr is willing to continue his service as Derby Municipal Court Judge.
- The Municipal Court processed 4,733 cases in 2006, which is 11% more than in 2005. Cases are being adjudicated more quickly, fines are being collected more promptly, and a Time-to-Pay docket was implemented for defendants seeking to make installment payments.
- In 2006, all categories of serious offenses showed significant decreases from the previous year, including assault and battery (32%), disorderly conduct (79%), drug offenses (35%), and worthless check (62%).
- Court revenue in 2006 of \$493,595 represented an increase of 19.6% over 2005, largely due to the increased caseload, to more emphasis on filing failure-to-appear charges when defendants do not appear before the court as ordered, and to enhanced devotion of prosecutorial time from Larry Linn, who became the City's prosecutor in September 2006.

Financial Considerations:

- The Municipal Court Judge serves under a contract currently paying slightly more than \$27,000/year.

Legal Considerations:

- Appointment of the municipal judge by the Mayor is subject to confirmation by a majority vote of the Council.
- An incumbent municipal judge continues to serve until a successor is appointed and confirmed.

Policy Considerations:

- Mr. Kehr is both an experienced attorney and a sitting judge in both Derby and Mulvane; he has demonstrated his willingness and ability to work with the Court staff to schedule and conduct dockets that are both efficient and equitable to all parties.

William Kehr, stated that he appreciates being allowed to be the judge for the City of Derby for the past year and ½. He served as the judge for the City of Derby for about six months after Stan Singleton had to leave due to illness, he did that without any appointment. Later he was appointed by Mayor Avello, and frankly he was unaware that he was to receive any type of approval from the city council for that. After that court was moved from Wednesday night to Thursday afternoon in the belief that the City of Derby had grown big enough that it should have its own court time, as opposed to trying to be a night court, which is a very difficult thing to pull off professionally. You get a lot of odd things that happen at night that you really don't see in the daylight hours. Having practiced in the city court in Derby for many years at night he can verify that. He encourages anyone that is interested to come to court and observe, it is an open court. He tries to be professional and courteous to everyone that comes in, regardless if they are defendants, city council members or police officers. The goal of the city court is not to convict somebody of crimes, the goal is to allow the court system to work properly, where the city can present its side through the police and the defense can present their side or the citizen's, and then they get a fair ruling. Some of the cases will go through a plea bargain, some will go through diversion, some will go to trial. It is a learning experience and he learns every time he does it; every court date is a different day. He has not had very many cases appealed from Derby Municipal court. One of the reasons that we have been down quite a bit on worthless checks is because Wal-Mart used to send in about 40-50 worthless checks a month. Wal-Mart has now decided they will attempt to collect bad checks civilly, and he believes they have abandoned bad checks under \$20.00. They have just changed their enforcement policy, it had nothing to do with the court, but he finds it interesting in that a lot of the revenue in previous years came from those bad checks. It was a big revenue maker for the court because those people would often times come in and plead guilty or take a diversion and that put a lot of money into the system. One of the big concerns, when Wal-Mart elected to go elsewhere was that that might be a big boon, but that hasn't happened. Chief Reyes and the police department have done a wonderful job and been very supportive, as has Mr. Alexander. They have hired a full-time city prosecutor and that has been very beneficial, both in allowing the police someone to talk to on a more regular basis and in allowing a great deal of consistency in the treatment of people coming to court. You don't want two people having the same charge, but two wildly different outcomes because that breeds contempt.

MOTION: Arnold moved to confirm Mayor Avello's nomination of William M. Kehr to serve as Derby Municipal Court Judge for a one-year period commencing April 24, 2007. Warren seconded.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, motion carried.

Council Member Schwarz asked about the conference Mr. Kehr recently attended.

Mr. Kehr explained today was the last day of the Municipal Judges Conference for the State of Kansas. He had spoken with Mr. Alexander before he went because we have a lot of old warrants. He brought up the question at the conference of what you do with old warrants and

received 120 different answers so that is an issue that will still have to be worked out with Mr. Alexander.

Council Member Schwarz brought up the discussion of teen drinking and parties and he had a discussion with councilman Staats about some of the approaches the police department takes. He (Mr. Schwarz) had received a brochure that summarizes what a cab ride would have done for someone versus all of the costs associated with being caught drunk driving. He sees this as a proactive endeavor that our city could do and it basically shows a comparison between a \$35.00 cab ride and \$10,141.00 in costs associated with that drunk driving charge. He can see this as a brochure that we could easily put out to our kids or put in various locations. It is that sort of proactive stance that he sees our community working on and seeing it in the end paying dividends for us down the line.

Mr. Kehr advised there was also a brochure provided at the conference for underage drinking that has made its way to the probation officer in the City of Derby. We use that on every underage drinking person that takes a diversion or is found guilty or pleads, they end up with that brochure as well as all the other penalty's that go with it because it is good information. He likes the cab ride comparison brochure because it was intimated at the judge's conference that the National Highway Traffic Safety Administration had a grant to pay for those.

FINAL PLAT OF THE HILL ADDITION

Don Losew, Derby City Planner presented the staff report.

Background:

- The Hill Addition is located in the County, on the south side of 63rd and just west of K-15 Highway. Although in the County, it is in Derby's area of Subdivision Regulation and therefore is subject to approval by the Derby Planning Commission and City Council. While a residential dwelling presently occupies the site, the site was required to plat as a condition of a County zone change to GC, General Commercial zoning (including a protective overlay).
- On March 1, 2007 the Planning Commission by a vote of 9 to 0 approved a Final Plat for this application area. Although presently on on-site sanitary sewer and water, petitions were required and have been submitted to the City for the future extension of municipal water and sanitary sewer in this area. This site is within McConnell AFB's Accident Potential Zone (APZ) II and an avigational easement and restrictive noise covenant were required.

Financial Considerations:

- As noted above, as a condition of this site's platting, various petitions were submitted for required (future) improvements. The applicant has submitted such petitions and a Certificate of Petitions.

Legal Considerations:

- Pursuant to State Law and the City’s Subdivision Regulation, the planning Commission has approved this plat.
- Approval of this plat will also require action by the Board of County Commissioners.

Policy Considerations:

- Upon approval of the petitions, City Staff will submit them to Gilmore & Bell for preparation of the required resolutions which the Council will consider in the very near future.
- The applicant has complied with all requirements of the Subdivision Regulations.
- The Planning Commission approved this plat on March 1, 2007.

MOTION: Warren moved (1) approve the plat of the Hill Addition, (2) authorize the Mayor to sign the Plat, (3) accept the avigational easement, and (4) instruct Staff to record the Plat, Certificate of Petitions, avigational easement, restrictive covenant, and notice of (zoning) protective overly. Seconded by Schwarz.

Mr. Alexander pointed out that Mr. Losew had indicated that the last item (4) regarding recording the plat should not be included in the motion.

Council Member Warren withdrew his motion.

Council Member Craig pointed out that since we have so many issues about what we are doing and how we are doing it that they consider in the future putting together a position for a parliamentarian so they don’t get “wrapped around the axle”. He advised the council to think about it and he suggested Mr. Warren redo his motion.

Council Member Warren again withdrew his motion and restated it as follows:

MOTION: Warren moved to (1) approve the plat of the Hill Addition, (2) authorize the Mayor to sign the Plat, (3) accept the avigational easement. Seconded by Schwarz.

VOTE: Craig abstain, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 7 yea, 0 nay, 1 abstain, motion carried.

(Inaudible) discussion by council without microphones turned on.

Mayor Avello advised they could not revisit the issue as it had been voted on.

Mr. Losew explained it was not the plat map; the drawing was simply a locational map to show the area that was involved in the plat. The council received copies of the final plat as part of their agenda package.

**REQUEST TO VACATE
PLATTED DRAINAGE
EASEMENTS IN LOTS 1,
2 & 3, BLOCK A OF THE
SPRINGCREEK PLAZA
ADDITION**

Don Losew, Derby City Planner presented the staff report.

Background:

- The area involved in this vacation request was first platted in 1987 and subsequently replatted several times. Most recently the site was platted as the Springcreek Plaza Addition after having been approved for a Non-Residential Planned Unit Development (NRPUD) zoning classification. Under the NRPUD a conceptual development plan was prepared. On the basis of that plan and other drainage related issues, a drainage plan was prepared for the site. Proposed changes to that conceptual plan and the applicant's desire to revise the site's original drainage plan have necessitated both the granting of new easements and this request to remove those easements that will no longer be needed.
- This vacation request now reflects what the applicant and City Engineering now consider to be the appropriate drainage plan for this site. Replacement or substitute easements for the new drainage plan have been received by Engineering.
- The utility companies have also been informed of this vacation request and have no objections.
- On January 3, 2007 the Planning Commission recommended approval of the vacation by a vote of 8 to 0.
- Vacation cases are a public hearing item before the City Council and such a notice has been published as required.

Financial Considerations:

- The cost associated with mailing notices to adjacent property owners, publishing the Notice of Public Hearing, and recording the Vacation Order are covered by the filing fee for this case.

Legal Considerations:

- As required by the Subdivision Regulation, the Planning Commission has reviewed and acted on this vacation request. Also, as required by State Law, this vacation request has been advertised in the official City Newspaper two weeks prior to the April 24, 2007 City Council meeting. The City Clerk has not received

protest petitions. This is a public hearing item before the Council and after hearing from the public such hearing may be closed and the Council then act on the request as it deems appropriate by majority vote.

MOTION: Warren moved to accept the substitute easements, approve the request to vacate the drainage easements and instruct Staff to record the Vacation Order. Arnold seconded.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, motion carried.

Council Member Bannon advised she was glad to see that change, she had had issues with that old drainage area before. She asked what was being done for overflow as that water will move fairly quickly into the storm sewer area and into the Spring Creek pond.

Dan Squires, City Engineer explained the pond is designed, as most detention ponds are, to collect excess runoff based on the development and to fill at the rate at which it comes off.

Council Member Bannon asked if it were going to overflow out into the street and into the storm drain or is it going to go under the street and into the Spring Creek pond.

Mr. Squires advised it would go into the Spring Creek pond. The storm sewer that comes out of that pond connects into the existing storm sewer. They have replaced one of the lines underneath Osage Street and then ran a hydraulic profile on that to show that the water surface elevation would remain below the inlet level as it crossed the street. They did ask the design engineers when they reviewed the plans to make sure that they weren't going to end up flooding Osage Street because it does sit considerably lower than the pond does.

Hill Addition Plat:

Ms. Sexton stated that she had spoken with Mr. and Mrs. Hill and they clarified that the drawing on it is accurate; they just didn't think it quite matched the sketch that was on the screen. She assured them that the sketch on the screen was not a legal document and the plat drawing is the one that would be signed and they agreed that was correct.

**LEASE AGREEMENT –
BIG DADDY
FIREWORKS, L.L.C.**

Jean Epperson, Director of Finance, City Clerk presented the staff report.

Background:

- As the City continues to develop, the number of properties available for lease for fireworks stands has declined.
- The City was approached by Dr. Robert Sweet of Big Daddy Fireworks to lease the property owned by the City of Derby adjacent to and west of the water metering station on Patriot Avenue. The legal description of this property is Lot 2, Block A, of the Porter Addition to the City of Derby.
- This fireworks stand was displaced from its site from last year at 1710 E. Madison, which is now being used for the temporary Verus Bank during construction of the new bank building.
- The term of the lease will be from June 24, 2007 until midnight, July 6, 2007. This allows access the day before and the day after the selling period for fireworks. The sale of fireworks is allowed only during the time that the use is permitted by city ordinance which is from 8:00 a.m. on June 27th until 10:00 p.m. on July 5th.
- The proposed lease requires that the property be restored to its original condition. Installation of the utility services is at the expense of Big Daddy Fireworks, L.L.C. as well as the removal of the utility pole.

Financial Considerations:

- The lease requires payment of \$3,000 for rent on or before June 1, 2007.
- In addition to the rental revenue, the city will receive \$5,000 for the fireworks stand permit.
- The lessee will furnish a Certificate of Insurance of \$2,000,000 of liability coverage naming the city as an additional insured.

Legal Considerations:

- The City holds fee simple title to the property to be leased.
- The property may be used for any lawful purpose.
- The proposed lease has been reviewed and determined to be satisfactory in the form presented.

DISCUSSION:

Council Member Bannon asked if there were going to be fireworks shot at the location, or is it just sales.

Mrs. Epperson advised it was just sales.

Council Member Bannon asked if the funds would go into the general account or the fireworks account.

Mrs. Epperson stated that has not been addressed.

Ms. Sexton explained that any kind of lease revenue would go into miscellaneous account, the general fund. When you say the “fireworks account”, the only monies authorized by the council to go into that account are the stand permit fees, which are \$5,000 per stand.

Council Member Craig asked about access to the area and parking.

Mrs. Epperson explained there is an inlet driveway on Patriot Avenue. Regarding parking, they had discussed the fact that the city would prefer there be no asphalt millings or gravel from the aspect of maintenance down the road. Dr. Sweet has agreed that they would restore the land to its original condition by hauling in dirt; the parking would be on city property.

Council Member Craig asked what the plan is if it rains, since it is grass and dirt out there now and the only parking available would be on Patriot Avenue.

Dr. Robert Sweet, Big Daddy Fireworks explained that all of his other lots have similar problems when it rains, there is very limited parking; if it is raining their sales are very limited. Their big days in sales are the 3rd and 4th of July or the weekend before and if it rains it makes it very limited sales and parking will be very inadequate there. There are not any great plans and hopefully it will not rain, but they do not have any specific plans for parking.

Council Member Craig advised people will shop for fireworks even though it’s raining when it comes to the last couple of days before the 4th of July.

Mr. Sweet stated they also have a stand north of O’Reilly’s on the west side of K-15. More than likely if we would not have the ability of cars going there due to mud, he does not want people parking at Lowe’s and walking across the street, it is too busy. They would probably move most of the stuff to the other location because they have hauled in lots of rock, asphalt and millings down there so the parking there, even in wet conditions is really good. They have an asphalt slab there also so they are not opposed to moving stuff down there in the case of rain. They don’t want to bring in a lot of dirt, they will if there are a lot of ruts, but the cost of bringing in a lot of dirt would be cost prohibitive down the road.

MOTION: Warren moved to authorize the City Manager to execute a property lease agreement for the land at 407 W. Patriot in the City of Derby in substantially the form presented. Bannon seconded.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, motion carried.

**SPRING 2007
COMMUNITY
ENRICHMENT
PROGRAM GRANT
RECOMMENDATION**

Mandy Wagner, Assistant to the City Manager presented the staff report.

Background:

- On May 9, 2006, the Derby City Council established the Community Enrichment Program (CEP) – a grant program – as a means to financially partner with organizations to provide events or programs that contribute to the quality of life in Derby. The spirit of the grant program is to encourage development of entertainment, artistic, or cultural activities to bring people to Derby or, likewise, keep Derby residents in town for their leisure time.
- Applications are received bi-annually during the fall and spring and reviewed by a selection committee made up of elected officials and City staff. The selection committee makes recommendations on allocating grant funding to the City Council for approval.
- Previous CEP grant recipients include:

<i>Organization</i>	<i>Program</i>	<i>Award</i>	<i>Grant Cycle</i>
Derby Twins	Parents' Weekend	\$1,500	Summer 2006
DRC	Summer Concert Series	\$2,500	Fall 2006
- Spring 2007 CEP grant applicants include:
 - The Derby Community Coalition Promoting Healthy Choices
 - The Miss Derby Organization
 - The Derby Twins
 - The Derby Free Spirits
- The selection committee met on Wednesday, April 11, 2007, to discuss the CEP applications and determine its recommendations to the City Council. Members of the selection committee include Council President Cheryl Bannon, Councilmember George Arnold, City Manager Kathy Sexton, and Public Information Officer Kristy Bansemer; the selection committee is assisted by staff liaison Mandy Wagner. The selection committee's recommendations are discussed herein.

Financial Considerations:

- CEP funding is derived from 25% of revenues from fireworks stand permit fees from the previous fireworks season.
- The CEP fund currently has \$4,750 that can be allocated to Spring 2007 applicants.
- A maximum of \$2,500 per application can be awarded.
- Unallocated funds from any application cycle will be carried forward to the next application cycle.

Discussion:

- The Derby Community Coalition Promoting Healthy Choices requests a grant of \$1,500 for Summer Fest, an evening of free family-friendly activities and entertainment that will expose children and families to a variety of healthy and fun activities.

- Anticipated offerings include cultural entertainment, interactive booths by local organizations promoting family-oriented activities, a Derby Junior Football punt, pass and kick competition, inflatable moonwalks, food vendor(s), an ice cream social, games and giveaways, and a movie under the stars. Summer Fest 2007 will be the inaugural year of the festival but the organization anticipates making it a yearly tradition for the Derby community.
 - The selection committee **recommends** this application for partial funding. The selection committee recommends that CEP funds be pledged in the amount of \$750 *contingent upon matching contributions* to the SummerFest event by other donors. Eligible matching contributions include cash, in-kind goods, and professional services; volunteer service hours are not eligible for matching contributions. An accounting for the matching contributions would be required before CEP funding would be released.
 - Such a “challenge” donation would support the Summer Fest program, promote diversification of the event’s funding streams to ensure its stability for future years, and incentives financial support of Summer Fest by other donors.
- The Miss Derby Organization requests a grant of \$2,000 to be applied towards increasing the amount of scholarship monies awarded in the Miss Derby/Miss South Central pageants to have greater impact upon the recipients as they strive to achieve their goals in life.
 - The selection committee **does not recommend** funding for this application for the following reasons:
 - The event was already established prior to the founding of the CEP program in May of 2006 and does not substantially differ from its activities and offerings of that time. Therefore, as proposed, it does not add diversity to the entertainment, artistic, or cultural offerings available in Derby.
 - The proposal does not benefit a reasonably broad audience; applying CEP funding directly to the scholarship prize only directly benefits a few individuals.
 - The Derby Twins requests a grant of \$2,000 to sponsor Parents’ Weekend June 28 through July 3 which includes seven home games.
 - This sponsorship request is equivalent to *two* “Home Run” sponsorships, a sponsorship package offered by the Derby Twins.
 - Each Home Run package includes three Game Date Buyouts, six Twins t-shirts, one quarter-page size ad in every regular season scorecard, one web broadcast sponsorship, a link to the business from the Twins web page, free patron entry on game day, game promotions listing the business as sponsor, throwing of the first pitch by the business’s person of choice, at least three announcements during the game of sponsorship, business’s banner displayed during the game, and handing out of business’s promotional items by the patron at the game if desired.

- The selection committee **recommends** this application for grant funding in the full amount requested of \$2,000 to sponsor Parent’s Day Weekend and take full advantage of the benefits package being offered through the Home Run sponsorships.
- The Derby Free Spirits requests a grant of \$2,000 for start-up funding for the CJ Memorial Golf Tournament. The event will benefit the Derby Free Spirits, an organization founded to provide individuals with intellectual and/or physical disabilities in the Derby area with opportunities to participate in various recreation and leisure activities.
 - The committee believes this event is not only a worthwhile cause but also meets the CEP criteria of diversifying events in Derby, drawing people into Derby or keeping Derby residents in the community for leisure activities, and promotes Derby in the surrounding area.
 - The selection committee **recommends** funding in the full amount requested of \$2,000 with the stipulation that this is a one-time start-up contribution as identified in the applicant’s proposal.

Legal Considerations:

- The Derby City Council has empowered the selection committee to make recommendations for allocating available funds to successful applicants based on program guidelines as evaluated by the selection committee.

Policy Considerations:

- See attached Program Guidelines for complete Assessment Criteria, Limitations and Restrictions, and Application Requirements on which the Spring 2007 applicants were evaluated.
- Following the evaluation of the Spring 2007 applicants, the selection committee reviewed the program guidelines and determined that the following language should be added to the Limitations and Restrictions section:
 - “Events or programs established prior to May of 2006 are ineligible for funding.”
 - “Fundraising events to benefit non-profit organizations will only be eligible for a one-time start-up contribution.”
 - The amending language will be effective in the Fall 2007 CEP application cycle.

MOTION: Warren moved to approve Community Enrichment Program grants of \$750 matching contribution to the Derby Community Coalition Promoting Healthy Choices for Summer Fest 2007, \$2,000 to the Derby Twins for two Home Run sponsorships for Parents’ Weekend, and a one-time grant of \$2,000 to the Derby Free Spirits for the CJ Memorial Golf Tournament. Arnold seconded.

DISCUSSION:

Council Member Bannon thanked all of the organizations who have applied. She knows there are a lot more organizations in town that could benefit and they are looking to bring all kinds of things. If you listened to what went on at the public forum, there is a lot going on in this town and a lot more being added all the time. She stated that part of what the Derby Twins is going to be doing with their money is advertisement of city items. She is hoping that the Historical Society may be open that weekend so that people can tour, we can advertise Derby Dash, Rock River Rapids, the library and businesses around town, she is really excited about that. She mentioned there was an applicant that applied that they did not chose to award monies to this year and there have been some questions about that. It affects only about six young ladies who are very important to the community, but it is a very small amount of people that it does affect and the award would be strictly for a scholarship that would really go to one person. The goal of the Community Enrichment is to bring different, new events to Derby to get as many people as possible involved.

Ms. Wagner advised the deadline for the next application process will be in early fall and will be announced at a council meeting in late summer, and it will be on the city website.

Council Member Craig asked if the Derby Community Coalition was a not for profit organization.

Becky Robinson, indicated they hold a 501(c)(3).

Council Member Craig asked if the Derby Free Spirits were not for profit.

Ms. Wagner explained they are a 501(c) (3) under the Kansas Special Olympics.

Council Member Craig stated that obviously we want the Derby Coalition to get the matching for the total of \$1,500. Since this is kind of a start for them also, does that exclude them from further requests?

Ms. Wagner advised it did not. Anything after May of 2006 that is new to the community is welcome to apply and compete along side other programs, new and established from then on out.

VOTE: Craig yea, Meidinger abstain, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, 1 abstain, motion carried.

(Inaudible discussion on the bench, no microphones on)

Ms. Wagner explained this is the 2nd half cycle of the CEP grant funding and along the process, the selection committee has seen that as our needs have evolved, so must our practices and policies be adaptable. They have seen fit to recommend two adjustments to the program guidelines for clarification. It will not substantially change anything they have been doing, but it

helps to clarify some guidelines to the program. The first one is, a definition for what a new program means. A new program means after May, 2006, they will explicitly, with the council's approval, begin to list that in the program guidelines from here on out. The point of the CEP program was to add new events to the Derby community, and certainly it was never intended, according to her understanding, to constantly generate and setup new events without having any continuing support. The hope is to have them continue to be competitive with brand new start up events. The language that would specifically be added is "that events or programs established prior to May of 2006 would be ineligible for funding". That will help to clarify for all future applicants what that means. The second point deals with fundraising events. They are recommending that fund raising events to benefit non-profit organizations only, will be eligible for a one time start up contribution. That is reflected by the committees' recommendation for the CJ Memorial Golf Tournament. She did note that upon approval of these two alterations to the program guidelines that they will go into effect officially, in the fall of 2007.

- MOTION: Bannon moved to update Community Enrichment Program Guidelines to add the following, effective for the Fall 2007 CEP application cycle:
- "Events or programs established prior to May of 2006 are ineligible for funding."
 - "Fundraising events to benefit non-profit organizations will only be eligible for a one-time start-up contribution."
- Arnold seconded.

DISUCSSION:

Council Member Warren stated he does not have the full list of guidelines followed when the committee is considering funding, but he knows they are talking about events that will bring people into the community and he questioned if that aspect is still considered for a fund raising event.

(Inaudible answer)

Council Member Craig asked if the date of May 2006 was restrictive to the point that if someone that was established prior to May of 2006 had a new approach to what they want to do and expand it, do they become ineligible if they come back to the committee.

Ms. Wagner explained that it was not, as long as they have a new component to an established program. For example, the Derby Days Organization event is a long established event for the Derby Community. Were they to apply for funding for an already established event they would not be competitive under these guidelines. But if, for example they began to put on a car show, which is not a part of Derby Days currently, and they applied for funding for that event as a part of the Derby Days umbrella, they would be eligible for funding.

Council Member Craig just wanted to clarify that it would not exclude folks that had a new idea.

- VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, motion carried.

ADDITIONAL DISCUSSION:

Council Member Craig asked what the total was in the fund presently.

Ms. Wagner advised after 30 seconds ago, zero.

Council Member Craig clarified that prior to that there was \$4,750.

Ms. Wagner stated that was correct. The funding for the fall 2007 and spring 2008 cycles of the CEP grant program will come from the fireworks stand permit fees of the next couple of months.

Council Member Craig asked how much is in the bucket from the fireworks money right now.

Ms. Wagner again advised zero, they have spent all the funding, upon the council's approval, that was available from the summer of 2006. There was about \$4,000 allocated at the end of 2006 during the fall cycle and now \$4,750 in the spring cycle. That bucket will be replenished in the coming months from the summer 2007 sales of fireworks stand permit fees.

Mayor Avello pointed out that as the city grows there is going to be more call for event money and we are just raising money from the fireworks stand, correct?

Ms. Sexton explained that is all that the council has set for this.

Mayor Avello advised the council can review it and change anything they want to do in the future.

Ms. Sexton advised they could. In the fireworks money, part of it goes for public safety education, some of it goes to the grant programs you heard tonight and some of it goes for the 4th of July event.

The council recessed at 8:35 p.m. and returned at 8:45 p.m.

**REVISED RESOLUTION
FOR DETENTION POND
IMPROVEMENT TO
SERVE SPRING RIDGE
ADDITION**

Charlie Brown, Director of Community Development presented the staff report.

Background:

- Spring Ridge Addition is located east of Rock Road, approximately ½ mile on the south side of Meadowlark.
- Spring Ridge Addition was approved by the City Council on May 12, 2004.
- Most recent resolutions to construct public improvements for Phase 2 were approved on December 12, 2006.
- The developer originally planned to construct all infrastructure with private funds in lieu of City special assessment projects.
- A portion of the detention pond excavation was actually undertaken by the developer. However, upon completion of the survey work for this project, it was determined that less excavation has been completed than originally believed.
- Consequently, the project cost will increase due to the additional excavation required.
- The developer has opted to submit a new petition which increases the allowable project costs and Gilmore & Bell has prepared the corresponding resolution for Council consideration, which would repeal the original resolution (26-2006).
- If the revised resolution is approved by the Council, the bids for the detention pond construction will also be considered at the May 8th Council meeting.

Financial Considerations:

- Funds for the construction work are included in the 2006-1 Temporary Note issue.
- Special Assessments will be spread against the benefit district properties over a 15-year period. There are no City-at-Large funds associated with this project.

Legal Considerations:

- This is a valid petition in accordance with Section 12-6a of the Kansas Statutes.

Policy Considerations:

- The Council has made a practice of financing such proposed improvements through the use of special assessments.

RESOLUTION NO. 39-2007

A RESOLUTION AMENDING AND SUPPLEMENTING RESOLUTION NO. 26-2006 OF THE CITY OF DERBY, KANSAS, WHICH AMENDED AND SUPPLEMENTED RESOLUTION NO. 79-2000, WHICH DETERMINED THE ADVISABILITY OF THE MAKING OF A CERTAIN INTERNAL IMPROVEMENT IN THE CITY OF DERBY, KANSAS (DETENTION POND IMPROVEMENTS, PHASE II/SPRING RIDGE ADDITION).

MOTION: Staats moved to approve the revised resolution for detention pond improvements to serve Spring Ridge Addition, Phase 2. Bannon seconded.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, motion carried.

PUBLIC IMPROVEMENT FINANCE POLICY

Charlie Brown, Director of Community Development presented the staff report.

Background:

- The City's Public Improvement Finance Policy is presented in Resolution 106-2003, and covers the projects that are eligible for city financing, the developer's financial guarantee requirements and methods for releasing the developer's guarantees.
- The main focus of proposed modifications to this policy deals with the methods of releasing the developer's guarantees.
- Secondary modifications to the policy are being proposed to clarify the use of special assessments for various streets, sidewalks, and traffic signals.
- Existing Release Policy. Resolution 106-2003 allows a 50% reduction in the developer's guarantee when 35% of the lots in the benefit district are issued an occupancy permit. The remaining 50% of the guarantee is then prorated on a per lot basis until the entire benefit district is developed and occupancy permits are issued. This requires continual monitoring by Engineering staff and results in a financial burden to the developer.
- Proposed Release Policy. City staff has researched requirements of other cities and is recommending a 2-step method: At 35% developed (occupancy permits), the guarantee would continue to be 50%; and at 75% developed, the guarantee would be totally released. This method will save countless staff time in calculating the appropriate release amounts, will result in Derby being comparable to other jurisdictions, and will still provide an adequate level of protection against the city's risk.
- Portions of Section 5 have been clarified or added to reflect the current methods for assessing streets: Local Streets – 100% benefit district; Collector Streets – benefit district pays equivalent of local street and City-at-Large pays for oversizing (width and thickness); arterial streets paid 100% by City-at-Large (except for turning lanes); commercial streets paid 100% by benefit district; and turn lanes, driveways, etc. paid 100% by benefit district.
- In Section 5.b., staff is recommending the sidewalk payment be revised from 50% benefit district to 5 feet to put in writing this long-held practice.
- Section 5.f. has been added to put in writing the long-held practice of payment for required traffic signals (80% City-at-Large and 20% Benefit District).

Financial Considerations:

- Changing the release policy will result in redirection of staff time to other more useful endeavors.
- The level of financial guarantee from the developer will be adequate to cover the city's risk relative to non-payment of special assessments.

Legal Considerations:

- The proposed resolution establishes policy under the authority granted by article 12-6a of the Kansas Statutes Annotated to finance public improvements through levy of special assessments.
- Under K.S.A. 12-6a01 and following, the City has broad discretion as to what improvements are financed, how they are financed and what conditions will be attached to public financing.

Policy Considerations:

- Revisions to the release policy will result in the City being more comparable to other area cities.

RESOLUTION NO. 40-2007

A RESOLUTION ESTABLISHING POLICIES FOR MUNICIPAL FINANCING OF CERTAIN PUBLIC IMPROVEMENTS AND LEVYING OF SPECIAL ASSESSMENTS WITHIN THE CITY OF DERBY, KANSAS; AND REPEALING RESOLUTION NO. 106-2003 OF THE CITY.

DISCUSSION:

Council Member Arnold stated that he feels we need to make a change, however he has one concern, in the past while dealing with the builders, whenever we did things in their favor it has come to his attention that a number of them owed us quite a bit of back taxes. In some cases we were carrying those taxes for two or three years. He knows that we issued a policy at that time to bring those taxes up to date and he is wondering if that is still the case today.

Mrs. Epperson responded that our practice is that every six months we request a report from the county and verify as far as the special assessments to make sure the developers or anyone that would have an interest in that development, that there are no delinquent specials. That is definitely a requirement, if for example a developer requests a reduction in a letter of credit, that is the first thing we look at, is to make sure they are current. Because specials are due every six months, that is why we request the report, we give the county ample time to post all of the payments then we look at the specials to make sure they are current.

Council Member Arnold advised he is in favor of the change, we want to be competitive.

Mr. Brown covered the remaining items in the staff report.

FUTHER DISCUSSION:

Council Member Johnson asked if we were requiring sidewalks in all additions.

Mr. Brown advised sidewalks, by ordinance are required on both sides of all streets in Derby.

Council Member Craig asked if Meadowlark, east of Rock Road will eventually be a commercial street.

Mr. Brown advised it will be an arterial street.

Council Member Craig asked about Tall Tree to the north, when developed along the edge of New Market Place, will that be arterial or commercial.

Mr. Brown advised it will be a collector street. He believes, in that case, the petition was the equivalent of a residential street by the developer, the city paying the extra 10 feet.

Council Member Craig asked how something becomes a commercial street.

Mr. Brown explained typically it will be determined by the zoning district.

Council Member Craig clarified the one at Kohl's becomes a commercial street because it goes into that area.

Mr. Brown advised that was correct.

Council Member Craig clarified that was paid 100% by that particular area.

Mr. Brown advised that was correct, no city at large contributions on those streets.

MOTION: Arnold moved to approve resolution modifying the City's Public Improvement Finance Policy. Seconded by Warren.

Council Member Warren pointed out a mistake in item F, the 80% and 20% are backwards.

Mr. Brown agreed, those numbers need to be switched.

Council Member Meidinger stated he liked the Wichita method of 50/50 commercial split. For example, on Patriot Avenue, Kohl's created the problem and now you are suggesting the city at large pay for the problem that Kohl's or another retailer would create. It would be the same case when we go out to Market Place or those areas; you are asking the total city to pay for congestion that is caused by commercial. He does not think that is fair to the citizens at large in Derby, therefore he is not going to vote for this. He agrees with the other parts of it, but he can't agree with letting the commercial people come in and take advantage of the tax base of the city.

Council Member Bannon advised she is glad to see item 7(C) regarding the unpaid taxes, she had really pushed to get something like that on the books and she is glad to see it included in this particular document. As far as the traffic signals, she does not consider city growth and the need for another traffic signal a problem. She considers any time we have more commercial business coming to town; they help increase our tax base and increase the amount of traffic, good and bad, through our community and bring in more people to shop. Is this exact percentage that we need to be at, she doesn't know that there is a guidebook anywhere that says what isn't right. She thinks this is something we've been doing and we are at least getting our practice policies put in writing and updated. She noticed on there a couple of items that they had been in theory doing each time, but that may or not have been exactly how it is written, she is glad to see that updated.

She does not want any commercial business to think that they are necessarily causing us a problem by having to have a stoplight or traffic light; she looks at that as growth of the community. As far as the percentages she thinks that is something that can be dealt with on a go forward basis if things need to and we find that we are putting in a lot more, then we can change.

Mr. Brown advised the city attorney is going to revise the one item Mr. Warren talked about; there is one other item they have overlooked. In a location a traffic signal is required to the street, such as the Target store, somewhere between Meadowlark and Tall Tree, that traffic signal is assessed 100% on the development. We have actual petitions from Target property, MRV is the developer, for that particular case and that is not in this resolution yet. That is something that was overlooked and the motion needs to be amended to include that. If a business by itself requires a traffic signal it's not 50/50, it is 100% on the development. We are talking about, in this particular case, public streets. A good example would be The Oaks entrance into The Oaks off of Rock Road at Tall Tree; that will be 60% city, 20% Oaks and 20% Marketplace. We are actually collecting more from the developers than Wichita is in those particular cases. An intersection of two public streets is 80/20, but a commercial drive by itself is 100% on the development and that needs to be included in this resolution.

Council Member Arnold asked what the proper way to handle this is since it is not in the resolution right now.

Mr. Alexander stated that considering that there is a motion and a second, it would be appropriate for someone to withdraw that motion and the second to be withdrawn and then a new motion made that would include the additional changes that Mr. Brown mentioned, correcting the percentage for split for signals generally, and addressing the signals for private drives.

Council Member Arnold withdrew his motion.

Council Member Bannon withdrew her second.

Council Member Johnson asked how Mr. Brown would assess the stoplight at Meadowlark and Woodlawn. There is about from one diagonal where the church, is to across that street, to where the golf course is, there is a length of time of maybe 50 years. When we get a development that comes in but doesn't necessarily increase that traffic as much, but we have something somewhere else come in a mile away, like Rock Road that increases the traffic. He doesn't consider any one of those developments as causing that stoplight, but collectively we needed the stoplight there, so who pays for that stoplight?

Mr. Brown advised his opinion is that it would be city at large through the Capital Improvement Plan.

Council Member Johnson agreed. We are going to have that problem going on east, on 71st street with various additions over there and possibly on Madison as we extend on east with additions on both sides of the road. He also agrees with the commercial deal, for example, Kellogg at Greenwich Road. Obviously Kellogg is a highway and they put up stoplights there

that even the state highway commission should have been in on, but the entrance going in from the west, that is a terrible thing and the whole cost of that should have been on the developer because he created that exit with a lot of cars going out on it. Wouldn't that be a perfect example?

Mr. Brown advised under our proposal, it would be 100% by the developer.

Council Member Craig asked about the possibility of there being a stoplight at 71st and Tall Tree.

Mr. Brown stated that was a possibility.

Council Member Craig asked who had control over that, whether that happens or not.

Mr. Brown advised it would be the city engineer. That is a petition that we had received during the platting of MarketPlace Addition. In case the traffic from that commercial property justifies another signal then we have the method to get that built. He is not going to say it is going to be next week or next year or five years from now. But in case we get Towne East Square II and you have traffic volumes that require another exit point with a signal, we have a method of doing that.

Council Member Craig advised that he appreciated that point, but he thought that our design was primarily one for seven lanes of traffic including a center, dedicated left hand turn lane; two thru lanes, accel/decel lanes. That to him, if that is planned right; we shouldn't have to be bothered with another stop light at a ¼ mile. They might pay for it 100% but if you have ever been down the main street of Hays there is one every 300 ft. and that becomes a real problem.

Dan Squires, City Engineer, explained there is a petition we have that provides the ability, if that signal is justified in the future, with a set of warrants used to analyze that based on traffic volumes and accident history, etc., that we could assess part of it to that development if that signal is warranted in the future. If you put seven lanes in there, your through traffic is okay. What you run into is somebody trying to get out of that development and get across the four lanes they have to to make the left onto Rock Road. The signal may be warranted in the future. It may never get done, but we have a financial mechanism to assess part of that to the developer, that is part of the Rock Road plan and there is no intention to put that in at this time. We also looked at the access points as we went through this development and created right in and right out entrances; that is not the only entrance in. There is one limited point that may need that; the other ones won't have the option to make a left out of the development.

Council Member Meidinger advised this is exactly what he is referring to. When a commercial area comes in and creates a traffic problem they should pay for it. He appreciates Mr. Brown putting that in there because otherwise it strictly wasn't fair. Obviously we do want these major retailers coming in, and he also reminded the council that these are not ma and pa corporations, they are multi-billion dollar corporations and they should pay the way if they want to do business in our city. Obviously we welcome them, we want them to come in, but they have to pay in other areas of construction and this is a very wise move.

MOTION: Bannon moved to approve the resolution modifying the city's public improvement finance policy with the change made regarding the typographical error of the 80/20% benefit district, also the change reflecting the commercial traffic lights. Seconded by Craig.

Council Member Meidinger asked if the 50/50 for commercial streets is in this resolution also.

Mr. Brown explained the commercial street will be 100% development.

Council Member Meidinger clarified that will be in this resolution.

Mr. Brown advised it will be with the change in the motion.

Council Member Meidinger advised he was getting confused, what about the commercial street, like the one between Lowe's and Kohl's.

Mr. Brown advised it is in the resolution as presented.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, motion carried.

**MADISON AVENUE
DECEL LANE
IMPROVEMENTS,
SPRINGCREEK PLAZA
ADDITION**

Dan Squires, City Engineer presented the staff report.

Background:

- A bid opening for the construction of Madison Avenue Decel Lane Improvements to serve Springcreek Plaza Addition, was conducted on Tuesday, April 17, 2007 at 2:00 p.m.
- The following bids were received by the City Engineer's office and witnessed by the City Clerk:

Kansas Paving	\$79,330.00
Lafarge Asphalt & Paving	72,056.00
Cornejo & Sons	62,837.00

Engineer's Estimate

\$57,206.00

- The Springcreek Plaza Addition, Madison Avenue Decel Lane Resolution 24-2006 was approved November 28, 2006.
- Although the low bid came in over the Engineer's estimate, the bids were well within the approved resolution amount of \$77,000 and a letter of agreement has been received from MKEC Engineering Consultants, Inc.

Financial Considerations:

- Funds for the construction work were included in the 2006-1 temporary note issue.
- Costs for the Madison Avenue Decel Lane Improvements will be paid 100% by the benefit district and none by the City-at-Large.
- Special Assessments will be spread against the benefit district properties over a 15-year period.

Legal Considerations:

- The City has followed all statutory procedures in securing financing and in planning the project.

Policy Considerations:

- Cornejo & Sons, Inc. has completed several projects in Derby and has submitted all required bonds and financial sureties for the project.
- Upon approval of the bid, staff will prepare the required contract documents for signature.

MOTION: Schwarz moved to approve the bid of Cornejo & Sons, Inc. for \$62,837 for construction of Madison Avenue Decel Lane Improvements for Springcreek Plaza Addition. Arnold seconded.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, motion carried.

**ENGINEERING
CONTRACTS FOR 2007
CIP PROJECTS**

Dan Squires, City Engineer presented the staff report.

Background:

- The Capital Improvement Plan (CIP) includes several significant infrastructure projects to be constructed in 2007 or to be designed in 2007 with construction in subsequent years.
- City staff sent out Requests for Qualification to approximately 21 consulting engineering firms throughout the State, soliciting their interest in designing the various projects. The Statements of Qualifications that were received were

reviewed by a selection committee comprised of Dan Payne – GIS Coordinator; Dan Squires – City Engineer, and Charlie Brown – Director of Community Development.

- The engineers’ proposals were evaluated and rated on the firm’s overall experience, experience with similar projects, schedule, fee range, and evidence of the engineer’s visiting the project site and reviewing the preliminary design issues.
- Based on the committee’s evaluation, the following is a list of the projects, recommended engineering firm, their proposed lump sum fee, the engineering budget, and construction schedule for each of the projects.

<u>Project</u>	<u>Recommended Engineer</u>	<u>Proposed Lump Sum Design Fee</u>	<u>CIP Design Fee Budget</u>	<u>Orig. Design Schedule</u>	<u>Construction Schedule (Year)</u>
Phase 7 Bike Path (on Woodlawn, Market to Garrett Park)	Young & Assoc.	\$28,200	\$25,000	2007	2008
Nelson Drive Water Lines (Meadowlark to Patriot)	TranSystems	\$24,000	\$33,300 \$10,200	2007 2008	2007&2008
Spring Creek Bridge Erosion Control	Parsons Brinckerhoff	\$16,000	\$10,000	2007	2007
Buckner Reconstruction (Kay to So. City Limit)	Crafton, Tull & Sparks	\$29,900	\$15,000	2006	2007
High Park Parking Lots	Young & Assoc.	\$7,000	\$24,000	2007	2007
Madison (Buckner to Water) (Extension to Industrial Park)	Baughman Co.	\$21,000	\$58,800	2009	2009
Total		\$126,100	\$176,300		

Legal Considerations:

- Solicitation and evaluation of proposals were conducted in accordance with the City’s purchasing procedure, which authorizes an RFP process in lieu of competitive bidding for professional services.
- A standard professional services consulting contract previously developed by city staff will be executed with each successful firm.

Policy Considerations:

- The 2007 CIP will be updated during the upcoming budget process to reflect modifications to fees and schedules.

MOTION: Arnold moved to approve contracts with engineering firms as recommended by staff and authorize the Mayor to execute all necessary documents. Seconded by Warren.

DISCUSSION:

Council Member Meidinger asked about the Phase 7 bike path, that is going north on Woodlawn correct?

Mr. Squires advised that will go south on Woodlawn from the DRC to Garrett Park. Phase 6, which is already under design by Trans-Systems will go north from the DRC and be constructed this summer all the way to Meadowlark and then along Dry Creek out to 63rd Street. There are two different projects; this is for the design of Phase 7.

Council Member Bannon asked if there is typically a percentage when the budget is done that is figured of the project for design fees, is there a standard?

Mr. Squires advised it is hard to set a specific percentage because it may vary from project to project, a water tower is different than a street.

Council Member Bannon stated she was looking at the large divergence between low and high bids and asked if the choices of recommended engineers was based on low bids or how did that factor in.

Mr. Squires explained they set up a matrix for each of them. They each evaluated the proposals they received independently and then got together with their evaluations and selected consultants. The fee was 25% of that selection process with the other items comprising the other 75%. They do not typically bid engineering work and there is good reason for that, coming from his consultant experience you can pay many times over in construction with what you saved in hiring the cheapest designer.

Council Member Bannon regarding the \$16,000 erosion control she asked; what kind of erosion control we were designing, is it rock held up by chicken wire or what?

Mr. Squires stated that at this point we don't know. That was kind of an awkward project to do and we had some internal solutions, different consultants had some different ideas and at this point we are not sure. We are going to try and find the most economical, cost effective solution that we can in that process, and that is what we have asked the consultant to do.

Council Member Bannon pointed out that the erosion control, the Buckner reconstruction and High Park still have 2007 on the construction year schedule and asked if we still planned on hitting all of those this year.

Mr. Squires advised we do. Depending on the scope of what comes on the Buckner reconstruction, that may slide, there are potentially some significant issues there with right-of-way. We will probably do something of a quick study phase on that to determine whether it's going to be cost effective to try to put in proper drainage and ditches or if we want to go to a curb and gutter section. The other two projects, and actually that project according to what was given to us still meets the 2007 design schedule.

Council Member Craig asked Mr. Arnold if he made a motion that the mayor execute these, or the city manager.

Council Member Arnold advised he said mayor.

Council Member Craig advised they should correct that.

(Inaudible, no microphones on) (Discussion among council regarding whether it says mayor or city manager).

Ms. Sexton apologized and pointed out it says it one way on one form and the other way on the other.

Council Member Arnold asked if he needed to correct it.

Council Member Arnold withdrew his motion.

Council Member Warren withdrew his second.

Council Member Craig gave instruction to make the motion again.

MOTION: Arnold moved to approve contracts with engineering firms as recommended by staff and authorize the City Manager to execute all necessary documents. Seconded by Warren

Mayor Avello asked when we do a contract for \$100,000, with the cost of energy and asphalt and other things, are we holding them to that \$100,000 or is there a clause in their contract that they can escalate their costs?

Mr. Squires advised for a construction contract, they are expected to build it for the cost and it's their responsibility to build that security into their bid. After Hurricane Katrina we had some issues where the pipe manufacturers were giving prices for piping and they wouldn't guarantee it until the time it was delivered and the delivery date was past the week or two weeks that they would guarantee that pipe price, but typically that risk is absorbed by the contractor and not by the city.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, motion carried.

CONTRACT FOR THE PUBLIC WORKS AND PARKS MASTER PLAN

Robert Mendoza, Director of Public Works and Parks presented the staff report.

Background:

- The Public Works and Parks Master Plan is a study to determine key development points for the creation of a new Public Works and Parks facility.
- The Scope of Services includes an Operational Review, Space Analysis, and Site Planning.
- The City of Derby sent out Requests for Proposals to architectural and engineering firms throughout the State.
- The proposals that were received were reviewed by a selection committee comprised of Ted Austin – Director of Operations, Charlie Brown – Community Development Director, Kathy Sexton – City Manager and Robert Mendoza – Director of Public Works and Parks.
- The City received six proposals which were evaluated and rated on the firms' overall experience, experience with similar projects, schedule and fee range.
- Three firms were chosen for formal interviews, and the selection committee selected Bucher Willis & Ratliff as the most qualified and most cost effective.

Financial Considerations:

- 2007 Estimated Budget of \$25,000.
- Negotiated price of the PWP Master Plan - \$28,000.

Legal Considerations:

- Proposals for development of a Public Works and Parks Master Plan were solicited and evaluated in accordance with the City's purchasing procedure.
- The proposed contract has been reviewed and found to be satisfactory.

DISCUSSION:

Council Member Warren stated the engineering fees don't seem that out of line but he questioned if we really need an engineering firm to tell us where we are going to put our buildings, where we are going to put our entrance. In the private enterprise business, Cornejo and Sons probably didn't hire somebody to tell them where to put their cement mixer. Is it really that important that we hire somebody to tell us where to put our buildings?

Ms. Sexton advised she thinks this is a good idea. First of all, this is not an engineering contract, it is architectural more so than engineering. It is what we call the preliminary design phase, the same as what is in the process of happening with the library, for example. If you first

figure out what you need, and in this case it is more of an operational review, compared to the library that is more or less what the people want. With this it is more looking at what other cities are doing and how many codes we are violating in terms of the inadequacy of the current place and how do you fix that and efficiently have traffic flow through the area. It is developing a master plan with a cost estimate. You might recall you adopted a CIP last year in the budget for this facility. No professional has spent any time figuring out what a cost estimate might be. If we pay these folks a little bit of planning money to get people like Robert Mendoza, Darrell and Mike Gasho away from their normal duties and make them sit down and find out what they need. They are basically a facilitator in the process but they bring with them a lot of experience in public works facility, it is a specialty area for this firm which is kind of unheard of, none of the other proposing architectural firms have a specialty area in public works facilities. They go all over the country doing this kind of thing and we are hoping to gain from their experience with public works. Even if we didn't hire them we would need a plan, a preliminary programming document including a cost estimate.

Mayor Avello asked how you do that without owning the property or having property in mind.

Ms. Sexton advised it is trickier. If you had a piece of property you knew you were going to use, which we do not at this time, we are still exploring several options in that regard, you would lay it out realistically and it would be more engineering involved. You would look at the elevations and all those sorts of things. In this case it is more just preliminary planning. The architects would love to have a piece of land, what we will tell them are things like the size of land we will have and they will provide a document indicating the amount of square footage you will need for storage, office, vehicle maintenance, etc. Those kinds of cost estimates can be done no matter where you put the facility.

Council Member Meidinger asked if there has been any consideration to talk with the school district on a shared maintenance facility. As Ms. Sexton pointed out our current facility probably has a few code violations and he would guess the school systems maintenance building is probably just as old and antiquated. As the City of Derby grows the population will grow and so will the school population and they are going to outgrow their facility. We currently share the fuel depot which was probably not planned right from the beginning because we didn't know they were going to share it with us when we built it. It would be a good idea if you haven't already thought about it to get with the school district to see what their plans are.

Mr. Mendoza stated that discussion has been had with the tri-gov Organization, USD 260, the city and the DRC as we have gone through our facilities planning. We did spend several months looking at the library issue, the public works facility, along with the bus barn and they came back with the response that with current trends they don't believe they are going to make any changes in that facility any time soon, at least not in the time frame we would be looking at. There is no doubt that we would look at fuel issues and things like that that we are currently sharing with them and how we can maintain that relationship at a new facility.

Council Member Meidinger advised they also had the same thought pattern when the fuel facility was built. They wanted no part of it until it was built and then they said "oh, by the way, it is a great idea". (Inaudible, no microphone on)

Mr. Mendoza advised he understood.

Council Member Craig asked where Bucher, Willis and Ratliff were located.

Mr. Mendoza advised they were out of Kansas City.

Council Member Craig asked if they had someone local.

Mr. Mendoza explained they do not have a local office; they all come out of Kansas City.

Council Member Craig asked for some insight on the word “negotiated”. Did they start at one level and the contract was negotiated down to an acceptable level?

Mr. Mendoza stated they started with a scope of services that he, Mr. Brown and Ms. Sexton worked on extensively to come up with a clear scope of work they wanted to accomplish. They sent that RFP out to all the organizations and received bids back. They then looked at who they thought would be the best person for that, looked at the scope of work again and looked at the price, which was well over budget on most of them. They went back and revisited the scope, provided a specialized list and asked for their standard practice and where the two come together, where they ask for extra and where they do it automatically. They rewrote the scope for us and we compared what they do and what we have and agreed that is what we wanted. With that new scope, this is the negotiated price for that.

Council Member Bannon asked if there will be a design at the end of this and if not, how much does Mr. Mendoza expect the next phase to be.

Mr. Mendoza advised they are intending to have a working set of guidelines and documents as far as space analysis that they can hand to an architect if necessary if they decide to go with somebody other than our current firm. We would have that document available which we would then rebid. He does not know the cost, there will be a cost estimate from Bucher Wills that will tell them what to expect as far as design costs, construction costs from that point on.

Council Member Bannon advised this is preplanning, then we will have planning, then construction so there will be three sets of costs to this.

Ms. Sexton explained the phasing is a preliminary programming phase, which is what we are doing now. A lot of times you would just hire an architect to do the preprogramming and figure out what you want and then design, design culminating in construction documents. A lot of people just hire an architect to do both phases, but what we are trying to do is hire an architect to the first phase of the master planning of the facility, then figure out how much we are going to build first and how much money we have to do it, then pay an architect to design the buildings and issue the construction documents.

Council Member Bannon asked if there were plans to include any of the council members in any of this planning as has been done in the past.

Ms. Sexton stated she had not even thought about it and is not sure what that means. She asked if it meant working with the consultant to figure out what it's going to be.

Council Member Bannon explained that someone from the council has been on pretty much all of the design committees. It helped with Rock River Rapids for example, to educate the council and act as a liaison. She thinks it is a building that we are in need of but she somewhat echoes Mr. Warrens concerns in that the amount of money that we are spending now, then we have to spend more money for design. Keep in mind she knows that the more money you spend up front can save you on the back side also. She asked how the council feels about spending that.

Mr. Mendoza stated that originally this was something that was going to be done in house. Over time questions and other thoughts have come up that indicated maybe we needed a master plan or a larger project. What we have tried to do is combine those needs to come up with an idea and a plan to make it happen where it would be acceptable to everyone involved and give us maybe an outside look of what we actually do and try and show why we do what we do and what we would need to be up to speed today, because we are not there. The reason the programming seemed important is because we are looking at adding equipment, personnel over time with the growth of the community, we wanted to have some benchmarks. It is easier sometimes to hear that from someone else than it is here. Looking at those issues we thought this was an excellent way to show the benchmarks and provide the comparisons to the outside community of where we are going and what we are going to need that already exists out there in the world today.

Council Member Bannon advised Mr. Mendoza almost had her until he said "the benchmarks exist and it's easier to hear it from someone else". If we can save \$25,000 and hear it from you guys, I'm cool with that. She doesn't need to pay someone else to tell her that the benchmarks exist and we are just too dumb to understand what our local city officials are telling us. She asked if the benchmarks exist.

Ms. Sexton stated it is important to understand that we have a pretty minimal staff in this organization so sometimes we hire outside people to do specific jobs because we don't have time. If we spent the time to go out, and other cities took the time to let us visit their places and look at how they do it and gather that kind of research she imagines we would have spent \$28,000 by the time we send teams of people to go out and visit. We are trying to avoid that by having someone come who has done these all over the country who can tell us in a few weeks what we need to do and why. We are paying for experience.

Council Member Bannon advised that is what she needed to hear, that we don't have staff or time available to go out and find this information.

Ms. Sexton commented regarding the statement about paying up front versus paying it later, when you pay somebody to do this kind of programming and analyzing your operations, it is going to be difficult for Robert and his managers. They are going to come in and question the way they are doing things. It is a fresh set of ideas and it's not necessarily going to save you money in the construction project, it's going to save you money in operations, that's what we are getting at here. The city has doubled in size in 15 years; we are so far behind in this organization

that we don't want to build something that's going to be behind within 5 years of being built. They are going to give us information about dump trucks and staff and question the way we are running the staff.

Council Member Bannon pointed out we have a number of buildings in town that are running a little behind in size and it was nice to see that brought up.

Mr. Mendoza clarified that he did not mean to insinuate that council doesn't trust city staff, or him in particular because he thinks they do. The reality is that getting that information out to the council is difficult for us in house.

Council Member Craig pointed out that in house is usually very myopic and you can't get away from that. He advised he has been in the benchmarking business before and it is very expensive, especially when you load everybody up to find the best practices. What you are actually doing is contracting the knowledge of those best practices to come to you. He knows this looks expensive on the surface and this project will require more money but this is one thing that you have to get the process in order first. You don't get the cart before you get the horse identified to see how much you really got.

MOTION: Craig moved to approve Bucher Willis & Ratliff to develop a Public Works and Parks facility master plan for \$28,000 and authorize the City Manager to enter into a contractual agreement. Arnold seconded.

Council Member Warren advised he is still somewhat reluctant but there does come a point where you have to have trust. In this process, through efficiencies either in what we build originally or how we build it that we are going to save \$28,000.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, motion carried.

STREET SWEEPER PURCHASE

Robert Mendoza, Director of Public Works and Parks presented the staff report.

Jean Epperson, Director of Finance, City Clerk explained the financial considerations.

Background:

- Replacement of the old Elgin Mechanical Street Sweeper was included in the 2006 budget.
- Sealed competitive bids were received and opened on April 2, 2007.
- Eight vendors were contacted, of which 2 responded. These include Key Equipment & Supply Co. with a bid of \$129,725 and Mid-West Truck Equipment, Inc. with a bid of \$140,080.

Financial Considerations:

- This item was included in the 2006 budget to be financed via a lease-purchase with a five-year repayment schedule of \$33,000 per year beginning in 2007. Additionally, the low bid is approximately \$20,000 less than the budget estimate.
- It is now recommended that the budgeted funds be combined with Equipment Reserve Fund monies to pay cash for the sweeper and therefore avoid \$15,000 in interest and lease processing fees.
- Bids this Spring for pickup trucks and building inspection software have resulted in \$31,000 savings when compared to the 2007 budget. It is proposed that the bid savings would be used to supplement the cash purchase of the sweeper.
- Adequate funds are available in the Equipment Reserve Fund to supplement the remaining cash needed. This would require using \$65,725 of the Equipment Reserves in September 2007 upon delivery of the sweeper. The 2007 budget provides for a \$50,000 transfer from the General Fund to the reserve so the unencumbered fund balance would almost be restored by year end.

Legal Considerations:

- Competitive bidding is required for purchase of this equipment.
- Bids for this equipment were solicited and evaluated in accordance with the City's purchasing procedure.
- The contract, in the form of a purchase order, has been reviewed and found to be satisfactory.

DISCUSSION:

Council Member Bannon indicated she was glad to see that we are paying cash for this, it is a good way for a city to operate, if you can't afford it you don't need it that bad.

MOTION: Bannon moved to approve the vehicle bid from Key Equipment & Supply Co. for \$129,725 for a street sweeper as described in the bid specifications and authorize the City Manager to enter into a purchase agreement. Schwarz seconded.

Council Member Johnson asked if this was in the budget or not.

Mr. Mendoza advised it was.

Council Member Craig asked about a warranty on this piece of equipment.

Mr. Mendoza explained there is an extensive warranty with an initial 12 months with different time frames for different aspects of the machine. Street sweepers start destroying themselves the minute you turn them on.

Council Member Craig asked for a projected life cycle cost on this particular item since we are investing almost \$130,000.

Mr. Mendoza advised the life span on this with general maintenance is roughly 10-12 years, and it is planned for replacement at that time because of wear and tear. There are different aspects of replacement; the hopper and generator motor versus the vehicle itself. The sweeper we have now is completely mechanized as a sweeper. We have not done the cost as far as year five, it will cost us "X" amount of dollars in replacement fees or maintenance fees. We have basic costs that we know for general maintenance throughout the year.

Mayor Avello asked if we are going to cycle this throughout the city every quarter, what are going to do with it.

Mr. Mendoza advised that was the goal. With the current sweeping process we only do the primary and secondary streets because that is all we can really accomplish with manpower and equipment time that it's actually running. It is the goal with this piece of equipment to expand those services; we hope to at least do the entire city three times a year. Does that mean you are going to see us out there on a regular basis in front of your house, no, but hopefully you will see it within the residential, three times a year, with a continuous sweeping of the primaries and secondary's as it becomes necessary.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, motion carried.

DUMP TRUCK PURCHASE APPROVAL

Robert Mendoza, Director of Public Works and Parks presented the staff report.

Background:

- The 2007 budget includes replacement of a 1987 Ford F800 Dump Truck, Vehicle #307, which is equipped for snow removal.
- The existing vehicle will be used as a trade-in and is valued at \$5,000.
- Six vendors were contacted, of which three responded. These include Kansas Truck Center with a bid of \$102,465, Roberts Truck Center with a bid of \$103,905 and Doonan Truck & Equipment with a bid of \$111,468.

Financial Considerations:

- 2007 estimated budget of \$114,000.
- Lowest and best bid received \$102,465.
- Purchase request is \$11,535 under estimated budget.

Legal Considerations:

- Bids for this equipment were solicited and evaluated in accordance with the City’s purchasing procedure.
- The contract in the form of a purchase order, has been reviewed and found to be satisfactory.
- The contract does provide for cancellation at the City’s option in the event the manufacturer increases its price or the trade-in value is below what has been quoted.

MOTION: Warren moved to approve the bid from Kansas Truck Center for \$102,465 for a 10 ton dump truck as described in the bid specifications and authorize the City Manager to enter into a purchase agreement. Meidinger seconded.

Council Member Craig asked what kind of truck it was.

Mr. Mendoza advised it was a Sterling.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, motion carried.

**ADULT HOTEL AND
ESCORT SERVICES
ORDINANCES**

Phil Alexander, City Attorney presented the staff report.

Background:

- Derby recently amended its adult entertainment code with respect to adult cabarets, theaters and similar establishments.
- At that time, the Council directed staff to prepare additional ordinances regulating adult hotels and escort services.
- Two ordinances have been prepared, one regulating adult hotels and the other regulating escort services.
- Two ordinances have been prepared, one regulating adult hotels and the other regulating escort services.
- Adult hotels are defined as those in which a substantial portion of the material presented over image-producing devices emphasizes sexual activities or specified anatomical areas.
- Escort services are regulated; “sexually oriented” escort services are prohibited.

- Both ordinances:
 - Reference findings made by the Council prior to adoption of the adult entertainment ordinance (no. 1881) with respect to the adverse secondary effects of adult entertainment.
 - Require that regulated businesses be licensed and impose substantial license fees (each individual engaged in providing or arranging escort services must also be licensed).
 - Provide that a license may not be issued to anyone who is under age 18 or has a conviction for a felony or morals charge within 5 years.
 - Require that licensed establishment be more than 750 feet from a church, school, residential dwelling, park, or another adult entertainment establishment.
 - Provide for punishment of violators by suspension or revocation of the license and fine or imprisonment upon conviction by the municipal court.

Financial Considerations:

- No immediate financial impact is anticipated.
- There are currently no businesses operating in Derby that would be affected by these ordinances.

Legal Considerations:

- Separate ordinances are proposed because of the unique features of each type of business.
- Adoption of the findings made by the Council with respect to adult entertainment generally makes clear the Council’s intent to regulate the effects of adult hotels and escort services rather than any expressive quality either activity might have.
- Regulating businesses in the manner proposed is a legitimate exercise of the City’s police power.

Policy Considerations:

- Extensive research in cities throughout the nation has established a connection between adult entertainment businesses and a wide variety of adverse secondary effects including, among others, increased:
 - Violent crime
 - Property crime
 - Drug use
 - Prostitution
- Council members have personally reviewed the results of this research and may reasonably conclude that without adequate regulation of such businesses, Derby would experience similar results.
- The proposed ordinances will alert prospective licensees to the nature and extent of applicable regulations before operations are commenced and provide a powerful tool for policing illegal operations.

ORDINANCE NO. 1886

AN ORDINANCE REGULATING ESCORT SERVICES OPERATING WITHIN THE CITY OF DERBY, KANSAS.

Council Member Bannon stated she understands the difference on the escort services and why we need an ordinance for that, but as far as the adult hotels, why do we have to allow them at all. Why can't we just pass that they are totally not allowed within the city limits and be done with the adult hotel issue forever.

Mr. Alexander advised that was an option.

Council Member Bannon stated that to her, instead of saying that one can operate under these particular things, when she doesn't know that they want one operating at all, why not just pass an ordinance to say we don't want it.

Mr. Alexander responded that was an option they may want to consider, another option would be to postpone consideration for any ordinance for some period of time. As he had said he thinks with the nature of the industry he believes it will be a long time before Derby has to wrestle with adult hotels

Council Member Bannon advised she wants us to get out in front and take care of this, but instead of having this long detailed ordinance, let's just outlaw them all together as far as the adult hotels. As far as having the escort ordinance she understands since there is a type of escort service that would be allowable and legal and one that is already specifically detailed as illegal to operate.

Council Member Warren stated he would be curious to see if it is constitutionally sound to just outlaw it. If it is an option then he thinks it is something our citizens would want to have. How far can we go in just limiting, outlawing, saying we don't want it. We have a constitution we have to live within and he wants to make sure what we are doing meets that. He asked where this ordinance came from, is it a computation of a number of ordinances or one in particular that you liked.

Mr. Alexander explained their goal was to create a regulatory scheme that was substantially similar to what we see in the surrounding communities, particularly in this case, Sedgwick County and Wichita. We did look at ordinances from other communities, specifically Maize and Park City. Most of the communities across the country have migrated toward a more or less common model with specific differences from community to community, but this is a fairly typical ordinance and very typical of what we see elsewhere in Sedgwick County. In terms of the constitutional aspects of this, the ordinance dealing with adult hotels is crafted based upon the type of entertainment offered. That is specifically designed, or intentional to be sure that we are correlating our regulation with constitutional minimums relating to free expression. If you were to ask him if there were a one to one correlation between the entertainment available in the rooms and the secondary effects associated with them, all he can tell you is that studies have shown that that is true. It is a different question as we have discussed already as to whether we will see this sort of business in Derby anytime in the near future. Should we get to that point

then we would have to tread lightly in terms of regulating a business based upon the type of entertainment presented. When that issue first arose he spoke with the folks at Hinkle, Elkouri about why that is chosen as a definitional category. In other words, there probably are other ways to define adult hotels and their answer was that it's the only one that is sufficiently precise, the others would deal based upon the type of activity that is being conducted in those facilities. It would be difficult to categorize the types of behavior, if we were going to base a definition on behavior. He believes that is why this was chosen and that implicates the first amendment issues as Mr. Warren correctly indicated.

Council Member Arnold, thinking on the same lines as adult hotels and escort services, he thinks we might want to include in that also, adult video stores.

Mr. Alexander advised that was a good point, those types of businesses are included in the adult entertainment ordinance that was adopted before Mr. Arnold was appointed.

Council Member Warren advised he would be curious to see how far we can go in limiting, is just outlawing a reasonable constitutional option.

MOTION: Warren moved to table the ordinance regulating adult hotels for further information. Bannon second.

VOTE: Craig yea, Meidinger yea, Johnson nay, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 7 yea, 1 nay, motion carried.

MOTION: Schwarz moved to adopt an ordinance regulating escort services located or operating within the City of Derby. Craig seconded.

DISCUSSION:

Council Member Craig asked if the fees were pretty much in align with the other ordinances we have constructed such as the licensing of the business owner.

Mr. Alexander advised those license fees are essentially the same as the ones approved earlier this year for other types of adult businesses.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, motion carried.

Council Member Johnson stated this is a little bit silly, are we going to have two ordinances here? There is no reason we can't combine these. An adult hotel probably will come in as a five-star resort; they won't call themselves an adult hotel. When the ordinance comes into fact is when somebody's breaking the law and that is what we are trying to put on the books and we are refusing to do it. Do we think they are going to come in and say they are an adult hotel when they open up?

Mayor Avello advised he did not think they were refusing to do it; they just want clarification whether we can constitutionally just have an ordinance saying you can't come in.

Council Member Johnson asked what the point was of saying they can't come in if they are not going to call themselves an adult hotel, that's his point. They are going to call themselves a 5-star resort and turn into an adult hotel.

Mayor Avello agreed, but pointed out it was too late now they had already voted.

**CHARTER ORDINANCE
PROVIDING FOR
FILLING OF COUNCIL
VACANCIES AND
REPEALING CHARTER
ORDINANCE NO. 2**

Phil Alexander, City Attorney presented the staff report.

Background:

- Under K.S.A. 14-204, City Council vacancies are filled by appointment for the balance of the unexpired term.
- Charter ordinance no. 2 of the City, enacted in 1961, provides that Council vacancies are filled by appointment "until the date of the next April City election".
- Council minutes dating from adoption of charter ordinance no. 2 do not disclose the motive for departing from state law with respect to filling Council vacancies.
- Notwithstanding charter ordinance no. 2, the practice in Derby has generally been to appoint for the unexpired term.
- The proposed charter ordinance would provide for filling vacancies by mayoral nomination and majority vote of the Council; if the mayoral nominee is not appointed, any member of the Council may nominate a candidate for appointment by majority vote.
- Adoption of the proposed charter ordinance would conform City ordinance to the generally established practice of filling Council vacancies for the unexpired term of the office.
- An option proposed by Council member Warren would require a mid-term election to fill an unexpired term if a vacancy is filled by an appointment made before the filing deadline for the mid-term election.

Legal Considerations:

- The City's organizational documents and its practices should be consistent.
- Filling vacancies for the unexpired term of office is consistent with state law, the practice in other cities and past practice in Derby.

Policy Considerations:

- Repeal of charter ordinance no. 2 would eliminate the need to conduct a mid-term election to fill a vacancy on the City Council unless the option proposed by Council member Warren is adopted.

CHARTER ORDINANCE NO. 43

A CHARTER ORDINANCE EXEMPTING THE CITY OF DERBY, KANSAS, FROM AND MAKING INAPPLICABLE TO IT THE PROVISIONS OF K.S.A. 14-204; PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS FOR THE ELECTION OF COUNCIL MEMBERS, QUALIFICATIONS THEREFORE, TIE VOTES AND FILLING OF VACANCIES; AND REPEALING ORIGINAL CHARTER ORDINANCE NO. 2 OF THE CITY.

DISCUSSION:

Council Member Craig advised the confusion factor is at an all time high. If we consider one; remaining with the old charter ordinance, Mr. Johnson would have had to run for election, as would have Mr. Arnold because he was seated before the election.

Council Member Warren pointed out that the appointment came after the filing deadline.

Council Member Craig advised “this says election”

Council Member Warren stated that he thinks the wording, at least the . . .

Council Member Craig advised that was beside the point and went on to state it becomes a large confusion as to who is running where and how many years do you really serve and to him it doesn't make sense. He is a principled, he thinks of keeping it very simple.

MOTION: Craig moved to adopt a charter ordinance providing for filling of Council vacancies by appointment for the unexpired term, requiring that a vacancy be filled within 60 days after it occurs, and repealing charter ordinance no. 2 of the City. Schwarz seconded.

Council Member Meidinger advised he had submitted a suggestion for 30 days. He thinks that 60 days is twice as long, obviously, and to go through the agony of waiting to be appointed or not be appointed and putting candidates through hoops, he thinks that if somebody suggested that he had to wait 30-60 days to be appointed, at 60 days he might tell the mayor that he wasn't interested. He thinks you need to get it done and give the councilmen as well as the constituents the voting power that that one seat has taken. Waiting 60 days is a long time. When he resigned from the council in 1999, Mayor Standrich appointed somebody before he left the seat he thinks. It's not that difficult. We are making it very difficult and its very time consuming and should be done in less time than 60 days.

Council Member Craig responded that the month of May has five Tuesday's in it, so we meet on the 1st and the 15th. Say a vacancy occurs on the 16th or 17th, now you have three weeks before the next official council meeting and that has already ate up at least 21 days,

approximately. To get an announcement out officially by this council only leaves a week to formulate that, get it back and then back to the council. The timing looks like a long time, but it's not considering we only meet every two weeks. He would try to keep 60 days into it just to give a little more comfort zone; he thinks 30 days can get consumed real quickly between getting applicants, looking at them and getting them back before the council.

Council Member Warren advised there are two aspects that apply to both of these questions that he is not sure everyone is taking a look at and that is the idea of getting as much community involvement in what is going on at the council level. His problem with the 30 day aspect is very much in line with what Mr. Craig was saying. His idea is that we would go not more than 3 council meetings, by the 3rd council meeting that the appointment would have to make because it would depend on when the person resigned, but at least that would give 2 council meetings for the announcement to be made that a seat has come up. If people are interested in running for that seat they have time to make the application. There is the opportunity for a lot of people in the community to get involved. It gives the mayor the opportunity to interview if there are a number of people to do that and then can make a choice that would be the very best for the city from that standpoint. His idea would be to go no more than 3 council meetings then that position would have to be filled. The other aspect, and he knows over the last two or three years the aspect of community involvement, keeping the community informed and giving the community the opportunity to participate in the process is what he is looking for in the aspect of an appointment to the next election. If a person is appointed after the filing deadline then that becomes kind of a mute point, you are looking at no more than a two year period plus a couple of months from that standpoint. If there is the opportunity for the community, for the citizens to get involved in the process and to avail themselves the right to run, then they should be given that opportunity. One of the charges that comes to him, or at least is thrown at him is that, Chuck Warren has been around for a long time and he is part of the "good ole boy network", he does for his friends, or whatever. He thinks that is a charge that can be magnified against a mayor. At one point last year we had three people that were appointed to the council, if we have a situation where we have multiple appointments and they are all people that the mayor has appointed then that leaves the mayor open to a fair amount of criticism that he is just brining on his "cronies" and there is a "good ole boy network" that is out there. If at the first opportunity, without going to a special election, he is not looking for anything that is going to add cost to the city, but if at the first opportunity for a regular election where the citizens can be involved in that process we need to open that up. Part of the process, and he has talked with Ms. Sexton about this, and the school board does this when they have multiple seats that are available. Let's assume that Mr. Arnold had been appointed prior to the filing deadline, using this for an example only, he would be back up for election. If more than four people would have filed for two seats in Ward IV then there would have been a primary to get down to the four and then the top two vote getters at the general election would go into the two Ward IV seats. The top vote getter would get the four-year seat and the second vote getter would get the two-year seat. He thinks it's a fair way, it's a way that allows the community to get involved and it takes away the aspect that somehow when we get up here we have this "good ole boy" network and we are going to drop the community out of the process. Two years ago when some folks came on there were some guys that got up on soapboxes and they talked about getting on their soapbox about getting against the "good ole boy network" and he finds it ironic that he is the one that is trying to figure out how to get more

people involved in the community when he is the one that usually gets that “good ole boy network” tag thrown on him.

Mayor Avello pointed out that Mr. Warren is not the only one on the council involved in trying to find other people.

Council Member Bannon asked if our current charter ordinance allowed for an election after, say someone was appointed, say someone died the day after they were elected and the mayor appointed someone to fill that position, were they good for the next four years or were they only good until the next election.

Mr. Alexander explained that under our current charter ordinance, were a vacancy to occur almost at the inception of the four year term, then that vacancy would have been filled until the next regular city election, in other words, for two years.

Council Member Bannon advised that was the charter ordinance we have worked under for the last 45 years, during that time has anyone ever went to election.

Mr. Alexander advised he cannot answer that. He looked through 25 years of vacancy filling options or operations and most of those were either silent or indicated that they were being filled for the unexpired term. He couldn't tell by looking, how long that was. There was at least one that indicated that it was until the next April, however he doesn't know if that was in April at the end of a four-year term or April in mid-term.

Council Member Bannon advised her point is that we have had an ordinance on the books but we have not done what was in the ordinance. She thinks it would be possibly somewhat confusing to the voters to change it; however she does like the idea that we are making the ordinance match what we are actually doing as we seem to be having a run of that recently. As far as the 30, 45 or 60 days, she believes they need the extra time; they only have one meeting in December. The night Mr. Duncan appeared at the council meeting and gave his resignation the next morning, 30 days wouldn't have probably provided enough time on that for a replacement to happen. You need to remember it is kind of like an “on or before”, it doesn't have to take 60 days, the mayor could do it at the very next meeting. As far as any “good ole boy”, the council has to approve the mayor's appointment, so we would all have to be hit with that same paintbrush if there is any type of “good ole boy” system still in existence because we have to approve it. She questioned the comment in the ordinance that says “following a nomination by the mayor, provided that then in the event the mayoral nominee does not receive a majority vote, then the vacancy will be made by the remaining council members”. The mayor basically then gets one nomination, if it goes down in flames, it's over and the council can make the next nomination, is that correct.

Mr. Alexander agreed, that is the way it is drawn.

Council Member Bannon stated she is going to be in support of the motion currently on the floor for the reasons stated.

Council Member Arnold advised he is of the old adage, “if it’s not broke, don’t fix it”. He concurs with what Ms. Bannon said; we have been using this same system for the last 40 years. He brought to the attention of the council that whenever there is a vacancy and the mayor is responsible for interviewing these people, you have a person that is working full-time to support himself, not working full-time for the city, although sometimes it feels that way. He or she will require some additional time, especially if that individual is now faced with 8-10 applicants applying for that vacancy. In all fairness to those people, he or she has to sit down and make the time to interview these people, then make a decision and he does not see how you can do that in 30 days when you look at the position of mayor as part time and most of these people who are mayors are working full-time. In order to do an effective job and do it to the best of your ability, you do require some time to do it.

Council Member Meidinger advised he stands corrected, he had forgotten about the December meetings. He believes that Mr. Warren probably had a good idea of three council meetings. He commented that the three appointments the mayor made were very fine appointments; he knew what he was doing.

Council Member Johnson stated that one thing we need to keep in mind is that when this ordinance was written the term was a 2-year term and it was that way for many, many years in Derby and there is no doubt in his mind whatsoever that it was always understood that they were filling an unexpired term, that is the intent. It did not say that and he agrees with Mr. Alexander that it didn’t say that, but he is certain that was the intent. Regarding Mr. Warren’s example about four people running for two positions, indicating the need for a primary, he doesn’t think you would need a primary with four running for two, but let’s say we have five. Now who runs for what positions, who runs for the one where there’s two years left and who runs for the one where there’s four years. Is it the highest vote getter, does he get his choice? We are making that confusing and whatever can happen, will happen, just like Murphy’s Law. He commented that this council has a burning desire to eliminate the powers of our mayor by using the word nomination, then in our casual conversation you say appointment. He doesn’t think they mean the same thing and he personally is not for watering down any of the powers of the one person on this bench who has been elected by all of the people in Derby. None of the rest of us have been, but he has, he was subjected to all of the voters of Derby and he should have the power to appoint people. An appointment means they get the job unless the council votes that they are unqualified and disqualifies them. It is not necessarily approving their appointment, they have to disqualify them. With those exceptions he is basically in favor of the motion. One thing we might consider, rather than a certain number of days, is we might say the person would be appointed to fill the unexpired term three meetings after the effective resignation, or some such number of meetings after, then a five-week month wouldn’t kill ya because you would still have the number of meetings. Three meetings after a resignation may give the mayor enough time to make that decision, maybe it should be four, but it should be made on that last meeting.

Council Member Craig pointed that out most of them on this council have stood up to agree to disagree and still walk away and be able to look each other in the eye. He is for whatever it is that gives the proper amount of time for notification of applicants. As you can see on this council, the only seat that had a real election is the one that Mark Staats is sitting in right now; everybody else was unopposed so we haven’t had volunteers knocking down the door to fill

these seats because it is a bigger job than a lot of people think it is. He is not going to change the motion he made unless someone else wants to amend that properly, and he opened it up for that person to do that.

Mr. Alexander stated he is not sure it is his position to suggest an outcome here, but he noted depending on how meetings fell, three meetings could involve as much as 49 days, which isn't a long ways from 60. His point is, it may not make a lot of difference which alternative you might choose, if you choose either one.

Council Member Warren wants everyone to understand; those on the bench, those that watch this on television or read it in the paper, that if we pass this, essentially as it goes through, that we had the opportunity to put the decision in the hands of the voters and we kept it at the bench instead.

Council Member Arnold added to his earlier comments, he agrees that the system has worked very well over the last 40 years, but he would like to bring to the attention, one really big problem we have in the City of Derby and that is when you have three wards that run unopposed. He wishes the activity in those three wards was as great as they are in Ward IV, but they are not. That is the bigger issue we have here, how do we get the people in this city, especially the younger people, to become involved with the city, that is the big issue.

MOTION: Schwarz called for the question. Meidinger seconded.

VOTE: Arnold yea, Craig yea, Meidinger yea, Johnson nay, Warren yea, Schwarz yea, Bannon yea, Staats yea. 7 yea, 1 nay, motion carried.

Ms. Epperson reread the motion.

MOTION: Craig moved to adopt a charter ordinance providing for filling of council vacancies by appointment for the unexpired term, requiring that a vacancy be filled within sixty (60) days after it occurs and repealing charter ordinance no. 2. Schwarz seconded.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren nay, Schwarz yea, Bannon yea, Avello yes, Staats yea, Arnold yea, 8 yea, 1 nay, motion carried.

Council Member Johnson commented that he has no problem with the vote or the motion, but he does have a problem with coming out with 3 or 4 variations of what is going to end up being a law in the City of Derby. We don't know what the grammar is going to be on this when it comes out, we have some ideas but he really would like to look at an ordinance if we are going to call it passing a law. He thinks we should get closer to what we really want in the future so we know what we are voting on. This one still says nomination which is okay, if you guys want it to read like that its fine with him, but we keep using the word appoint. Whatever this thing says, we

should vote on what it says and maybe, without getting grammatically correct on every little “i dot”, he is just saying he thinks it’s a good idea.

Ms. Sexton stated that for clarification, the charter ordinance presented to the council, the only thing that changed was adding the 60 days, everything else is exactly as written.

Council Member Craig pointed out that in their procedure, that appointment is by the mayor.

Mr. Alexander clarified that as the ordinance is currently drawn, which is the one that is currently under consideration based on the motion; there would be a nomination by the mayor. Only if the mayor’s nomination did not receive a majority vote would filling the vacancy then fall to appointment by the council.

Council Member Craig pointed out for clarification that the mayor gets first shot.

Mr. Alexander agreed.

Mayor Avello stated he has been on the council for a long time and has seen many appointments made. Before he became mayor there was no questioning of anybody who was put up, they were just appointed. When he became mayor this all started and he thinks it is the right thing to do to have this council talk to the nominees when the mayor is putting somebody up. He is not knocking the old system, it changed and he thinks it changed for the better. As far as the number of days, things happen and he could live with the 2 or 3 meetings, that could be done.

CONSENT AGENDA

Ms. Sexton, City Manager presented the staff report for the consent agenda.

Renew Resolution of Support for a Low-Income Tax Credit Application

RESOLUTION NO. 41-2007

Background:

- Last June, the City Council approved a resolution of support for a proposal from the Dalmark Group, LLC to rehabilitate the Brookridge Plaza Apartments with funds from the state’s Low Income Tax Credit program. The application was submitted but was not funded in the 2006 program.
- The Dalmark Group would like to resubmit the project for 2007, and an updated resolution of support is needed from the City. Dalmark staff does expect the project to be approved in this round.
- Brookridge Plaza, located at 1259 N. Buckner, is a 46-unit multi-family housing structure reserved for low income seniors; tenants must be 55 years or older. 100% of the residents receive Section 8 rental subsidy assistance and currently the project is income restricted to households earning at or below 50% of the Sedgwick County area median income (AMI). The property is fully leased. The apartments were built in 1990 and have an appraised value of \$1,611,600.

- The proposed scope of work includes new siding, windows, carpet, cabinetry, fixtures, appliances (including dishwashers, which are new to the property), new heating, ventilation and air conditioning system and some roof repairs. The estimated cost of the improvements is \$23,000 per unit.
- The Dalmark Group is part of a Development Team, for which it serves as the development consultant and managing agent. The Team also includes the 5th District Economic Development Fund, Inc. (a regional development organization of the African Methodist Episcopal Church) and St. Paul AME Church of Wichita together serving as general partner. As a group, these entities will be the applicants for the tax credits.
- The Development Team will submit another application to the Kansas Housing Resources Corporation for low-income housing tax credits, which will be sold for equity that will pay for the rehabilitation of the property. Conventional construction and permanent loans will also be used.
- The Dalmark Group, LLC is a project developer specializing in affordable housing projects. Dalmark Management Group, LLC is a subsidiary of The Dalmark Group and currently serves as the property management agent at Brookridge Plaza.

Financial Considerations:

- The resolution of support does not require any financial action or support from the city. The cost of the renovations will be covered entirely by the proceeds of the tax credits with financing obtained by the Development Team.

Legal Considerations:

- Approval by the local jurisdiction is required in order for the developer to obtain some or all of the financial incentives available to enhance the viability of the project.
- Adoption of the proposed resolution does not commit the City to provide financial support to the project or relieve the developer from compliance with applicable City ordinances and building regulations.

Policy Considerations:

- As an existing low-income housing property, this project will continue to serve the needs of qualified seniors in the Derby community.
- The proposed renovations will modernize the units and add to the value of the property.

D.A.R.E. Celebration

Background:

- Each year D.A.R.E. hosts an end-of-school-year event for area schools.

- This year's event will be held in High Park on May 12, 2007 and feature many activities with a fireworks display as a conclusion.
- Stellar Fire Works, a local company, will be the display operators again this year and have provided the necessary documentation as required by Derby Fire Code; site map, license, and insurance certificate.
- City Ordinance Title 8.16 requires approval by City Council for a fireworks display to be held in the City of Derby.
- Area residents will be notified of the fireworks display.

Legal Considerations:

- Certificate of Liability Insurance coverage, copy of State License for the pyrotechnic operator and map of location have been provided.

Police Considerations:

- Meets requirements of City Ordinance 8.16.

Application for 2007 Fire Act Grant

Background:

- Each year, Congress allocates funding for grants to fire departments for assistance in purchasing needed items.
- The Derby Fire Department has participated since 2001 when the Fire Act Grant was first initiated.
- If successful, a grant would pay for 90% of the cost of the item requested.
- This year, fire staff has evaluated what our most pressing needs are and what can benefit the City. The current apparatus is 51 years old and one of the oldest in the City. It does not meet requirements both for NFPA and DOT for emergency response vehicles.
- A replacement for our current 1956 Rescue/Utility truck will be requested.
- According to the City's vehicle Replacement Plan, this vehicle is slated to be replaced in 2008. A supplemental budget request will also be presented for replacement in 2008 in case we would not be successful in getting a grant.
- The request for the grant and also in the supplemental is that the Fire Department has latitude to either purchase a new or used unit.

Financial Considerations:

- Financial Replacement cost of Rescue Unit = \$200,000
- City's share (10%) = \$20,000

Policy Considerations:

- Grant applications are to be approved by City Council.

MOTION: Craig moved to approve Consent Agenda as presented. Meidinger seconded.

VOTE: Craig yea, Meidinger yea, Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, motion carried.

ADDITIONAL DISCUSSION:

Ms. Sexton pointed out information provided for the council to prepare for the strategic planning workshop that the governing body has planned for Monday, April 30th at 6:30 p.m., beginning with dinner at 6:00 p.m. That event is a public meeting that will be located at Cheryl Bannon's house, 321 Valley Stream Drive. It is intended to be a workshop with the council in terms of reviewing the old strategic plan and developing changes to that, etc. She suggested taking a look at the background materials before hand because it is interesting reading that might help you prepare.

ADJOURNMENT

MOTION: Warren moved to adjourn at 10:45 p.m. Schwarz seconded.

VOTE: Craig yea, Meidinger yea Johnson yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, 0 absent, motion carried.

Dion P. Avello, Mayor

ATTEST:

Jean Epperson, City Clerk

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