

**UNAPPROVED MINUTES
REGULAR COUNCIL MEETING
April 27, 2010
6:30 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I
WARD II
WARD III
WARD IV

COUNCIL MEMBERS PRESENT:

Jim Meidinger, Jim Craig
Vaughn Nun, Heath Horyna
Chuck Warren, Cheryl Bannon
Tom Haynes, Mark Staats

Flag salute was led by Council President Staats. The invocation was led by Pastor Joplin Emberson, Cross Way Church.

PUBLIC FORUM:

Council Member Bannon announced there will be an art reception next Thursday, May 6th for a photography show at the library from 6:00 p.m. to 7:30 p.m. The art work will be up for 3 months. After that there will be art work, quilt shows, etc. Shows are scheduled through 2011.

Council Member Craig stated that after visiting two third-world countries he wants everyone to know we live in the greatest nation in the world. From the time he left New York City until the time he returned he could not drink one drop of tap water. Just to be able to brush your teeth out of tap water is a real pleasure. We have it really good. They went to Egypt for two weeks and Jordan for a week. He thanked everyone for thinking about them while they were gone.

Council Member Horyna thanked City staff and volunteers for their work during the Arbor Day celebration. We had a great turnout and the weather cooperated. A tree was planted and there was fun for everyone.

Mayor Avello advised he had an opportunity to do his first DARE culmination the other day with Officer Liston and a couple of other officers. Officer Liston has been after him for seven years to go to one and it never worked out, but it did last week. The joy on the faces of the fifth graders for finishing this project and receiving an award is unbelievable. If you have an opportunity to attend one of those ceremonies he strongly recommends you do that. It is funded by the City of Derby and hopes that is a project that we never fail to fund.

CONSIDERATION OF MINUTES

Minutes of the April 13, 2010 Regular Council Meeting.

MOTION: Warren moved to approve. Haynes seconded.

VOTE: Motion carried 6-0, Craig and Bannon abstain.

PROCLAMATIONS:

Mayor declared the month of May as “Older Americans Month” in the City of Derby.

Dee Williams, Senior Center Administrator, along with members of the Senior Services Advisory Board accepted the proclamation. Older Americans Month has been a tradition since 1963. This year’s theme is “Age Strong, Live Long,” which recognizes the diversity and vitality of today’s older Americans. To celebrate these remarkable citizens, the United States Administration on Aging is sponsoring a contest called “My recipe for strength.” The national contest invites us to share with them what we are doing to age strong. We have selected the video category to enter the contest. Winners will receive a certificate of recognition and their entries will be publicly announced and prominently displayed on the United States Administration on Aging’s website. Mrs. Williams presented the video to the council.

Mayor declared the week of May 23-29 as “Public Works Appreciation Week” in the City of Derby.

Robert Mendoza, Director of Public Works, introduced Lois Landwehr, Carl Rose, Darrell Zimmerman, Max Behrns and Amy Akers. Amy stated that May 26th is Public Works Day. The event will be held at High Park from 9:00 a.m. to 11:30 a.m. and 12:00 p.m. to 3:00 p.m. We have partnered with the Middle School and 6th Grade Center and they will be attending the event. We will have equipment there for demonstration for the kids. The public is also invited to attend. There will be games to play, a moon bounce and popcorn.

Kathy Sexton, City Manager, commented that although it sounds like a party it is really a great way to give young people, 6th graders this year, an opportunity to see what we do. It’s like a job fair. Kids don’t know what a street sweeper does. They get the equipment out there and the kids are, probably for the first time ever, exposed to heavy equipment and realizing that you can make a pretty good living being a heavy equipment operator and it’s good, honest, hard work. We try to make it a little bit fun but it is about educating young people on what the jobs are that are available for them.

Mayor declared the month of May as “National Water Safety Month” in the City of Derby.

Darcie Parkhurst, DRC Aquatic Director, accepted the proclamation and reminded everyone that Rock River Rapids opens Memorial Day. She encouraged everyone to take swimming lessons. Prepare yourself and your kids for swimming lessons. Not only the ponds and lakes you go to but also backyard pools and neighborhood pools. Teach your children to be safe in and around the water and always swim with a buddy.

PRESENTATION OF DRC ANNUAL REPORT.

Chris Sexton, DRC Board Chairman, presented the report to the council.

Council Member Horyna asked what percentage of the 5,000 members are from outside the city limits.

Mr. Sexton advised at this time that is something we are looking at. Right now we just do a total membership. Keep in mind we don't necessarily follow the city limits; we are more set up with the school district boundaries. Currently we have an out-of-district fee and an in-district fee. He believes it is 5% or less outside of USD 260.

Council Member Bannon asked where they are with the facilities master plan.

Mr. Sexton stated that last year they did the open forum. Shaffer, Johnson, Cox & Frye recently returned some ideas about what the projected needs are for a city of our size. A lot of this has to do with facilities in our future growth and possible expansion. Some of the discussion has been additional space for aquatics. We realize that and have known that. We cannot go out alone as a commission; obviously we can't do it without the assistance of the City of Derby to help us in additional facilities. There are a lot of ideas, it just depends on how much and when. There is a lot out there to consider right now. We continue to work with the city and the school district. Right now the Process for Success plan the school district has, we want to try and be in line with them and the city as well, so we are all together.

Council Member Haynes stated that last year during management negotiations for Rock River Rapids with the DRC we talked about performance matrixes and how we measured performance and how money is paid out. At that time it was mentioned that the DRC was looking at ideas of how to measure performance, tracking employee performance, that type of thing. Have you had time to put some of those matrixes together? Also, one of the big issues that was brought up was safety and how is it measured and incorporated into the matrix. Have you had time to think about those and put some of those ideas down?

Mr. Sexton indicated they have had an opportunity to go out and solicit ideas from other aquatic facilities. What we have run into is this is a unique animal. The first response we got in an email was that we are so fortunate to be in a partnership the way we are in a community that you can actually get along with your city. The agreement is easier than it looks. We were able to successfully find a common ground with the city on an amount for this year. We think we have information coming in that will support that agreement and we are very close with that. As far as the means of measurement, the matrix we will use, he is 100% behind rewarding safety. Our track record certainly justifies that. As chairman he wants to see that transition to the lifeguards. That's where the rubber meets the road. He wants to make sure we impress upon them that's the #1 priority for us. As we get ready to move along we want to acknowledge safety and the 400 and some successful water saves, but we make sure we are not so driven on the bottom line that we are compromising safety. In a roundabout way to answer the question, we have a unique animal. Some of these management companies are actually paying for chemicals, services, utilities, cost of water, it's all invoiced over to the management group. We don't see that, we are just focused on the personnel and overall operation. Once we were able to take out some of those incremental costs that were involved from the other group we found that where we are currently is very close to what they would be without those additional costs involved in their contracts. Another thing is they don't realize the 900+ attendance at the gates daily the way we do on average. Last year we had a daily average attendance of 935. Some of the others that have come back don't quite see those as an average. He doesn't know if that's because of an

expanded pool year of their dates. It's more trying to do a comparison of apples to apples. We have had good response but continue to ask for more input.

Council Member Haynes agreed that safety is paramount and needs to be put into whatever matrix you come up with. If he understands, we do have measurements in place and you are able to assess those measurements after 30 days of operation to give yourself some kind of idea of performance from a management standpoint and to share that information with us?

Mr. Sexton indicated he does not know that we have an exact means of measurement on accuracy of management, whether it's going to be financial or through turnover. There are several pieces there that we could analyze and take a look at but one of the things in business, we take a long hard look at complaints and other issues involved out there as well. We feel as though financially it is very healthy and strong. From a DRC standpoint we take a long hard look at expenses. We want to be as responsible as we need to be without compromising safety all the way down the line. There would be some that would question the need for as many lifeguards as what we have but the truth of it is, we overstaff somewhat to take care of summer vacations and things that come up. The last thing we want to be is short at the park when it's the busiest.

Council Member Craig advised the leaders at the park have a great passion for the job and are demanding. He has observed the classes that Darcie gives. If they don't know the importance of the job when they start the class, they will know it when they leave. It's hard to measure safety but the first time you have a real serious mishap people will ask where the safety program is. He is impressed with the training they are given at the DRC. He will put in a plug for those two ladies. They are strong in their belief with what they are doing.

Mayor Avello indicated the aquatic park as well as the DRC are both very important to this community. He advised Mr. Sexton that if they need more time feel free to come and tell us. As we move forward communication is very important, and there are a lot of things on the stove. Anytime we need to communicate let's keep that door wide open.

RESOLUTION AUTHORIZING THE SALE OF G.O. BOND SERIES 2010A AND 2010B

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

Background:

- The proposed action, which is the authorization to market bonds, is the final step before the actual approval of the sale of general obligation bonds.
- General Obligation Bond Series 2010-A will provide permanent financing for special assessment internal improvement projects within the City of Derby as follows:
 - Hamilton Estates Addition
 - Derby Medical Campus Addition
 - The Oaks Addition, Phase XI storm water and Phase XII sanitary sewer
 - Stone Creek Commercial 4th Addition
 - Derby Corporate Park and Stone Creek Commercial water main

- The “pay-in” period for advance payment of special assessments associated with this bond issue ended Wednesday April 12 at noon, and no payments were received.
- The bond sale will be held May 11, and the bids will be presented during the regular council meeting that evening. Bids for the bonds can be submitted via the Internet using the services of PARITY at www.tm3.com in addition to the usual methods of facsimile and mail.
- In addition to the special assessment projects, the bonds will provide permanent financing for the new library facility that opened last fall.
- The proposed resolution provides authorization for redemption of the balance of the Temporary Note Series 2008-1 and a portion of the Temporary Notes Series 2009-1. In addition, both series of Sales Temporary Notes Series 2008-2 and 2009-2 which temporarily financed the library project will be redeemed.

Financial/Sustainability Considerations:

- The special assessment bonds to be sold total \$3,020,000, and payments are being spread over 15 years to mature December 1, 2025.
- In 2007, the voters authorized a ½ cent city-wide retailer’s sales tax to finance construction and provide for the operation and maintenance of a new public library. The ballot also included authorization to issue sales tax/general obligation bonds up to \$9,435,000.
 - The library sales tax commenced January 1, 2010 upon the sunset of the aquatic park sales tax.
 - The bonds for the library are currently projected to be issued in the amount of \$7,250,000 and are to be repaid over seven years to mature in 2017. We originally projected an eight-year repayment schedule, but due to lower construction costs and a shortened temporary financing period due to the early sunset of the aquatic park sales tax, we now recommend a seven-year schedule. A seven-year repayment schedule should provide sufficient funds to retire the debt and supplement operation of the library.
 - The original construction project cost was estimated at \$8.5 million and was later reduced to \$7.0 million. Temporary financing costs, including cost of issuance and interest, were estimated at \$935,000 and were later reduced to \$250,000 due to lower interest rates and a shortened financing time frame. Please note that the financing costs are being verified and a final number will be presented at the City Council meeting.

Legal Considerations:

- The legal work for this process is being performed by the City’s bond counsel, Joe L. Norton of Gilmore & Bell. Mr. Norton and his staff worked with City staff to determine the timeframes and are preparing all of the necessary legal paperwork, in strict adherence to state law, which ultimately governs the special assessment process.
- The job of calculating the final costs, notifying and mailing notices to property owners and spreading of specials is a combined effort of City staff and the City’s Financial Advisor, Greg Vahrenberg of Piper Jaffrey Company and Charley Young of the Public Finance Group.

- The resolution provides for approval of the Preliminary Official Statement in substantially the form presented which outlines the details of the offering to prospective buyers of the bonds.

Policy Considerations:

- The various steps taken to complete the process of permanent financing of these projects are in compliance with existing city policy and state statutes.
- Kansas law limits the life of the library sales tax to 10 years. Initial projections indicated that the library building debt likely could be retired in 8 years, keeping in mind that the referendum also provided that the tax would fund some library operating costs.
- A policy decision will need to be made in the future as to how to pay for annual library operating expenses.
 - While library operations have traditionally been paid from the general fund, when the recent sales tax was approved, it was to cover not only the building debt but also the increased cost of operating the library in the new building, including utilities, some staffing, and maintenance.
 - Once the sales tax sunsets, those operational expenses will require a new funding source. Options available include a reserve fund from which to pay operating expenses for a few years (similar to the aquatic park’s operating reserve), developing a new funding source, or funding all library operations from the City’s general fund, which is made up primarily of property tax revenue.
 - We currently do not have a full year of experience of operating costs, but as the year progresses, we will be able to project a clearer picture of our long-term needs.

RESOLUTION NO. 22-2010

RESOLUTION AUTHORIZING THE OFFERING FOR SALE OF GENERAL OBLIGATION BONDS OF THE CITY OF DERBY, KANSAS.

DISCUSSION:

Council Member Bannon stated this has been a long time personal dream of hers. The community came together and the library was the result. In January we had over 13,500 people through the doors and that number keeps growing. They are just now getting settled in, they have only been open six months and the programming is just now getting started. The exhibition space, meeting rooms, it’s just taking off. Our responsibility to the citizens now is to look at the future and funding and how we are going to do that. We have some really great opportunities available to us.

MOTION: Bannon moved to approve a resolution authorizing the offering for sale of General Obligation Bonds, Series 2010-A and 2010-B, of the City of Derby, Kansas. Horyna seconded.

VOTE: Motion carried 8-0.

REQUEST FOR REZONING JEHOVAH’S WITNESS CHURCH PROPERTY ON BUCKNER STREET FROM R-1 TO I-1

Bud Newberry, City Planner presented the staff report.

Background:

- Lots 10 & 11, Fulton Heights Addition, are located on the west side of Buckner just north of Meadowlark.
- A long standing policy of the Community Development Department encourages owners of land with uses that do not match the established zoning on the property to re-zone to the district most compatible with their use.
- New churches are now required to obtain the I-1 “Institutional District” zoning on their proposed building site prior to beginning construction. The I-1 district, the least intensive of the commercial zoning districts, is intended to be used adjacent to residential uses or to serve as a buffer between residential uses and more intensive development. Churches are an outright permitted use in the I-1 district.
- The existing church building located on this site was built prior to adoption of zoning regulations in Derby and is zoned R-1.
- This property has a contract purchaser who wishes to change the use of the property to a mortuary, and the present zoning will not allow that use. Even after approval of the requested zone change, the mortuary use will not be allowed without first obtaining a conditional use permit from the Board of Zoning Appeals. Such a conditional use cannot be approved without this change of zoning.
- Notice of the public hearing conducted by the Planning Commission on April 1, 2010, was published in the City newspaper and sent to nearby property owners.
- The Planning Commission recommended approval of the proposed rezoning by a vote of 6-0.

Financial/Sustainability Considerations:

- The property will become taxable when re-purposed as a mortuary, thus increasing the City’s tax base.

Legal Considerations:

- All conditions precedent to consideration and approval of this proposed zone change by the Council have been satisfied.

Policy Considerations:

- This property is presently shown in the Comprehensive Plan as “Institutional,” which is compatible with the proposed zoning district.
- No protest petition was filed within the prescribed 14-day protest period.

ORDINANCE NO. 2015

AN ORDINANCE REZONING REAL PROPERTY LOCATED WITHIN THE CITY OF DERBY, KANSAS, FROM R-1 “SINGLE FAMILY RESIDENTIAL DISTRICT” TO I-1 “INSTITUTIONAL DISTRICT;” AND AMENDING THE OFFICIAL ZONING MAP OR MAPS OF THE CITY TO REFLECT SUCH AMENDMENT, ALL PURSUANT TO THE ZONING REGULATIONS OF THE CITY.

DISCUSSION:

Council Member Craig asked if we can reassure the public right now that this is the only property being rezoned in this area.

Mr. Newberry advised that we did rezone another church recently, but this is the only property in this area being rezoned.

Council Member Craig went on the record that none of the other residents on the east side are affected by this rezoning.

Mr. Newberry agreed. We have had no other inquiries at all.

MOTION: Craig moved to approve an ordinance rezoning Lots 10 & 11, Fulton Heights Addition, from R-1 “Single Family Residential District” to I-1 “Institutional District” based on the Findings of Fact as recommended by the Planning Commission. Warren seconded.

Council Member Bannon asked what other uses in the future “I-1” would allow.

Mr. Newberry advised that “I-1” is very low intensity. There could be some small professional offices like an accounting firm or small dental office or something like that. They picked out uses that don’t generate a lot of traffic. No convenience stores, no restaurants, none of that type of use.

Mayor Avello asked if there were any protests filed.

Mr. Newberry advised there were not. We did have two people show up at the public hearing and spoke against it mainly because of what they thought would be an increase in traffic but they did not file any official protest.

Council Member Craig pointed out this is all conditional because this is step one and they have to apply for another zoning for the mortuary to become a reality then.

Mr. Newberry explained that Institutional zoning will allow for the mortuary under a conditional use so they will be approving a conditional use under “I-1” zoning.

Council Member Craig stated that our action has a condition that the sale of the property will move forward because right now that’s what is required.

Mr. Newberry agreed.

VOTE: Motion carried 8-0.

AMENDMENTS TO SIGN REGULATIONS IN ARTICLE 7 OF THE ZONING ORDINANCE

Kathy Sexton, City Manager, presented the staff report.

Background:

- Per the City Council’s recently established policy to discuss ordinances with major policy changes at one council meeting followed by action at a second meeting, this proposal was introduced to the City Council on April 13 for discussion and is presented at this time for action.
 - Amendments to the Derby Zoning Ordinance are recommended to the City Council periodically by the Planning Commission when the changes do not conflict with Kansas State Law or other ordinances of the City.
- Due to an increase in the number and variety of signs being used by residents and businesses in Derby, staff presented a recommendation to the Planning Commission to amend portions of the Sign Code, Article 7 of the Derby Zoning Ordinance.
 - The public hearing was advertised in the City’s official newspaper and was conducted by the Planning Commission on April 1, 2010, followed by a vote of 7-0 to recommend the proposed changes to the City Council.
 - The proposed amendments were introduced and discussed at length during the City Council meeting on April 13.
- Tonight, the version approved by the Planning Commission is presented including several changes as proposed in the April 13 Council meeting. All substantive changes from the current code are described in the following summary, with changes proposed since the last Council meeting in **bold/underlined typeface**:

Summary of Major Changes to Article 7 of the Derby Zoning Ordinance

The following are the primary changes to Article 7 of the Zoning Ordinance proposed by city staff and approved by the Planning Commission. Article 7 contains the regulations which designate the type, size, location, number, and duration of display of the various types of signs. Several minor corrections are proposed that are not discussed in this summary.

1. Signs in rights-of-ways. Currently, some signs may be placed in the city right-of-way (most notably signs advertising housing subdivisions), but many others may not. The proposal is to allow **most** all signs in right-of-way so long as they are placed a minimum of eight (8) feet back from the curbing, unless conditions will not allow for 8 feet. In that instance, less will be acceptable if conditions will allow the sign to be placed without blocking the site lines for motorists. This will facilitate enforcement. **In residential areas, only real estate sale signs may be placed in the right-of-way, if 8 feet from the curb. All other signs the homeowner wishes to display (church events, police appreciation, etc.) must be on private property.** (See Sections 702 and 704)
2. **Location of Signs. No more than two substantially similar signs may be placed at any intersection. (See Section 704)**
3. Signs allowed in the “Special Event Commercial” category. Currently, the ordinance allows up to four signs to be permitted for a total of 100 days a year. Compliance is nearly impossible to track, both for business owners and the City. The proposal would allow four signs when the special event is either a grand opening or a going-out-of-business sale. Grand opening signs could be displayed for 21 days; going-out-of-business signs for 30 days. All other types of signs would be considered promotional signs and would be permitted for 30 days at a time. Only one such sign could be displayed at a time, but could be replaced after 30 days with another permitted sign. (See Section 705)
4. Naturally Energized Signs. This type of sign or decoration (usually strings of pennants, streamers, spinners, etc.) is normally seen at automobile dealerships and occasionally in

other locations. Currently, they are not regulated, either as to location or duration. **The proposed amendment would allow them in all zoning districts but with some restrictions with commercial usage.** They will be allowed in lieu of their one permitted promotional sign, but would require a permit. (See Sections 705 and 706)

5. **Real Estate Signs.** These signs would be required to be placed at least eight (8) feet from the back of the curb and ten (10) feet from the edge of any driveway for motorist visibility purposes. (See Section 705)
6. **Residential Signs. The list of signs not requiring a permit is proposed to be updated to include security system signs, special events, and public service announcements. The size of such signs could be three (3) square feet (instead of the current two (2) square feet). No such signs are allowed in the public right-of-way. (See Section 705)**
7. **Special Event Non-Commercial (governmental bodies, religious organizations, civic, educational, general public).** This is our most problematic type of sign to control. Most of the people involved with such organizations are not familiar with sign regulations in Derby. The **revised** proposal would allow up to **sixteen (16)** signs, either on or off-site, for up to ten (10) days, inclusive of the day or days the event is held. These signs must be removed within 48 hours of the completion of the event. **The definition of special-event non-commercial decorations/sign is proposed to be updated to address concerns expressed about private property and free speech rights. Routine daily or weekly events are not considered special events.** (See Section 705)
8. **Garage Sale Sign.** This new category is proposed because they do not fit well into the Special Event Non-Commercial category. The **revised** proposal would allow **six (6)** signs to be placed either on or off-site for 24 hours prior to the sale; they must be removed within 24 hours after the sale is concluded. No permit would be required, but the 8-foot setback from the curb would apply. (See Section 705)
9. **Penalty for Violation of the Ordinance.** This new provision is adapted from the Wichita sign code. Violations are punishable by a fine of up to \$500. Also, signs impounded by code enforcement personnel would require payment of a \$5 redemption charge. This charge is already included in the City's fee resolution. (See Section 709)

Financial/Sustainability Considerations:

- This clean-up of sign regulations is expected to result in more productive use of time by code enforcement and management personnel. For example, time that is currently spent attempting to explain the currently complex sections of the code could be redirected to more productive endeavors.

Legal Considerations:

- This proposed amendment to the City's zoning regulations is a permissible exercise of the Governing Body's authority.
- All conditions precedent to consideration and approval of this proposed amendment to the zoning ordinance by the Council have been satisfied.
- The Governing Body has the same options available to it as with any other zoning amendment.

Policy Considerations:

- City staff will conduct an extensive program to educate the public of the changes to the sign regulations prior to beginning enforcement of new regulations.
- Upon approval of the proposed amendments, publication of the ordinance and completion of the educational program, staff will begin to collect \$5 for redemption of any sign impounded by Code Enforcement personnel.

Options:

1. Approve an ordinance amending Article 7 of the Derby Zoning Ordinance as submitted by the Planning Commission (simple majority required).
2. Override the Commission's recommendation. This action must be approved by a 2/3 majority vote (six).

Potential Motions to Amend:

1. Move to amend paragraph two of Section 705 B (2)(f) Special Event Non-Commercial to read "In no case shall more than ___ such signs and decorations be displayed..." *(If you desire a different number from the staff recommendation of 16, then you can fill in the blank with your desired amount.)*
2. Move to amend Section 705 B (2)(g) Garage Sale Signs to read "_____ such signs may be displayed..." *(If you desire a different number from the staff recommendation of 6, then you can fill in the blank with your desired amount.)*
3. Move to refer this item back to the Planning Commission for further consideration of _____ *(need to specify the basis for the referral).*

ORDINANCE NO. 2016

AN ORDINANCE AMENDING ARTICLE 7 OF THE ZONING ORDINANCE OF THE CITY OF DERBY, KANSAS, REGULATING THE TIME, PLACE AND MANNER OF PLACEMENT OF SIGNS; AND REPEALING ORIGINAL ARTICLE 7 AS THE SAME HAS BEEN FROM TIME TO TIME AMENDED.

DISCUSSION:

Council Member Warren asked if we wanted to go with the recommendation of 16 signs we can do that without amending the motion?

Ms. Sexton advised the recommended motion at the very end of the staff report is the ordinance as presented tonight. That is not what the planning commission approved, which is 10 signs. It is as presented tonight with 16 being the max.

Council Member Warren stated that 16 is still a light number, especially as the city grows but he is willing to leave that for a future council.

MOTION: Warren moved to approve an ordinance amending Article 7 of the Derby Zoning Ordinance as presented. Haynes seconded.

Council Member Bannon asked about the right-of-way, does it vary or is it always 13.5 feet?

Ms. Sexton advised it varies.

Council Member Bannon asked if we should include a set stipulated minimum right-of-way. Every homeowner or subdivision may be different. When someone comes in and they are wondering about a personal sign in their yard but they don't know what their right-of-way is but they don't need a permit.

Ms. Sexton advised that once this gets passed we intend a full fledged educational campaign. We will be able to tell people for example, most of the city is "this". If it's easy to map on a map maybe it's something we could color code on a map and put on the website or in the Horizon or something. She doesn't think we would want to guesstimate on something like that because if you do have that offensive sign that someone is going to complain about the one thing we would just make sure is that you are not on public property.

Council Member Bannon asked if we want to put an effective date in the ordinance. She assumes it will go into effect once we pass it but we won't enforce it until after the education? She would hate to see us get caught up in someone saying they don't have to do it yet because we aren't enforcing it yet.

Ms. Sexton explained it will be like any other ordinance, in effect upon the passage tonight and publication in the paper next Wednesday. That is true but if we got a complaint about something and it wasn't illegal last week but it is this week, that is something our officers would start addressing in talking with people and helping them understand. We will get the educational materials prepared pretty quickly but there are a lot of people to educate.

Council Member Bannon asked about real estate signs and garage sale signs. She finds most times they are effective, they are closer than 8 ft. to the street.

Council Member Craig advised there are 9 major intersections for advertising. If you can't cover between those 9 intersections with 16 signs you are going to have to put them someplace else. After looking through this entire ordinance, there is only one area in this town that he is concerned about, our waterfall at Rock River Rapids. Sixteen signs will be a relief that we won't have 44 signs and Mr. Newberry won't have to take my calls to get them picked up.

Council Member Staats asked about the 16 signs, does that include private property? For example, the basket weaving club is having a huge symposium somewhere and they want 16 signs put out to tell everyone when it is. If we have some very enthusiastic members of the club who want to put some signs in their front yard and you end up with 20 signs instead of 16. He has a problem with limiting someone advertising something they are passionate about on their own private property.

Ms. Sexton clarified that the something being advertised is a special event.

Council Member Staats advised yes.

Ms. Sexton stated that the way it is written now would be 16 total, special event, non-commercial signs located on or off-site, 10 days prior to the event and taken down 48 hours after. That's the intent for special event. Some people might want to put these in front of their house but that's a pretty big loophole given that 90 some percent of this community is residential property and a lot of residences are at heavily driven areas. That's different from "beware of motorcycles" or what we think of as public service announcements because those aren't events. People can put stuff on their property saying "He is risen" because that's not advertising an event.

Council Member Staats agrees with 16. He doesn't like them out on the corners but he really has a problem with, it's his property and he's really into basket weaving and he wants to let his

neighbors know there is a special event coming up he would like to put a sign in his yard to let them know. He doesn't have a problem with the rest of the language, including keeping it for 10 days then it has to be removed. It would be difficult for the city to come on his property and say they don't like his sign. Your neighbor's sign is okay but we don't like yours.

Ms. Sexton understood Mr. Staats point. It's not to say you can't make a sign and put it up for an event, such as an event for the basket weaving club but the vast majority of special events we are talking about is an entity that manufactures a standard sign, hands it out and takes them around and puts them up. We are getting 30-40 for any given event, and that is the problem we are trying to solve.

Council Member Staats agreed. He doesn't think it's going to be a huge problem, but he thinks it should be someone's right to put a sign in their yard. They would have to remove it in the allotted time. It's no different from someone leaving a trash cart out, we have ordinances for that. He can't support this as it's written right now.

Mayor Avello pointed out there is a residence on Honeybrook that has had a sign up for months.

Ms. Sexton clarified that if it's not advertising a special event that's okay.

Council Member Staats indicated he doesn't have a problem putting a time limit on them but if you have someone who has 20 signs and has 4 left over that's where he stands on it.

Council Member Meidinger stated he doesn't know how you would control that. If somebody has 16 signs and someone has four extra ones he would hope city staff would have more to do than go around and count signs.

Ms. Sexton advised it is kind of like setting a speed limit. It is the city council's job to set a law. It doesn't mean that everybody is going to follow the speed limit; it doesn't mean that everybody who speeds is going to get caught. We definitely are not going to be driving through neighborhoods counting signs per se. The fact of the matter is with special events, part of the budget is the marketing of the project. Part of the budget is making a standard sign and putting them around town. If you put them around town yourself and you pick them up on Saturday versus handing them out to the membership of your board and have them put them in front of their house. Most people doing special events are not going to say "put this in front of your house" if they have a limit. They are going to say, where do you live, how many people drive by your house? If they don't have a limit, that's a pretty big loophole, you're going to have a whole lot more signs in residential areas would be her guess. If you have a limit, the organizers of the event are going to go to the higher traffic intersections and since we are allowing those in the right of way they don't even have to get permission from people to put on private property. They will get them out at high-traffic intersections, she would think.

Council Member Meidinger stated that at the intersection of James/Rock Road, on the southeast corner where the waterfall is located, he would like to see that area protected from signs. He doesn't want to get into the measurement of it being 8 feet back or 16 feet back, he thinks it should be addressed as a public park and we prohibit signs on public parks. That is such a beautiful area and he doesn't think it should be obstructed with 10-15 signs. Can that be addressed in this issue or another one?

Ms. Sexton stated that would depend on how the council wants to proceed. We have talked about that these past couple of weeks. A middle ground she would propose is that we measure back 8 feet from the curb at that corner and you are pretty close to the bike path on both streets. The area behind the bike path is owned by the city so there is right-of-way and then a city lot with a pond, waterfall, sign for Rock River Rapids and some grass. She would propose we stake

out an area that would be off limits for signs because we don't want them obstructing the view of our sign, which is Rock River Rapids. That is where you turn and how else would you know that's where you turn if you're from out of town. Seventy-five percent of people on weekends who go to Rock River Rapids are from out of town, so it's important to sign where to turn. One way is to restrict on the entire property but another way would simply be to figure out the site lines from each direction and restrict the signs from obstructing the view of our sign.

Council Member Meidinger indicated he was looking at the easiest way to enforce no signs rather than getting a tape measure out there and getting into that type of hassle.

Ms. Sexton advised that what is important at that intersection is looking at the other three corners and how much room there is for signs on the other corners. We want to encourage people to find new housing developments, for example, that are being built so to restrict all signs from our corner might make it hard to put a sign on some of the other corners.

Council Member Meidinger stated he did not think it is the responsibility of the city to make sure all people have access to signs. There are some areas you don't put signs in. We don't have signs in front of city hall do we, or can we do that now?

Ms. Sexton advised that under this ordinance there is right of way but it's not a high traffic street so it's kind of moot.

Council Member Meidinger advised his point is, it's not the responsibility of the city to provide areas for people to put signs up. Especially since we spent so much money on the waterfall and Rock River Rapids, he would like to prohibit signs in that area. He doesn't think it should be in this ordinance, but somewhere else.

Ms. Sexton stated that if you pass this tonight as is, signs will be allowed at that corner in the right-of-way as long as they are 8-feet back so that is a very limited area. We would help people understand with maps where you could put signs, it would severely restrict them. If we didn't want them on our piece of property, not the right-of-way, but our property, like banks on the corners don't want people putting signs on their property. They know they have to allow it if they are in the right-of-way because it's not their property but a lot of private business folks or residences don't want them. If someone came and put a sign in her yard she would take it down, but if it's in public right-of-way that's different.

Council Member Warren commented on restricting based on the content of the sign. We are going to allow the Police Appreciation signs to go up all over town in whatever numbers we can get out. He encourages people to put them up but he doesn't see why that should be treated any different than any other organization because we deemed it an event and based on the content of the sign we are going to restrict them. He thinks that individuals need to have the right to put signs on their property. If that is a restriction then he will have to vote against this ordinance as presented. If we can make the change to allow for signs on individual property then he can go forward. Otherwise that is a deal killer for him.

Ms. Sexton asked if Mr. Warren was talking about special event signs.

Council Member Warren advised he was talking about private property signs. He wants to allow people to put a sign on their property.

Council Member Horyna stated that the way he reads it, it allows signs of non-commercial events to be placed on the residents' private property as long as it's outside of the right-of-way, is that correct, on page 19, Section E, #6?

Mr. Newberry explained that we are allowing those types of signs to be put in a person's yard on residential property. At the time we wrote that though we were assuming that it would be one of the 16 that was allowed if you chose to put them on someone's private property. It would be okay, it would just count as one of your 16.

Council Member Horyna indicates this section identifies the ones that are waived from the permitting authorization, is that correct? The way he interprets it, if we are not requiring them to be permitted then we are counting them.

Ms. Sexton agreed that the section is for the signs that are not permitted. We hadn't thought of it that way, but if that in and of itself means it's a loophole around the 16 max. She asked Mr. Alexander if that is the way he read it?

Phil Alexander, City Attorney, advised he hadn't thought of it as a loophole, but can see the argument that's being made.

Ms. Sexton pointed out after further review that they were both in the same section. Section e, on page 19, those are the ones in residential areas, and Section f is the special event. Special event (non-commercial) don't require a permit either. That section does limit you to 16 total and the time limit. None of them require a permit, it's basically telling the groups who normally do events their limit and the rules. We are not requiring a permit fee and we don't want the staff up front permitting, it's just not necessary.

Council Member Bannon stated that as in most things we do in government, we don't make everyone happy; there is no way to do that. Her feeling is that we have rewritten the sign ordinance at least twice since she has been on this council. It gets better every time but there is a lot of hard work involved. The original intent of part of this rewrite was to get rid of the "sign fluff." A lot of it is special event, no permit required. She does not think the 16 limit sign is a big deal. If you have someone on your group or committee who lives at the corner of Meadowlark and Buckner and they are right on the corner and their yard is a great place and you want to put it there okay, that's one of your 16. She understands the personal rights issue, but if we allow that then you have given them a legal loophole so entities that aren't even in Derby but just running some special event close-out sale in Wichita, can come down here and pepper the town with their close-out signs. That is not what our goal was. Our goal was to limit the signs on the corners, limiting to 16 does that. She can think of any number of special events and you won't usually have more than 16 and they generally put them at corners. Let's go ahead and pass this. Let's get it done because overall this will help keep our city a little cleaner and that was the goal with this ordinance.

MOTION: Bannon called for the question, Craig seconded.

VOTE: Horyna yea, Warren nay, Staats nay, Meidinger yea, Nun yea, Bannon yea, Haynes nay, Craig yea. Motion carried 5-3.

RESTATED MOTION: Warren moved to approve an ordinance amending Article 7 of the Derby Zoning Ordinance as presented.

Council Member Warren withdrew his motion. Haynes withdrew his 2nd.

MOTION: Bannon moved to approve ordinance Article 7 of the Derby Zoning Ordinance as presented. Craig seconded.

Council Member Bannon restated her question about real estate signs and garage sale signs. Many times you find them to be closer than 8 feet to the street. Sometimes that's necessary or they won't be visible when you look down the street.

Ms. Sexton advised there is a provision in here, in the 8-foot rule from the curb. It doesn't matter if it's a real estate sign or garage sale sign. The provision indicates that if that's not possible because of sight conditions then we can make exceptions.

Council Member Bannon inaudible, microphone off.

Ms. Sexton stated that in the ordinance, little page 12 or big page 37. It indicates that it must be 8-feet back from the curb but if the right-of-way is too narrow, signs should be placed as far back from the curb as possible. She stated that doesn't really cover what Mrs. Bannon mentioned in her comments.

Council Member Bannon stated that if you are looking for a house to buy, sometimes you are looking down streets for signs and if it has to be 8-feet back sometimes hedges or cars can hide them. Garage sale signs you typically try and put them as close as possible so you can get people's attention.

Ms. Sexton clarified Mrs. Bannon is advocating for residential areas.

Council Member Bannon suggested it saying "real-estate and garage sale signs can be within the right-of-way" and take the 8-foot out.

Mr. Newberry explained when that was put in there what we were really trying to address were the signs on the main streets in the rights-of-way. We haven't really had a problem in residential areas with people putting real estate signs especially, too close to the street. Signs are pretty easily seen 8-feet back. Garage sale signs probably would be a little bit of a problem if they were 8-feet back. What we were trying to do was, we were getting so many signs on some of the corners on Rock Road that they were becoming a sight problem. If we could get those back 8-feet, those are the ones that we are really concerned about.

Council Member Bannon, inaudible, microphone off.

Ms. Sexton indicated if you want to make them closer her suggestion would be not to say anywhere because then they will be right on the curb and you will have visibility issues for other reasons. Maybe 4-feet or something that would be not as far back. It's hard because if you parallel park along a curb, closer to a truck sitting at the curb is probably worse than 8-feet back.

AMENDED MOTION: Bannon moved to amend the motion to allow real estate and garage sale signs in residential areas to be 4-feet from the curb. Nun seconded.

Council Member Warren advised that the ordinance as it stands right now has to be back off of the right-of-way so we are looking at at least 13.5 feet in most cases. He thinks he is the only realtor in town to put it 15-feet back. Because he is on the council he feels it is his obligation to follow the law but most agents don't do that. The thing that frustrates him in terms of real estate signs is that if our rules could match up with Wichita's as it pertains to real estate signs then agents can move around the county and have the same rules rather than having to find the rules in each community. He thinks we need to look at this aspect of the sign ordinance and see where it matches up with the Wichita sign ordinance and try and make it match up as closely as we can so we don't have those kinds of violations. He would think there might be some merit to look at tabling the motion and taking a look at that as something we would try to get right rather than

throw it together and then change it within the next few weeks. He does not look at this other aspect as a loophole; he sees it as a fundamental right. He understands the intent of this ordinance was to get rid of the sign fluff. In his mind he was thinking we were looking at the signs in the intersections. Going to 16 went a long way towards changing that and he was fine with that as long as individuals could put them on their personal property. If you take that component out and tell an individual that they can't put a sign out because of the content of the sign, that's wrong. He will not vote for it as long as that's there.

MOTION: Warren moved to table the amendment. Haynes seconded.

To clear up confusion on motions, Nun withdrew his second of the amendment.

Bannon withdrew her amendment and combined it with the original motion, creating the following amended motion:

RESTATED AMENDED MOTION: Bannon moved to approve ordinance amending Article 7 of the Derby Zoning Ordinance, allowing real estate and garage sale signs in residential zoning districts to be 4-feet from the curb. Craig seconded.

Council Member Meidinger commented about Mr. Warren's comments about trying to equalize our ordinance with Wichita or anyone else's. He thinks that would be a real challenge for city staff to coordinate the ordinances with Wichita or maybe Rose Hill. It was a good try, but he doesn't think we can really do that.

MOTION: Meidinger called for the question. Bannon seconded.

VOTE: Warren nay, Staats nay, Meidinger yea, Nun yea, Bannon yea, Haynes nay, Craig yea, Horyna nay. Tied 4-4. Avello yea. Motion carried 5-4.

VOTE ON MOTION ON FLOOR: Staats nay, Meidinger yea, Nun yea, Bannon yea, Haynes nay, Craig yea, Horyna yea, Warren nay. Motion failed, 5-3.

Ms. Sexton explained the motion failed because anything that was to pass tonight besides what the planning commission approved required 6 votes. If there are any other motions to be made, you can keep the floor open or council could give staff direction to do something different. As she mentioned at the beginning of the meeting you can also make a motion to refer the item back to the planning commission. If you do that you will want to be specific about what you want the planning commission to do or you could refer it to staff.

The council recessed for a 10 minute break at 8:30 p.m. The council returned at 8:40 p.m.

MOTION: Bannon moved to approve the ordinance amending Article 7 of the Derby Zoning Ordinance as presented with the following modifications: 1) garage sale signs and real estate signs in residential zoning districts are allowed at 4-feet from the curb, and 2) a maximum of 25 special event, non-commercial signs. Craig seconded.

VOTE: Motion carried 8-0.

WEBSITE DEVELOPMENT AGREEMENT FOR ROCK RIVER RAPIDS

Kathy Sexton, City Manager, presented the staff report.

Background:

- The Rock River Rapids website was designed by a DRC staff member in 2004, shortly before the opening of the aquatic park. For the past six years, it has remained essentially unchanged. The current site primarily contains static information and images that are updated occasionally on an as-needed basis.
- At a joint City/DRC meeting of staff associated with the water park in October 2009, several participants suggested it was time for a new Rock River Rapids website. A new website has the potential to serve as an enhanced marketing tool while simplifying many routine tasks, thus eventually reducing the staff time required for routine transactions.
- In November, a small group of DRC and City staff members brainstormed potential ideas that could be integrated into a new website, and an RFP was written in early 2010.

Among the features included in the RFP were:

- Online ticket purchase of daily passes, group passes and season passes
- Event calendar that enables users to view available times and dates for birthday parties or facility rentals
- High-quality videos and photographs to showcase park amenities
- Banners to highlight special promotions
- Snack bar menus and pricing
- Interactive park map
- Smartphone compatibility
- Online request form for donated tickets
- The RFP was issued in March 2010, and five companies responded. Of the five responses, two agencies were selected for interviews with City and DRC staff. Detailed information is provided with the supporting documents. The responding vendors and base proposals are as follows:

<u>Agency</u>	<u>Base</u>	<u>Extras</u>
Howerton + White	\$20,000	Video, e-commerce, streaming video extra
HG Design	\$21,750	Video, photography extra
Greteman Group	\$35,000	Video, photography, workshop, usability study extra
Nye & Associates	\$36,000	Video, monthly maintenance/support/hosting fee \$400
Jajo	\$73,648	None assumed - bid was not itemized

- The committee recommends HG Design, Inc.
 - HG Design was chosen in 2004 to design the Rock River Rapids logo and produce an initial marketing plan for the aquatic park when it opened in 2004.
 - Though it was the second lowest cost proposal, the company's creative proposal was focused on integrating the park mascot "Ollie" into the requested website elements. This unique approach was appealing to the committee.
 - The agency's two-phase; 8-week timeline will enable key portions of the website to be operational when the park opens.

- Cost-wise, it appears the proposal from HG Design is the most comprehensive one, requiring the least amount of add-on costs either during the project or after completion.

Financial/Sustainability Considerations:

- The cost of the proposed website is \$21,750. This amount includes creative design, programming, software for content management and e-commerce, and production of the new website.
- Ongoing costs for site hosting and e-commerce as proposed are \$420/year (\$35/month) or if paid annually, \$372 (\$31/month).

Legal Considerations:

- The proposed contract with HG Design was prepared by the City Attorney.

Policy Considerations:

- The City's Bid Board reviewed and approved the recommendation to hire HG Design, Inc. at the April 12 meeting.

DISCUSSION:

Council Member Craig asked if they were a local company.

Ms. Sexton advised they are a Wichita company. They did the original artwork for Rock River Rapids as well as the marketing plan in 2004.

Council Member Craig asked about the performance period.

Ms. Sexton advised it is seven weeks. They will be done with the first phase by the time we open on May 31st. They will finish the e-commerce and other more complex parts a month or so after that.

Council Member Meidinger asked about the additional cost of \$125 an hour. Do we have a limit on that?

Ms. Sexton advised we are not committing to anything at that rate. What we asked them in the RFP was what their hourly rate was beyond the completion of the contract. If we, a year from now want to change a major feature we would know what their fees are. We were more pleased with their hourly support rates and policies than we were with most of the other firms.

Council Member Meidinger asked where this \$21,000 comes from. Is it out of the city budget or the Rock River Rapids budget?

Ms. Sexton advised it comes from the Rock River Rapids budget.

Council Member Meidinger stated that we didn't make \$21,000 last year did we?

Ms. Sexton agreed, that would be the operating account. In the aquatic park we have a whole fund. Part of it is the operations account and part of it is the debt service account, which we have

now paid and part of it was the reserve account which was set up by law to be \$1.5 million. Because we just ended that tax January 1st you can't really end it exactly at \$1.5 million because it takes two more months to get the revenues in. It was up to like \$1.9 million and we will pay for this out of that reserve as well as the pool painting at \$55,000. The other big project this year was the boiler replacement at \$254,000, both of which have already been approved. When you add those up that reserve balance would be \$1.63 million so you are still well above the \$1.5 million.

MOTION: Haynes moved to authorize the City Manager to execute an agreement with HG Design, Inc. in the amount of \$21,750. Nun seconded.

VOTE: Motion carried 8-0.

ELECTION OF COUNCIL PRESIDENT

Kathy Sexton, City Manager presented the staff report.

Background:

- Each April, an election for Council President is held during a Council meeting. The process is as follows:
 - The floor is opened for nominations. Nominations (with seconds) are received. The floor is closed, and nominees are then voted on publicly.
 - A majority vote of the Council members present and voting is required to elect a Council President.
 - The term of a Council President is one year or until a new Council President is elected.
- The Council President is a serving Council member elected by the members of the City Council to serve in the temporary absence of the Mayor.
 - The Council President presides at Council meetings when the Mayor is absent. He/She performs the ceremonial duties of the Mayor during the Mayor's absence.
 - When occupying the place of the Mayor, the Council President has the same privileges as other Council members and shall exercise no veto.
 - The Council President is also tasked with leading the annual performance evaluation of the City Manager.
- During Council meetings, the Council President takes the lead role in assisting the Mayor with meeting management, including but not limited to making motions to approve minutes, approve the consent agenda, recess to executive session, and bring the Council back to order following an executive session.
- The Council President exercises leadership by assisting newer council members with parliamentary procedures and Council norms.

Legal Considerations:

- State law (K.S.A. 14-204) provides for the office of council president, but Derby has exempted itself from this statute by charter ordinance.
- K.S.A. 14-308 provides for the president to fill the office of mayor if the office becomes vacant by reason of death, resignation, removal from the city, removal from office, refusal to qualify, or otherwise. Any change in the responsibilities of council president or with respect to succession to the office of mayor should be accomplished by charter ordinance.

MOTION: Staats moved to nominate Council Member Nun. Horyna seconded.

Council Member Meidinger asked Mayor Avello if he would resign as mayor if he is elected to the county commission.

Mayor Avello advised he would resign on January 1st if elected.

Council Member Meidinger clarified that the council president would assume the duties of mayor after that.

Mayor Avello advised that was correct.

VOTE: Motion carried 8-0.

CONSENT AGENDA

Kathy Sexton, City Manager presented the consent agenda.

Approval of Two Public Displays of Fireworks

Background:

- The City of Derby annually sponsors two public displays of fireworks: 1) The DARE Celebration, and 2) Independence Day.
- DARE Celebration:
 - The Derby Police Department hosts an end-of-year event for students from Derby schools that participated in the Drug Abuse Resistance Education (DARE) Program.
 - This year's event will be held in High Park on Saturday, May 8, 2010. The event will include a variety of activities and conclude with a fireworks display.
 - Area residents will be notified prior to this event.
- Independence Day:
 - The City will sponsor the Annual Community Fireworks Display in High Park as a part of the community-wide Independence Day Celebration on July 4, 2010.
- Stellar Fireworks is the display operator for both events this year and has provided the necessary documentation as required by the Derby Fire Code, including a site map, license, and insurance certificate.

Financial/Sustainability Considerations:

- DARE Celebration:
 - Funding for the DARE Program is provided through the Special Alcohol Fund. State law provides for a 10% gross receipts tax on the sale of any drink containing alcoholic liquor sold by a club, caterer, or drinking establishment. This revenue is allocated 30% to the state and 70% to cities where the tax is collected. Cities are required to allocate the money as follows: 1/3 to the general fund, 1/3 to a special park and recreation fund, and 1/3 to a special alcohol and drug program fund.

- By state law, use of the special alcohol and drug program fund is restricted to services or programs “whose principal purpose is alcoholism and drug abuse prevention and education, alcohol and drug detoxification, intervention in alcohol and drug abuse, or treatment of persons who are alcoholics or drug abusers or are in danger of becoming alcoholics or drug abusers.”
- Independence Day:
 - Funding is derived from fireworks stand permit fees from 2009. The funding formula was established in 2008 with \$12,000 and provides for an annual increase of 5%.
 - There is \$13,230 available for this year’s celebration. Any remaining balance is returned to the general fund.

Legal Considerations:

- The 2006 International Fire Code, adopted by Chapter 8.16 of the Municipal Code, requires City Council approval for a fireworks display to be held in the city.
- Stellar Fireworks has provided a certificate of liability insurance coverage, a copy of the state-issued pyrotechnic operator license and a map of the location for each event.

Recommend a Motion to:

- Approve public displays of fireworks to be held at High Park on May 8, 2010 and July 4, 2010.

Right of Way for Buckner Street Improvements

Background:

- The adopted 2009 Capital Improvement Plan includes \$55,000 for right of way acquisition for improving Buckner from Kay Street to the south city limits.
- The adopted 2010 Capital Improvement Plan includes \$602,000 for the construction of this project.
- Because of the on-going expense to maintain this portion of Buckner due to poor storm water drainage, the primary purpose of this project is to widen Buckner so that it complies with city street width standards and to include storm water drainage ditches.
- Long-term calculations were completed by Community Development and Public Works to ensure that it will be less expensive to first reconstruct Buckner and then include it in the city’s pavement management plan.
- The City engaged Land Acquisitions, Inc. to assist in acquisition of needed easements and right-of-ways.

Financial/Sustainability Considerations:

- Right of way acquisition presented for Council’s consideration total \$???? and include the following:
 1. Marjorie and Gary Boswell: \$3,700 for 7,303 square feet, and
 2. Sharon Boswell: \$1,000 for 1,820 square feet.
- The total project estimate is \$657,000 and includes design, land acquisition, utility relocations, and construction.

Legal Considerations:

- The City Council is authorized to acquire right of way in support of this project and to determine an appropriate level of compensation.

Recommend a Motion to:

- Authorize the City Manager to execute a contract for the required right of way.

Revisions to Personnel Policy Manual**Background:**

- A rewrite of the Personnel Policy Manual was approved by the Council on August 28, 2007. This rewrite was necessary as changes in federal and state laws, as well as numerous changes in the workplace, had occurred in the 12 years since the entire manual was last brought before the Council.
- Updates to the Personnel Policy Manual were again made on June 24, 2008 and July 28, 2009 to ensure that the Personnel Policy Manual included changes in federal and state law, as well as changing needs of the organization.
- City staff intends to review the manual annually to determine if there is a need for any updates or changes.
 - Some of the proposed changes are a result of suggestions and concerns received from employees and supervisors.
 - On October 28, 2009, the President signed into law the National Defense Authorization Act for Fiscal Year 2010, which amends the Family and Medical Leave Act to expand the military family leave provisions.
 - The addition of the HIPAA policy is the result of City staff's increased involvement in wellness initiatives and the need to ensure that employee privacy is maintained.
- On April 5, 2010, a review of proposed policy changes was conducted during a Senior Staff Meeting to ensure input and understanding by department directors.

HIGHLIGHTS OF CHANGES:

- Updated Table of Contents to reflect changes (p. 2-5).
- Extended tobacco free area to include areas outside "open windows" to area in which tobacco use is restricted and added anti-retaliation language to comply with state law (p. 19).
- Clarified that each day absent is a separate offense under the policy for absenteeism (p. 20).
- Added section to guide the process of returning employees to work following a work-related injury (p. 27).
- Clarified the wording of the Reinstatement section (p. 32).
- Added Health Insurance Portability and Accountability Act (HIPAA) policy to ensure that employees understand the City's commitment to ensuring their privacy (p. 33).
- Clarified the wording of the Longevity Pay section (p. 42).
- Added Children's Health Insurance Program Reauthorization Act (CHIPRA) notice. CHIPRA was signed into law on February 4, 2009 and allows states to subsidize premiums for employer-provided group health coverage for eligible low-income families. It also extends health and dental enrollment windows under certain circumstances (p. 46).
- Included eligibility requirements for retiree health and dental insurance. Also provides for a 2% administrative fee to be added to retiree insurance, which makes it commensurate with COBRA (p. 48).

- Updated “old holiday” section to indicate that 25% of old holiday balances may be paid out in 2011 and subsequent years, rather than “2010” (p. 53).
- Changed Family and Medical Leave Act (FMLA) language to comply with changes in federal legislation. Changes include extension of leave protection to members of a regular component of the armed forces, definitions for “covered servicemembers” and “serious health condition,” and a provision that those using FMLA need to follow normal call-in procedures pertaining to reporting sick leave, absent unusual circumstances (p. 60-64).
- Clarifies that leave without pay section pertains to approved leave and refers unapproved situations to the policy for unapproved absences (p. 67).

Financial/Sustainability Considerations:

- Provides for the payout of 25% of old holiday leave balances in excess of 40 hours as of March 1, 2010. Paying off these balances prevents future liability as hourly pay rates increase. Estimated cost is \$25,000 in 2011, as well as in 2012 and 2013. Payment is subject to availability of funding provided during the annual budget process.
- Includes a 2% administrative fee for retiree health and dental insurance to begin in January 2011. Based upon current health and dental plan costs, the cost increase to retirees will be approximately \$8 more per month for individual health and dental coverage and \$22 more per month for family health and dental coverage. The administrative fee will help offset some of the cost of providing retiree health insurance.

Legal Considerations:

- A legal compliance review of the proposed changes was conducted by the City Attorney.
- KSA 12.5040 provides that local governments must make retiree health insurance available to retirees with 10 or more years of service and who are under age 65. The statute provides that administrative fees of up to 25% may be charged to retirees purchasing group health and dental insurance.
- A personnel manual that is updated yearly to account for changes in federal and state law will ensure that the City of Derby maintains compliance.

Recommend a Motion to:

- Adopt the revised personnel manual as presented.

Assessment Ordinance for Debris & Trash Removal

Background:

- The City of Derby has incurred costs in abating nuisances found to exist upon certain properties located within the City.
- The costs are the charges the City incurred in contracting with vendors for mowing and trash removal service, plus a \$50 administrative fee.
- Each owner of record, at the time the charges were incurred, has been sent notification that Council will consider assessment by ordinance of the charges.

Financial/Sustainability Considerations:

- The costs incurred in connection with the parcels to be assessed total \$325.00.

Legal Considerations:

- City ordinance authorizes staff to mow properties with excessively tall vegetation and remove trash when owners fail to do so.

- City staff seeks to collect mowing and debris removal charges through informal efforts so as to avoid the need for formal remedies.
- Charges not timely paid may be assessed against the properties on which the work was performed.

Policy Considerations:

- City ordinance has established the policy that requires bulky waste, construction debris and tree waste be removed from properties to protect the health and safety of citizens.
- Ordinances are brought before the City Council for action as soon as possible so that recovery of the city's costs can occur from the owner of record at the time of assessment.

Recommend a Motion to:

- Adopt an Ordinance levying a special assessment upon certain properties the costs incurred by the City of Derby in abating nuisances found to exist thereon.

ORDINANCE NO. 2017

AN ORDINANCE LEVYING AS SPECIAL ASSESSMENTS UPON CERTAIN REAL PROPERTY, HEREINAFTER DESCRIBED, DIRECT AND INDIRECT COSTS INCURRED BY THE CITY IN MOWING GRASS, CUTTING WEEDS, REMOVING DEBRIS OR OTHERWISE ABATING NUISANCES FOUND TO EXIST THEREON.

Phase 7 Bike Path Change Order

Background:

- The City began construction of the Phase 7 Bicycle and Pedestrian Path along Woodlawn Boulevard and Chet Smith Avenue from the Derby Recreation Center to Garrett Park in late 2009.
- The project included construction of modular block retaining walls at several locations to address grade differences.
- During construction, an additional 510 linear feet of retaining wall was added to address grade differences and potential utility conflicts.
- The unit price of \$37.49 per linear foot for the change order was established in the original construction contract.
- In accordance with the agreement between the City and the state for construction of the project, the state is responsible for 75% of the actual cost of construction.
- The state portion of the additional cost will be included in the City's request for reimbursement upon completion of the project.

Financial/Sustainability Considerations:

- The total cost of this change order is \$19,119.90, of which the City is responsible for \$4,779.98 (25%).
- The additional expense is within the project budget.
- Once the change order is approved, the amount of the total contract will be \$216,119.90.

Legal Considerations:

- The construction contract for the project contemplated the need for changes in the scope of work. A change order is the appropriate vehicle to address such situations.

Recommend a Motion to:

- Authorize the City Manager to execute a change order in the amount of \$19,119.90 to the existing contract with Barkley Construction for the additional retaining wall required on the project.

MOTION: Craig moved to approve Consent Agenda as presented. Haynes seconded.
VOTE: Motion carried 8-0.

Council Member Meidinger stated again, regarding the sign ordinance, that we should pursue making the southeast corner of Rock/James a public park and eliminate signs altogether on that corner. Therefore you don't have to get into the measurements of whether they are so many feet back or are in compliance. That is one of the cornerstones of a nice area. He doesn't expect any action tonight but would like to put it on the agenda for later.

Council Member Bannon agreed the idea of limiting signs on that corner is important. She agrees with some of what Ms. Sexton said earlier about the other corners in that area, they are very limited in where you can put signs and you can't get to them to put signs up. She thinks we should limit the signs on that corner somehow but she is not personally in favor of totally doing away with them on that corner. She thinks limits should be in place.

Council Member Haynes indicated his concern would be where would it stop? A lot of people come down Rock Road and that's one of the first things they see and he thinks that's one of the selling points for Derby. His other concern is where does it stop? We have the Oakie Payne memorial at Patriot/Buckner, do we include that? There are probably several other areas in our city limits that we may want to look at or not look at. He is for restricting those things and thinks we can restrict those things but doesn't know that we want to go down the route of turning all those areas into a public park so we couldn't put any signs there.

Council Member Warren stated it sounds like there is enough interest from the folks on the council to at least talk about it and look at it in the future but he is not sure we even know what it is we want to talk about. He suggested we not direct staff to do anything in terms of coming up with any proposal or idea until we get a chance to think about it. He suggested we bring it up at another time.

ADJOURNMENT:

MOTION: Craig moved to adjourn at 8:58 p.m. Haynes seconded.
VOTE: Motion carried 8-0.

Dion P. Avello, Mayor

ATTEST:

Jean Epperson, City Clerk