

**APPROVED
REGULAR COUNCIL MEETING
April 8, 2008
7:00 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I
WARD II
WARD III
WARD IV

COUNCIL MEMBERS PRESENT:

Jim Craig, Jim Meidinger
Vaughn Nun, Chuck Warren
Charlie Schwarz
Mark Staats, George Arnold

COUNCIL MEMBERS ABSENT:

WARD III

Cheryl Bannon

Flag salute was led by Council President Charlie Schwarz.

The invocation was led by Pastor Greg Brandvold, Cross of Glory Lutheran Church.

**CONSIDERATION OF
MINUTES**

Minutes of the March 25, 2008, Regular Council Meeting.

MOTION: Warren moved to approve minutes of March 25, 2008 Regular Council Meeting. Arnold seconded.

VOTE: Craig yea, Meidinger yea, Nun yea, Warren yea, Schwarz abstain, Bannon absent, Staats yea, Arnold yea, 6 yea, 0 nay, 1 absent, 1 abstain, motion carried.

PUBLIC FORUM

Kathy Sexton, City Manager stated that we received a letter this week from Congressman Tiahrt that we have been awarded a SAFER grant. This is federal funding from the US Department of Homeland Security and FEMA that funds firefighters. We applied for this grant a couple of times and are pleased to be able to receive it now and we will be able to start hiring a few new firefighters here shortly.

Mayor Avello asked if that was from the new budget or anytime.

Ms. Sexton explained that she had previously told council it would have to wait until July 1st, but we found out today that was in error, that was our first reimbursement date of the money so we

can proceed to hire our four new firefighters. As soon as we get those folks on board we will be able to open Station One and we will have two fire stations running 24/7 with staffed units and we are very pleased with that. The council did put that item in the 2008 budget, there is city matching money required. It is a four year gradually decreasing grant, so in year five the four firefighters will be fully city funded. As you know every little bit helps. This is a \$396,000 grant over four years so that helps a great deal in funding the start up costs for our expanded fire department.

Council Member Schwarz advised he has been gone for awhile and it's good to be back. He expressed his appreciation for everyone that sent cards, letters and prayers, every prayer was greatly appreciated. When you know you're in a situation like that, prayers count.

Mayor Avello stated he is always concerned when gas prices go up what it does to our budget. He asked if we were okay, or are we having to make some adjustments.

Ms. Sexton advised that adjustments are definitely in order, just like all of our personal budgets. The price of gas has gone up and we budgeted for some increased price but a year and ½ ago it was awfully hard to determine what that would be. As you know we are starting the budget process right now, certainly that will put a pinch on us but she is sure we will manage.

Mayor Avello indicated we are having a problem with a dog in town. The owner has been in front of the judge and will be there again. He has asked Ms. Sexton to bring the vicious dog ordinance back to the Ordinance Review Board to see if we can put more teeth in it and make it a little stronger. Instead of having to go back and forth to court maybe we can put a little more teeth into it to make it work faster. This particular dog jumps the fence and goes after kids and we are afraid it might do something.

PROCLAMATIONS:

Mayor declared Friday, April 25, 2008 as Arbor Day in the City of Derby.

Robert Mendoza, Director of Public Works and Parks and Dave Peebler accepted the proclamation. Mr. Mendoza advised Arbor Day will be Friday, April 25th at 6:00 p.m. at High Park in the enclosed shelter. There are a lot of great activities planned, including giveaways and fun things for the kids. There will be more information coming in local newspapers and Channel 7.

Mayor declared April 2008 as Fair Housing Month in the City of Derby.

Allison Moeding, Director of Economic Development accepted the proclamation. She explained this is our 2nd year as a recipient of federal home rehabilitation grant funds. As part of that grant it is incumbent upon us to recognize fair housing and recognize that that is an important value for our community and for others across the country.

**RESOLUTIONS FOR
PUBLIC
IMPROVEMENTS TO
SERVE HAMILTON
ESTATES**

Dan Squires, City Engineer presented the staff report.

Background:

- Hamilton Estates is located on the south side of Meadowlark, approximately ½ mile east of Rock Road.
- PUD Zoning for the site was approved by the Council on November 27, 2007 and the Final Plat was approved by the Council on February 26, 2008.
- Along with the Final Plat, the Council also approved the petitions submitted by the developer for sanitary sewers, water lines, drainage improvements, streets and sidewalks.
- Gilmore & Bell, the City's bond counsel, has prepared the corresponding resolutions for Council consideration.

Financial Considerations:

- The subject resolutions include sanitary sewers, water lines, streets, storm sewers, stormwater detention pond, internal sidewalks and sidewalks on Meadowlark and on James (bike paths), all totaling \$2,384,300.
- Of the total amount, the City-at-Large share is \$30,300 (50% of the two bike patch petitions).
- Special Assessments will be spread against the benefit district properties over a 15-year period.

Legal Considerations:

- These are valid petitions 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. 13-2008

SANITARY SEWER IMPROVEMENTS, PHASE 1A/HAMILTON ESTATES.

RESOLUTION NO. 14-2008

SANITARY SEWER IMPROVEMENTS, PHASE 1B, HAMILTON ESTATES.

RESOLUTION NO. 15-2008

WATER MAIN IMPROVEMENTS/HAMILTON ESTATES.

RESOLUTION NO. 16-2008

STREET AND STORM SEWER IMPROVEMENTS/HAMILTON ESTATES.

RESOLUTION NO. 17-2008

DETENTION POND IMPROVEMENTS/HAMILTON ESTATES.

RESOLUTION NO. 18-2008

MEADOWLARK SIDEWALK IMPROVEMENTS/HAMILTON ESTATES.

RESOLUTION NO. 19-2008

JAMES STREET SIDEWALK IMPROVEMENTS/HAMILTON ESTATES.

RESOLUTION NO. 20-2008

INTERNAL SIDEWALK IMPROVEMENTS/HAMILTON ESTATES.

RESOLUTION NO. 21-2008

MEADOWLARK DECEL LANE IMPROVEMENTS/HAMILTON ESTATES.

MOTION: Schwarz moved to approve resolutions for public improvements to serve Hamilton Estates. Nun seconded.

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

**ORDINANCE
REQUIRING RAIN
SENSORS IN
IRRIGATION SYSTEMS**

Pat Swaney, President El Paso Water Company presented the staff report.

Background:

- In its role as public water supplier, the City is intimately interested in water conservation.
- Automatic irrigation systems have become increasingly common in recent years, both in residential and commercial applications.
- Automatic irrigation systems typically are set to operate at specific times or intervals and to run for a pre-determined time period, regardless of weather conditions.
- One result is that automatic irrigation systems often over-water because they do not react to wet conditions.
- Reliable, inexpensive rain sensor devices are now available to prevent over-watering by automatic irrigation systems.
- Rain sensor devices typically prevent an irrigation system from activating when a pre-determined amount of rain has fallen.

Financial Considerations:

- Rain sensor devices typically cost between \$20 and \$60, making them affordable to both residential and commercial irrigators.

- The cost of equipping an automatic irrigation system would be borne by the property owner.

Legal Considerations:

- Adoption of the proposed rain sensor ordinance would be an appropriate exercise of the City’s general police powers.

Policy Considerations:

- Water is an increasingly scarce and valuable commodity and should not be wasted.
- The City and El Paso Water Company Inc. seek to promote responsible use of water resources.
- The proposed ordinance would encourage conservation by requiring that all new irrigation systems and all commercial systems, regardless of when installed, be equipped with a properly operating rain sensor.
- Rain sensors would be set to prevent activation of the irrigation system when ½ inch or more of rain has fallen.
- The proposed ordinance would be enforced through the City’s code enforcement staff:
 - Upon receiving a complaint or observing an apparent violation, staff would refer the matter to Code Enforcement personnel.
 - The code enforcement officer would verify that the irrigation system actually requires a rain sensor.
 - Informal enforcement techniques would be used insofar as possible.
 - The code enforcement officer would be authorized to enter upon private property for the purpose of ascertaining whether a required rain sensor is installed and operating properly.
 - In the event informal enforcement is unsuccessful, the code enforcement officer could issue a citation requiring appearance in municipal court.
 - Violations would be punishable by up to a \$500 fine, up to 30 days in jail, or both.
 - For those irrigation systems fed from the public water supply, water service to the property could be interrupted until the required sensor is installed and operating. The cost of water service interruption and resumption would be borne by the offender.

ORDINANCE NO. 1932

AN ORDINANCE REQUIRING INSTALLATION AND MAINTENANCE OF A WORKING RAIN SENSOR DEVICE IN ALL AUTOMATIC IRRIGATION SYSTEMS INSTALLED OR LOCATED ON COMMERCIALY DEVELOPED PROPERTY AND ALL SUCH SYSTEMS HEREAFTER INSTALLED ON RESIDENTIALLY DEVELOPED PROPERTY; AND PROVIDING PENALTIES AND OTHER SANCTIONS FOR VIOLATIONS.

DISCUSSION:

Council Member Warren advised he has, over the last couple of years started moving towards enhancing conservation of our natural resources. This is one that he approves of and thinks we need to go forward with. There is an element of this one however he would like the council members to consider changing. On the ordinance, section 1, under definitions, “would apply to all commercially developed property”, he asked the council to consider striking that issue and maintaining this strictly for new systems that are going to be installed in the city and not require it

as a retrofit on existing systems. Simply because it is a good idea does not mean that we necessarily have to pass a new ordinance requiring people that already have their systems in place to do that. The concern he has is requiring it just on the commercial systems that are out there. He asked himself why would we apply this to retrofit commercial and not existing residential systems and came up with a few reasons. Number one, the number of commercial applications is much smaller than the number of residential applications, therefore the possibility of filling a room that would be opposed to us becomes a much smaller number. We have a fewer number of commercial entities out there that are not as likely to protest. If we were to mandate every residential system we could have a room full of people that are against retrofitting an existing system. He is a little opposed to the double standard, if the idea is that we want to preserve water then why would we not make it a requirement for residential as well as commercial if it's that important. Another possibility may be that business has lot's of money and they can afford it, so who cares. This one item in and of itself may not be a big deal but you pile up little items that in and of itself aren't big deals and they become big deals. From a standpoint that some businesses would have no problem, there could be some small independent operated businesses that he has a problem with the double standard. Many of the residential owners could certainly afford to add this to their system much easier than maybe some of the commercial applications that we have. The third possibility may be the belief that commercial users have large systems and therefore are our big wasters. The reality is that so many of our commercial systems are very narrow strips of land that may only be a few hundred square feet, whereas a residential area may have a home that would have 15,000 – 30,000 square feet so the big waster of water in many cases would be the residential users. He asked that we strike the retrofit on commercial. All new systems that go in, whether they be commercial or residential would be required to have the sensor system but would not require existing systems to go through the expense of requiring this retrofit to them.

Council Member Arnold added that if you are going to act upon this to conserve water it is important that we look at every issue. On the residential side, if you already have a system in place that does not have a sensor, but there is some maintenance requirements or things have to be changed, it would be an ideal time to go ahead and add that sensor. He agrees with what Mr. Warren said, the majority of the water that we use in this city is residential and anyone that is putting in a new system, be it commercial or residential be required to put the sensor in. The system at his house is 20 years old and it has a sensor so he knows they have been out there for many years. The one Mr. Swaney was talking about a few weeks ago is far more economical to purchase today as opposed to the one he has. He does not think it is unreasonable because if you replace a head or two on your system you have already spent \$100. The whole idea of water when you consider the fact of what it costs us to purchase this water it would save the homeowner a great deal of money when he goes on vacation and his water system was not regulated to allow for that time he was going to be gone and the system has been running 4 days out of the week and has been raining for the last 5-6 days, think of the money you would save. He is not opposed to making any changes, he thinks we should, but he would like to require that anyone that puts in a new system or replaces an existing system be required to put that sensor in.

Council Member Staats advised he is all for this. Today there were people watering their yards even after we got .5 inches of rain tonight. Regarding what Mr. Warren said about businesses, a lot of time we want to require businesses to do it because they are not monitored. At a

convenience store here in town, if it starts raining the employees won't know how to work the system and turn it off. That was brought up a couple of months ago when this was brought to council that businesses don't have the means to go out and turn it off, they can't leave the store so to speak and a lot of water is dumped because of that. He disagreed with Mr. Warren on excluding existing businesses. Another issue he has with this is the teeth we have in the ordinance as far as going on to somebody's property and checking to see if they are in compliance. He does not like "big brother" being able to go on someone's property to check that. The ordinance basically says that when you are hooking into city water you are giving implied consent that we can check it out. The ordinance also goes further and says that if someone has a well that the city can still go in and check for a sensor and there is a fine from \$25 to \$500 and he would assume the fine would be at the lower end of that if need be. He knows the city is not going to go in and start enforcing this right off the bat or enforcing it criminally, however they would need to make sure things are going to be handled more tactfully than just knocking at the door. He and Mr. Alexander talked extensively about that yesterday and his little bit of heartburn on this is allowing the city to go on people's property.

Mr. Swaney advised that he has found out personally that knocking on someone's door and communicating that they have problem, they are glad to know it. Like Mr. Arnold said, they are saving money when it's working properly. He does not anticipate under normal operating procedures ever having a problem. Most people are glad to know that something is not operating properly.

Council Member Staats indicated his concern is if the city would have any worry of violating a fourth amendment right by going on someone's property and doing enforcement. Obviously he is looking at this as a former law enforcement officer background but when you are going on to somebody's property and enforcing something, especially if they have a well. It ticks him off when he sees people that have wells and are watering after we have had .5 an inch of rain and they think it is "free water". They are still wasting a natural resource and he wishes we could do something to them.

Mr. Swaney advised that we are promoting conservation as we spoke to earlier and that is not just the water we purchase but the water that we are sitting on top of.

Council Member Staats agreed he knows we need to have some bite to the ordinance; it is just how we get there.

Mr. Alexander stated that the ordinance indicates that the standard for entry onto private property is reasonable suspicion, which is a slightly lower standard than the probable cause that we normally deal with in a fourth amendment situation. However, the nature of this enforcement effort is going to, as a practical matter, always amount to probable cause, which is a very clearly recognized standard in criminal law. As Mr. Swaney indicated, he does not expect this ordinance to be enforced criminally very often, if ever, but it's a good tool to have if push comes to shove, much as we do with animal control or other similar ordinances that we don't want to enforce criminally, but sometimes the need arises. We did consider a couple of other alternatives as we drafted the ordinance, one would be simply to prohibit operation of irrigation systems after a

certain amount of rain, there would be no need to go on private property. If you see it you issue a citation. Now that is kind of arbitrary because as we have discussed, perhaps it rains .5 inch in one part of town and not another part of town and we didn't think that was an appropriate proposal to bring to the council but that would be simple and would not require going on to private property.

MOTION: Warren moved to adopt the ordinance requiring rain sensors on certain automatic irrigation systems as presented, with the exception of eliminating #1, subsection a and section a under definitions, applying retrofitting to commercial, but requiring any new system, whether it is commercial or residential to have a sensor. Arnold seconded.

Kathy Sexton, City Manager suggested looking at item #2 and note that that is currently limited to residential so we would re-word item #2 to make it very clear that systems installed on or after the effective date of the ordinance that would apply to residential and commercial.

Council Member Warren indicated that is his motion.

MOTION: Warren moved to adopt the ordinance requiring rain sensors on certain automatic irrigation systems as presented, with the exception of eliminating #1, subsection a and section a under definitions, applying retrofitting to commercial, but requiring any new system, whether it is commercial or residential to have a sensor. And reword item #2 to include commercial and residential. Arnold seconded.

Council Member Meidinger asked about the cost of these devices.

Mr. Swaney advised that a hardwired one is \$20 and a regular frequency one is around \$38.95, that does not include labor and the price on that will vary. He really thinks that if you start an ordinance requiring them on new systems there will be more and more of the old systems pick them up because it's a savings not on water, but for money.

Council Member Warren agreed, his problem is just requiring people to do it; he thinks people will voluntarily do it because it makes sense.

Council Member Meidinger clarified that is \$50-\$60 per system.

Mr. Swaney advised that was correct.

Council Member Meidinger asked how many commercial lots would be affected by this?

Mr. Swaney advised there would be 95.

Council Member Craig advised that we are trying to protect a nonrenewable resource, that is the bottom line. Other things are kind of secondary to that in his opinion. He asked how many systems the city has.

Mr. Swaney advised the El Paso Water Company has one and the city probably has seven, the school has sixteen.

Council Member Craig stated that we need to set the example if we are going to do it (Ms. Sexton indicated that was done). He understands Mr. Warren's position; however the ones that he sees on the weekends that are going continuously are not monitored and go all the time. What we are doing is protecting a resource. He knows we are going to save money on one end, but the resource is pretty important. At this time he can't support that, he does not think we should eliminate those things that are going to protect a nonrenewable resource, that is the bottom line. Not only that, but the conservation of that is more important because we all know future water rates are going to go up. We are at the beck and call of Wichita and they are going up, in some areas much more than we anticipated and that's a given fact. He advised he cannot support Mr. Warren's motion and thinks it should go as is. He asked about the penalty indicated in the staff report of a fine of up to \$500 and jail for 30 days; however the ordinance states a fine of not less than \$25, no more than \$500, which one is correct?

Ms. Sexton explained the jail part was not removed from the staff report like it should have been. The ordinance is what you are adopting and it is a maximum \$500 fine, we took out the jail part.

Council Member Craig indicated he would support it as written because he believes our main intent is trying to protect a nonrenewable resource. He knows there are numerous businesses on the weekend that are not monitored and even some that are monitored, they don't do anything and this would take care of that. In the end, the city is one of the main violators, we have systems that go off automatically and if no one is here to take care of them then we just use the water and it goes for not. He encouraged the city to be the example.

Council Member Warren stated his real problem with this is the double standard, one for residential and one for commercial. If the main goal is water conservation then why would we not make this a requirement for everybody that has a sprinkler system, commercial and residential combined.

Mr. Swaney advised that was discussed and the reason is commercial people don't usually have anyone at that site that maintains their system.

Council Member Warren stated that the argument is if the system is going off it may be going off because of inattention because there is no one there monitoring it and one goes off in a residential area because of apathy. It doesn't really matter, you have water that is going off in a system because there is no automatic system and people aren't willing to go out there and take care of that. If it's good for one, it's good for both. He could compromise on the commercial if we could also apply it to the residential. Or, set the standard that says if the square footage, again we are looking at who are the big wasters. You have somebody that has a plot of land as big as our table up here and when they run their water they aren't using very much. You have somebody that has a .5 acre or .75 acre lot and they have 15-18 heads, they are wasting a lot of water. His contention is that we do it across the board, either we make it for everybody that has a sprinkler system or we just make it for new systems that go online. At this point he will hold with

the motion he has made. If we defeat that then he would like to come back and make it across the board for everybody.

Council Member Meidinger advised that Mr. Warren brings up a good point, why wouldn't we put all systems on whether they are commercial or residential. The sheer number of residential customers will outweigh the commercial usage wouldn't they?

Mr. Swaney advised there are around 800 on the books.

Council Member Meidinger stated that 800 opposed to 95, he would think we would want to have everybody conserve water not just one select group of people. What was the rationale of excluding residential?

Mr. Swaney explained the rationale that evening is that they are monitored, someone lives at the home and they know where their system is and in most cases are cost conscious. He guarantees that a lot of the commercial properties don't have anybody on site that even knows where the timer is to turn it off or on. It is set up in the spring and is winterized in the fall and that's it.

Council Member Meidinger asked if the same consideration be used for people that are on vacation? When they are gone no one is going to shut that water off.

Mr. Swaney agreed. He believes people will get on board with this; the school already has two installed.

Council Member Meidinger would favor having everyone on the same page as opposed to having one for commercial and one for residential. If you are going to save water you are going to save water. He does not agree with the ordinance the way it is written and would like for us to start all over again, withdraw the second, withdraw the motion and put in "all users".

Council Member Craig advised sometimes the solution is to include everyone and it takes a while to get some people there. There is another aspect of this, long ago we didn't have backflow devices, was that a state requirement?

Mr. Swaney advised that was correct, we didn't have any choice.

Council Member Craig stated he didn't think it was necessary but obviously it is and he has one and everyone else is supposed to have one. He doesn't see anything wrong with this; he would encourage us to look at when it has to be fully implemented instead of saying it has to be done this summer. He doesn't think we want to stress a whole bunch of people out about this. We can allow a couple of years to complete it and make sure it's done. The thing about it is, if you do that with the backflow certification you can make sure the rain sensor is installed and you have an automatic check system. If you do it this year and next year it allows a period of time for people to become compliant with what we are asking them to do. When you are on vacation and you come back with a water bill for over \$300 like he did, you would get the idea that you want to save water, but you also want to save dollars if you water too much. He agrees with the position

of it being applicable across the board but we will need some discretion in finding an implementation period that would give people time to get it done.

Council Member Arnold advised that anyone that reads the paper or watches television should be aware of the fact that right now in Atlanta they are talking about rationing water. Even with the rain they have had it is still nowhere near the flow that they need to get them through this particular summer. He thinks it's imperative that everyone gets in the act of conservation because it is a nonrenewable resource. All of us have seen houses running their sprinkler systems when it's pouring outside. He agrees we need to make it across the board for both business and residential. He thinks we should give them some time to meet that requirement.

Council Member Warren advised he thinks we are heading towards some consensus here. We need to try and nail down some numbers and dates that if we were to pass an ordinance or send staff back that we would have an implementation of all new systems, commercial or residential within 30-days of publication and all systems within the city limits would be compliant within 2 years. He asked what the process is for inspections of backflow devices; don't we have an inspection on backflow systems?

Mr. Swaney stated a certified tester has to do it and they send us the results once a year.

Council Member Warren clarified that can happen anytime during the year.

Mr. Swaney explained that usually it starts when the system is put in operation because when they are winterized you can't test them. Once the system is up and running they are tested annually.

Council Member Warren stated if we went to July 1st of 2009 we would catch notification this year of everybody and essentially next years notification because they will probably hit that up in April or May, June or July at the very latest so if we said July 1st, 2009 that it had to be implemented we actually have two cycles for them to notify the homeowners that they will have to have this in place. He withdrew his original motion.

Council Member Arnold withdrew his second.

Ms. Sexton explained that if the motion is intended to say you like everything in the ordinance except to apply it to everybody, implement for all new systems 30 days from publication and everybody else with existing systems would be required to comply with this ordinance by July 1, 2009, we can just update the ordinance with those dates.

MOTION: Warren moved to approve the ordinance with implementation of all new systems within 30 days of publication and all existing systems must be compliant no later than July 1, 2009. Arnold seconded.

Mayor Avello asked why retail was not mentioned.

Ms. Sexton explained that the intent is we will not take out reference to commercial and residential; it will just apply to all systems regardless of the usage of the property. If you have an irrigation system for your lawn, it applies.

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

AMENDMENTS TO BIOSOLIDS DESIGN CONTRACT

Dan Squires, City Engineer presented the staff report.

Background:

- In May of 2007 the Council authorized staff to enter into an agreement with Camp Dresser & McKee (CDM) for design of Biosolids Improvements for the City's Wastewater Treatment Facility in a total contract amount of \$406,000.
- The design contract fee was based upon design of improvements in accordance with the 2006 biosolids handling study, but also included evaluation of additional alternatives.
- During the evaluation of additional alternatives, discrepancies were found in the 2006 study that resulted in additional evaluation, design, and computer modeling by CDM.
- The evaluation also resulted in a final design recommendation that differs from the 2006 study recommendation.
- The City has also requested that CDM conduct an evaluation of alternatives for updating of the treatment plants process control system, which was not included in their original contract.
- Because the planned biosolids improvements, along with other necessary wastewater treatment plant improvements, will likely affect wastewater costs, staff has requested that CDM conduct a rate study to evaluate the City's wastewater rates and rate structure.
- The total increase requested for additional evaluation, modeling, design and control system evaluation and performance of a sewer rate study by CDM is \$95,000. This results in a new contract total of \$501,000 (\$406,000 + \$95,000).

Legal Considerations:

- The City is authorized to enter into a contract for the professional services proposed. The standard professional services consulting contract previously developed by city staff will be used to formalize the relationship with CDM following authorization by the Council.

Financial Considerations:

- The total revised fee for design and construction related services will be \$501,000 which includes the sewer rate study.
- The 2008 CIP includes \$250,000 for the design of the biosolids improvements. The wastewater operating budget also includes \$15,000 intended for use on the rate study.
- The source of funds for the design of the biosolids improvements is the Wastewater Depreciation Fund. Sufficient funds are available for the revised design fee in this fund of \$486,000 (\$501,000 less \$15,000).
- These costs will be updated during the upcoming budget process.

DISCUSSION:

Council Member Craig asked what the discrepancies were, are they discrepancies, deficiencies or shortcomings?

Mr. Squires explained that the discrepancies are a difference in opinion of the valuation of the wastewater strength, which has a tendency to change a lot of different things. Most of what we get at the plant is water, but what else is in there affects how our treatment system operates and sizing of basins and things that we need to complete the process. Most of that had to do with the quality of the water that we receive at the plant, in other words, what's in it besides water.

Council Member Craig asked about the additional monies to evaluate the rates and rate structure. He asked how well versed they are in rate study.

Mr. Squires advised that CDM is a multi-national design firm that specializes in environmental engineering; they don't do a lot of street and highway projects. Wastewater and water are pretty much all they do. They do a lot of specialized work and he is very confident in their ability to complete this rate study effectively.

Council Member Craig asked how much of the \$95,000 will be used for the rate study.

Mr. Squires stated it would be about \$17,000.

MOTION: Craig moved to authorize staff to negotiate an amendment to the current contract with CDM for design of biosolids improvements to revise the scope of services and increase the fee payable to no more than \$501,000. Staats seconded.

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

**47TH – 55TH STREET
SOUTH JOINT AREA
PLAN (2008-2030)**

Kathy Sexton, City Manager presented the staff report.

Background:

- During this past year, the cities of Derby and Wichita joined with Sedgwick County to collaborate on a planning effort for the potential future extension of services over the next 20 years in the region bounded by 47th Street South, K-15 on the west, 159th Street East (Sedgwick/Butler county line), and 55th Street South.
- Efforts included elected and appointed officials as well as staff from each jurisdiction and McConnell Air Force Base, Rural Water District #3, Westar Energy, and Aquila Networks.
- Copies of the 73-page plan are available at City Hall. The plan is also available at www.derbyweb.com on the City Council's agenda page and on the Community Development page.
- The purpose of developing a Joint Area Plan was fourfold:
 - Develop a tri-jurisdictional land use plan for Derby, Wichita, and Sedgwick County.
 - Determine the anticipated/desired future land use pattern that reflects the most efficient, future delivery of urban municipal services.
 - Serve as a basis for redefining the current 2030 urban growth areas for Derby and Wichita.
 - Lead to possible modifications to the current water agreement between Wichita and Derby regarding the provision and delivery of future water services in the plan area.

Policy Considerations:

- Good land-use and community planning practices dictate that analysis be performed well in advance of development occurring in a given area. This is especially true for areas where the boundaries of more than one municipality are likely to become close. The MAPD staff suggested this study to assist Derby and Wichita with future planning, as well as to demonstrate to other cities an example of a “best practice” in an attempt to encourage other cities to discuss issues in advance of conflicts occurring.
- On March 20, the Derby Planning Commission held a public hearing and then approved this plan as an amendment to the Derby Comprehensive Plan and recommended adoption by the City Council. No comments were received in the public hearing.
- On March 27, the Metropolitan Area Planning Commission approved the plan.
- Approval by the Wichita City Council is scheduled for April 15, and approval by the Board of Sedgwick County Commissioners is scheduled for April 16.

MOTION: Warren moved to approve the 47th to 55th Street South Joint Area Plan as an amendment to the comprehensive plan. Schwarz seconded.

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

UPDATE COUNCIL PRIORITIES

Kathy Sexton, City Manager presented the staff report. She advised the council last saw the priority list in November. There are seventeen priorities on the city list now, as well as the five priorities on the water company list. Since the council last saw the list six projects were completed and moved to the “achieved” list. We like to keep the achieved list so we can look back and know that we have accomplished things. The things we have accomplished since our last meeting in November include the minimum housing code, the fireworks ordinance updates, the motorized scooters, that standard traffic ordinance was reviewed again by ORAB and affirmed that changes were not needed at this time. For the water company we’ve integrated the personnel into the city system, completed converting them all to the performance evaluation system that the city uses and updated graphics for the water company billing. Those six projects were moved to the achieved list. As far as the list the council has before them tonight for consideration and approval, you know that all the items on the list of seventeen that are in italics are currently being worked on. We have a lot things being worked on and we also have a budget process that we are getting deep into. We will have a lot of priorities besides these in the next few months as we develop the budget. The performance measurement system, we created that new system last year and are currently implementing that and will have our first annual report out to the council and the public in October. As far as updating the park master plan, we are deep into that and we predict we will have that done in the next 1 ½ to 2 months. We need to develop a marketing plan for the community, we have been so busy doing the marketing that kind of gets thrown at us that we haven’t actually stepped back and requested professional assistance and actually developed a plan. We do know that’s our next step and we have a lot of good ideas on that already and a lot of interest in helping us with that. Regarding updating our nuisance ordinances, she thought we were finally going to be able to take those off the list but there is one more piece that we are working on. You know we have done several things on updating our nuisance ordinances this past year but the last piece that is still being worked on is our sign ordinance. There have been several things that have come up, one being commercial signage, like for the big Marketplace development. We realized that the limited size of the sign is not conducive to people being able to read hardly anything on the Marketplace sign. They have the maximum size sign out there now but it is difficult to read. With the road construction now you can’t go very fast and it’s easier to

read, but back when it was 45 mph it was pretty ridiculous to assume that people could read a sign that was as small as we limit it. We are thinking about updating that, but the bigger part of the sign ordinance is taking a look at some of the small signs that are put out by retail businesses at certain times and how far apart they are spaced. It is hard to enforce that. We want to enforce it but we also want to make sure the ordinance itself is fair and well written and then we will begin enforcing it. We are working on updating that and will have it to the council soon. The fifth priority is notification on future special assessments, you all know we are working diligently on that and we will have that signage ordinance to the council soon.

Background:

- On November 13, 2007, the Council last updated the priority list when the strategic plan was also adopted.
- Today, an updated priority list is provided for Council consideration. No new projects have been added to the list since November.
- Six projects have been completed since November and moved to the “Achieved” list, including four Water Company-related priorities.
- Work is underway on most of the 17 priorities on the city list, as well as the 5 priorities on the Water Company’s list.

Financial Considerations:

- None at this time. Implementation of the priorities will necessarily involve staff time and various expenses that will be determined at a future date and budgeted for as appropriate.

Policy Considerations:

- It is important for a governing body to agree on a set of priorities to guide the productive use of staff time.

DISCUSSION:

Council Member Meidinger stated that the last time we talked about the city council priorities he thought we were going to have assigned dates on these so we would have an idea on keeping track of them. Otherwise it’s just a list without any completion dates. Completion dates would put a little heat on the staff is what it amounts to.

Ms. Sexton advised she did recall that being mentioned last time but did not hear any other council members agree to that or decide to change it. She thinks the idea now as she understands it is that you want her to come back about every three months and show what is being worked on and what has been accomplished. Certainly she internally has dates and people assigned to do different things on different items. If there is a different accountability system that the council wishes then just let her know.

Council Member Meidinger stated for example, #7 recycling and trash franchising, Wichita is on top of this right now.

Ms. Sexton advised she serves on the board for the Sedgwick County Solid Waste Planning Commission and the article in the newspaper was about what the county is looking at. That is the reason the Mayor helped get her appointed to that to represent all the small cities in the county. She is the SCAC (Sedgwick County Association of Cities) appointment and the reason she got on that is because we are looking at this but when she called the county to request assistance to help on the project she was told the state requires the county to update their solid waste plan by June. They were going to look at a grass ban and various other things and we said we don’t want to get out there and do all this research and write ordinances and get everything changed only to have the county change the rules. We decided to learn what the county is doing and figure out how that affects us and then we will implement this in a year. You will also recall three months ago

when we had a major position on the management team vacated and things can't be done as fast as you want them to be when your #2 person isn't there. She introduced Stephanie Knebel, our new assistant city manager, which puts us back at full staff on the management team. She apologized if enough hasn't been accomplished in the past 3-4 months but she thinks the council will recall that it's certainly a difficult time to accomplish much when one of your top people leaves.

Council Member Meidinger advised his point is, without completion dates this is strictly a list and if we are just going to look at lists he kind of reverts back to when he was assigned a task by his boss and would just get around to it when he had time. That never did float with him too well. For example, going back to recycling, say we had a completion date of two months from now, and obviously from what we were just told it would be impossible to do anything on that, then you could come back and tell the council you can't do anything because of what Sedgwick County is doing. Otherwise it just lays dormant.

Council Member Craig agreed with Mr. Meidinger that we should have some type of target, but not necessarily a hard and fast date. He is looking for the council to say that item #15 is inappropriate to be on this list, he does not think it is appropriate to be on the list. It is something they as a council don't need to get involved in, that item is alcohol for special events at High Park and the DRC. He thinks we are approaching something that is pretty controversial and our part as a governing body that has to do with giving some appropriateness to having alcohol on public property that is paid for by tax dollars when we have large efforts in this town to reign in underage drinking. He would like to remove that from this list and let somebody else charge that because he doesn't think this council has any business doing that.

Council Member Warren commented that he has been on both ends of the management tree where he has those that are over him and those that he is over, there are some situations where he needs to set deadlines because he know it's not going to happen and there are situations where he lets people know what needs to be done and they take care of it. It would be inappropriate; he thinks to feel like we have to put some kind of a deadline on that situation. At the point where we feel like staff is not paying attention to these issues, that is something that could be done in the future, but he does not believe that is the case right now. He thinks staff has got a very good feel for the priorities of the council and with the quarterly reports that we get back, if there is an area that we want to move up in the priorities list we have the right to do that. He does not think it would be appropriate for us to start putting target dates on these at this point and he likes the flexibility that we have. He agrees that #15 is going to be a "hot potato" but it is a "hot potato" that lies at our doorstep because it involves the ordinances that the City of Derby has in place and we have got a number of citizens that feel there are situations and times when we need to take a look at that and there is nobody that we can pass that buck to. It is ours to have to deal with, as difficult and contentious as it may be, it's our baby. He does not think it should be taken off the list until we have had that discussion and public input.

Council Member Arnold stated that this is a city not a manufacturing company; it is not a service company. It is a city that is subjected to all types of state, federal, local laws and regulations. The management we have in place today was hired specifically because of her background and experience. The way she has been running it he sees no reason why we should change it. She gives us quarterly updates, which is typically what happens in most companies and we have the right as the council to change those whenever we wish. At the same time seeing the accomplishments she has created since she's been on board and the speed in which she has accomplished some of these things even when she was understaffed, to him says leave well enough alone. If it's not broke, don't fix it.

Council Member Craig advised it's not broke; we are not trying to fix it we are just trying to get more information. He understands the positions, however, when this comes before this council he

is looking for a “how goes it”. In other words, pick the ones that are most important to our City Manager and give us the status on it rather than saying “it’s still on there”. He needs to know what progress is being made on at least a few of these, especially the top ones, maybe the first 4-5 at the top so he has some idea what the status is. He might be missing some information someplace by not asking or reading something else that is available. As far as #15, you can count on him to vote no every time it comes up, it’s a hot potato and a no will get rid of the hot potato.

Council Member Warren suggested that there are some issues that come up here that definitely need to be addressed in front of the entire council, not only for our benefit but for the community’s benefit. We have been very open on how we do things and he doesn’t think that everything on this list needs to have a detailed accounting, but from time to time we do need that kind of accountability. Personally, if he needed an update on something on this list Ms. Sexton has been very gracious to let him know where we are at on any particular issue and that door is always open for anyone on the council to take at any point. If it’s important that it go across the table and across the community we have that option. If there is something on the list you would like specifically to have some details on, ask it and we will cover it.

Mayor Avello indicated he gets copied in on some of the emails that go around and that is why we have email. If there is a particular hot item that you want to discuss here email Ms. Sexton or pick up the phone and call her, he does. He is not sure that the way things are listed on this list are in order of priority.

Ms. Sexton explained this is the list the council approved, if they are not in the right order that is what this agenda item is for.

Mayor Avello stated some of the things he does not think are priority items. He agrees with Mr. Warren, if you have a hot button, email her or call her and she will take care of it. As far as dates go, they are targets but this is not a manufacturing company, it is a community and many things happen in this community that are going to change the priority list on a daily basis.

MOTION: Arnold moved to approve the Council’s updated list of priorities. Staats seconded.

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

CONSENT AGENDA

Kathy Sexton, City Manager presented the staff report.

Garrett Park Fence Replacement

Background:

- The Parks Division is replacing the chain link fencing for field #3 at Garrett Park.
- The existing fencing is 27 years old and is stretched and damaged beyond repair.
- We are upgrading the fencing material to a 6 gauge steel.
- Replacement includes all existing chain link, poles, top-rails, backstops and gates.
- This is an approved replacement identified in the 2008 Capital Improvement Plan.
- 3 vendors were sent requests for bids.
- Sealed competitive bids were received and opened on March 11, 2008.
- Bids were received from Reddi Industries in the amount of \$15,765, American Fence Company in the amount of \$16,981 and the Wichita fence Company in the amount of \$25,923. All bids met the conditions of the specs.

- The Bid Board reviewed all documents and approved the low bid from Reddi Industries on March 26, 2008.

Financial Considerations:

- This is part of a total project with an anticipated budget of \$34,000.
- Actual best and lowest bid received from Reddi Industries is \$15,765.
- This is an approved purchase identified in the 2008 Capital Improvement Plan.

Legal Considerations:

- All legal requirements governing solicitation and acceptance of bids have been satisfied.

Policy Considerations:

- The Department followed all bid and purchase guidelines as required by the City of Derby Purchasing Policy.

DARE Celebration

Background:

- Each year, the Police Department’s Drug Abuse Resistance Education (DARE) program hosts an end of school year event for area schools.
- This year’s event will be held in High Park on May 3, 2008 and feature many activities with a fireworks display as a conclusion.
- Stellar Fireworks, 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.
- The 2006 International Fire Code, adopted by chapter 8.16 of the Municipal Code, requires approval by City Council for a fireworks display to be held in the City.
- Area residents will have been notified of the fireworks display.

Legal Considerations:

- The City is empowered to contract for services in support of a public celebration.
- A satisfactory certificate of coverage, a copy of the state-issued license for the pyrotechnic operator and a map of the display site have been provided.

Policy Considerations:

- The proposed display meets the requirements of the recently adopted 2006 International Fire Code.

Request for Use of Street Rights-of-Way

Background:

- The Derby Days Parade Committee is requesting the use of city street rights-of-way to conduct the annual Derby Days Parade on Friday, May 30 at 6:30 p.m. Parade participants will line up in the Panther Stadium parking lot, leaving through the south entrance to proceed west on Market to Georgie, north on Georgie to Madison and then east on Madison to Mulberry.
- The parade route is identical to the route approved by the Council for last year’s parade.

Financial Considerations:

- The City will supply police officers at intersections as well as supply barricades and cones for traffic control. The estimated value of these services is \$1,920, an increase of about \$300 from 2007. The increase can be attributed primarily to police labor costs, as the hourly rate for off duty officers rose from \$24.43 in 2007 to \$30.47 in 2008.

Legal Considerations:

- The Council is within its legal purview to allow use of street rights-of-way for this purpose.

Lease Agreement – Big Daddy Fireworks, L.L.C.

Background:

- Dr. Robert Sweet of Big Daddy Fireworks has requested to lease the property owned by the City of Derby adjacent to and west of the water metering station on Patriot Avenue.
- Dr. Sweet leased this parcel last year to house a fireworks stand and successfully complied with the terms of the lease.
- The term of the lease will be from June 24, 2008 until midnight, July 6, 2008. This allows access several days 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.
- The proposed lease requires that the property be restored to its original condition. Installation of the utility service and removal of the utility pole is at the expense of Big Daddy Fireworks, L.L.C.

Financial Considerations:

- The lease requires payment of \$5,000 for rent on or before June 15, 2008, which is an increase of \$2,000 from last year.
- In addition to the rental revenue, the city will receive the fireworks stand permit fee of \$7,500 as required by city ordinance.
- The lessee will furnish a Certificate of Insurance 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.

Contract for Street Improvements to Serve Tall Tree Addition

Background:

- A bid opening for the construction of street improvements to serve Tall Tree Addition was conducted on Tuesday, April 1, 2008 at 2:00 p.m.
- Bids were submitted by contractors after advertisement in the appropriate publications.
- The following bids were received by the City Engineer’s office and witnessed by the City Clerk:

Lafarge North America	\$ 244,457.00
Kansas Paving	243,783.75
APAC-Kansas, Inc.	238,782.00
Cornejo & Sons, Inc.	233,685.50
Engineer’s Estimate*	\$ 323,190.00

- The low bid of Cornejo & Sons, Inc. is recommended for approval. The difference between the estimate and the bids is attributable to a combination of a conservative estimate (based on recent volatility in asphalt and concrete prices) and favorable pricing received from all bidders.

**Engineer’s estimate prepared by MKEC Engineering Consultants, Inc.*

Financial Considerations:

- Funds for the construction work were included in the 2007-2 temporary note issue.
- Costs for the improvements will be paid 90.4% by the benefit district and 9.6% by the City-at-large.
- Special assessments will be spread against the benefit district properties over a 15-year period.

Legal Considerations:

- The City followed all statutory procedures and local policies in planning and securing financing for the project, and in soliciting and analyzing bids.

Policy Considerations:

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

MOTION: Warren moved to approve Consent Agenda as presented. Schwarz seconded.

Council Member Meidinger asked about the leasing of the land by the metering station...

Council Member Warren asked for point of order, what are the rules if you want to take something off.

Council Member Meidinger indicated he wanted to ask a question about the clean up of the gravel on the metering station, it has nothing to do with the consent agenda, it has to do with the clean up of the gravel placed on there last year during the 4th of July rain storm. He thought we were going to have that cleaned up.

Ms. Sexton suggested, in keeping with parliamentary order, that they vote and then Mr. Meidinger's question would be in order.

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

Council Member Meidinger apologized for his lack of knowledge on parliamentary procedure but he thought they had already voted. He asked about the gravel on the property by the metering station. If he remembered last year when this lease was signed, part of the stipulation was that the grounds would be left in the same condition that they were received. There is a big gravel area down there now and it has not been cleaned up. He can see some major problems with that when we get into grass growing season and trying to keep gravel and grass separated. To his knowledge the lease wasn't followed properly, that is his question.

Ms. Sexton advised Mr. Meidinger was correct. There was an error made in the sense of implementing the lease in that the lessee had a situation where they needed to bring in gravel for parking and they asked a city staff member, not the right person so to speak, someone who was unaware of the requirements of the lease so some rock was put in and they were allowed to keep the tent open. It was a human error situation and was kind of hard to take back. We sat down and asked if we were going to hold strictly to the terms of the lease and have them pick up all the gravel and take it away and it was her decision at that time that it would be unreasonable to

require, and in some sense it improved the value of the city's lot so we decided to leave it there. She apologized for the error; it really was a communication issue between staff.

Council Member Craig recognized city staff member Darrel Zimmerman, that man is everywhere. He was on site at Q-Trip trying to make sure they get everything done right and that is a big job, he was right there making sure the city is taken care of.

Ms. Sexton pointed out that David Vansickle played a real big part in that as well and she will pass that on to him. She went on to say that she is pleased to have our city Economic Development Board working so hard for us, they have met a couple of times on our skilled nursing facilities proposals. They met a couple of weeks ago and thought they were done but then we had a term change on the Lakepoint proposal that was recommended. We are going to call that group back together on Monday, April 14th at 5:30 p.m. where they will receive some new cost benefit information from Wichita State to help us with that. We do intend to have; barring all catastrophe's this item on the next council meeting agenda on the 22nd of April. We intend to have a presentation about the Lakepoint proposal for a skilled nursing facility in Derby, we will show a PowerPoint, you can meet the owner of the project and we will be asking the council that night to set a public hearing date at a future council meeting in May. We can have the public hearing, and the action following the public hearing would be to issue a letter of intent for the issuance of the industrial revenue bonds. We believe we will have a recommendation from the board regarding a nursing facility.

ADJOURNMENT

MOTION: Schwarz moved to adjourn at 8:35 p.m. Warren seconded.

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

Dion P. Avello, Mayor

ATTEST:

Jean Epperson, City Clerk