

**APPROVED
REGULAR COUNCIL MEETING
December 22, 2009
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
Mark Staats

WARD IV

COUNCIL MEMBERS ABSENT
Tom Haynes

Flag salute was led by Council President Mark Staats. The invocation was led by Pastor Rick Wheeler, First Christian Church.

CONSIDERATION OF MINUTES

Minutes of the December 8, 2009, Regular Council Meeting.

MOTION: Staats moved to approve. Nun seconded.
VOTE: Motion carried 7-0, Haynes absent.

PUBLIC FORUM

Council Member Warren wished everyone a Merry Christmas. It has been a great year for the City of Derby.

Lisa Spillman made a presentation regarding the receipt of an ACE Grant received by the Derby Twins.

Donna Rhodes explained her experience of being a host family for the Twins.

Mayor Avello asked if we have had players we have requested to come back.

Ms. Spillman advised a lot of times we will ask a player to come back at the end of the season and encourage them to consider coming back. A couple of things happen with that; if they are a phenomenal player, which are usually the ones we ask to come back, lots of things happen when they are away at school. Usually they get drafted, as much as we want them back they get drafted and we can't bring them back. Sometimes their coaches ask them to play in a different league, in a different geographic area of the country. They will say "you played in the Jayhawk league last year, why don't you look at the Cape Cod league for this year" because it is a similar league. Often, they have the emotional tug that brings them back. Once they have been here, they love it here. The comments we get from the players, their families, their coaches is that their experience was so positive in Derby; we encouraged them to go back. Many feel like they

are coming home to their families, their host families became their parents, took care of them, fed them, took them to the doctor, everything that their normal family would have done in their absence. We do have kids coming back this year. Cole Waddell will be back and it's nice to have a local young man who will be able to play with us again. Our time with them is very short; they have to be college eligible so you can only bring them back a couple of times, their college experience is completely over. We did have exciting news this year, our coach's wife had a baby while he was here and he will be returning this year. The family he stays with when he is here is extraordinarily delighted.

2009 DERBY FIREFIGHTER OF THE YEAR AWARD

Background:

- Each year as Chief, I have the opportunity to look at a department of outstanding firefighters and pick one who represents the department at its best.
- For a firefighter to be recognized, they must show outstanding dedication, discipline and diligence in their career with the department.
- As always, it is a tough choice to make as so many of the Derby firefighters display these qualities and more.
- Harold Mattox began his career with the Derby Volunteer Fire Dept. on Jan. 01, 1966.
- Through his career with the Derby Fire Department, Harold has served under 5 different fire chiefs.
- Physical problems have caused him not to be as active this past year as he has been in the past, so Harold will retire from the Fire Department on Dec. 31, 2009 after a 44-year career.
- We want to honor Firefighter Mattox with the 2009 Firefighter of the Year award.
- Harold is also recognized tonight by the VFW Post 7253 for the 2009 "Outstanding Firefighter."

Financial Considerations:

- None

Legal Considerations:

- None

Policy Considerations:

- None

Recommendation:

- Present the 2009 Derby Firefighter of the Year award to Harold Mattox.

Chief Brad Smith presented the firefighter of the year award to Harold Mattox. Mr. Mattox, along with his wife Rosemary, son David and daughter-in-law Kris accepted the award.

Charlie Hahn from the Derby VFW also presented Mr. Mattox with the firefighter of the year award from the VFW.

Chief Smith also announced that Mr. Mattox will be retiring as of December 31st.

Mayor Avello commented that Mr. Mattox and Mr. Fields put the base down for the fire department here in Derby and left a good legacy for all these young men to follow. They are doing a fine job and those guys will be missed when they are no longer on the department.

AMENDMENT TO 2009 BUDGET

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

Background:

- A Public Hearing will be held during the council meeting for the purpose of hearing and answering comments of citizens related to the proposed Amendment to the 2009 Budget.
- At the December 8th City Council meeting an ordinance directing the defeasance of the General Obligation 2003-A Bond Series (the “Bonds”) was approved.
- The Sales Tax Revenue Fund requires an amendment by council to grant authorization to spend funds accumulated in the Bond Redemption Account for the defeasance of the Bonds.
- The defeasance of the Bonds is expected to occur on December 29th and the aquatic park sales tax sunset on December 31, 2009.

Financial/Sustainability Considerations:

- The 2009 adopted budget for the Sales Tax Revenue fund provided for expenditures of \$1,116,294 primarily for the payment of annual debt service, maintenance and capital related expenses of the aquatic park.
- The defeasance of the Bonds is projected to require funds of \$5,365,946 to be paid out of the Bond Redemption Account.
- The proposed amendment of \$6,482,240 will allow the expenditure of the original budgeted amount plus the defeasance payment.

Legal Considerations:

- State statutes govern the timetable for budget amendment, publication, public hearing, adoption and certification.
- The Notice of Public Hearing and Budget Summary for the 2009 Budget Amendment have been published in *The Derby Informer* in accordance with state statutes.

Mayor Avello opened the public hearing. With no one present to speak he closed the public hearing.

DISCUSSION:

Council Member Craig indicated this proves that when progress takes place things can get done a lot sooner. He asked Mrs. Epperson for an overview of how early the bonds are being paid off.

Mrs. Epperson advised the bonds were issued on April 1, 2003 and originally they were scheduled to sunset in April of 2017. The life of the bonds was six years and nine months.

Council Member Craig commented that the ½ cent sales tax can do marvelous things for our community.

- MOTION: Craig moved to approve the Amended 2009 Budget as proposed for the expenditure of monies in the Sales Tax Revenue Fund. Bannon seconded.
- VOTE: Motion carried 7-0, Haynes absent.

SALE OF LOT IN DERBY BUSINESS PARK TO AUTO SOLUTIONS, LLC

Allison Moeding, Director of Economic Development, presented the staff report.

Background:

- In 1999, the City of Derby developed the Derby Industrial Park 2nd Addition, also known as Derby Business Park, to ensure the availability of affordable property for new or expanding businesses to locate. This in turn encourages capital investment and job creation in our community.
- Mike Anspach, representing Auto Solutions LLC, seeks to purchase Lot 4 Block A with the intent to construct a building with 4,288 square feet to house a wholesale automobile sales business.
 - The company currently operates out of Hutchinson. Auto Solutions purchases vehicles at the end of corporate lease agreements, refurbishes them, and then resells them to multiple used car dealerships in the region. Typically, the vehicles are between 3 and 5 years old.
 - Hambelton-La Greca in Derby is a major customer, prompting the choice of Derby for the business relocation.
- The terms of this contract are generally consistent with past contracts:
 - Price per square foot is sixty cents for a total price of \$26,137. The buyer has agreed not to pursue any other incentives in connection with this project.
 - Construction must be completed within 12 months plus a possible 3-month extension, or the City has the option to buy back the property plus the cost of any improvements.
 - Closing costs will be shared 50/50 by both parties.
- Pat Egan of Egan Realty is representing the buyer, and the contract states the City will pay a standard commission of 6%.
- The buyer requested, and the contract includes, a provision that postpones closing on the sale until site plan approval is granted by the Derby Planning Commission, which is scheduled for either January 7 or January 21, 2010.

Financial/Sustainability Considerations:

- The sale and development of this land will return the property to the tax roll and result in an increase of the city's assessed valuation.
- The project is anticipated to create 3-5 jobs and generate about \$250,000 in initial capital investment.

Legal Considerations:

- The contract was prepared by the City Attorney and reviewed by the buyer.

Policy Considerations:

- It is the City's desire to expand and diversify the economic base of our community, and development of this property will bring a new business to the city.
- Of the original 15 lots in Derby Business Park, only 5 remain to be sold.

MOTION: Bannon moved to approve the proposed real estate purchase agreement with Auto Solutions, LLC in substantially the form presented and authorize the city manager to execute the agreement and take such other actions as may be necessary. Warren seconded.

VOTE: Motion carried 7-0, Haynes absent.

STATUS REPORT ON BUCKNER BUSINESS DISTRICT SIGNAGE

Allison Moeding, Director of Economic Development, presented the staff report.

Background:

- Following creation of the Buckner Business District in March 2009, staff began to discuss the use of signage to define the district and to encourage small business development in the district. Unique “Buckner Business District” signage defining the area would be an asset to existing businesses and could help attract new businesses by creating a unique identity for the corridor.
- In June, the Buckner/Meadowlark intersection work began, and in July, the street reconstruction project commenced.
- In October, staff met with a landscape architect to select appropriate locations for signage and develop preliminary signage concepts.
- In November, a meeting was held with existing Buckner businesses to discuss several signage concepts and other ideas for encouraging development.
 - The meeting was attended by Kyle Russell of Verus Bank, Laura Branstetter of Branstetter & Sparks Optometry, Les Depperschmidt of AT&T, and Kathy League and Amy Cline of Meritrust Credit Union.
 - Several other area business owners were interested in the project but unable to attend the meeting. They will be included in future meetings and communications.
- One entrance sign design to be placed at each end of the district was clearly preferred by the involved businesses, and they supported the idea of hanging banners on the 17 new light poles along Buckner. Additional ideas for future consideration included concrete planters, benches, and landscaping to distinguish the area.
- Installation of the first sign near K-15 and Buckner, along with related lighting and landscaping, could take place in the spring along with other project landscaping and street lighting improvements.
- Installation of signs would occur in three phases.
 - The first phase, on the south end of the district near K-15, is the logical spot since it is near most of the existing businesses.
 - The second phase would consist of the installation of unique banners on the 17 new light poles along the corridor.
 - The third phase would be a second sign near the southwest corner of Buckner & Meadowlark. This sign would not be installed until business development begins to occur on the north end of the corridor.

Financial/Sustainability Considerations:

- The street construction project budget has adequate funds to accommodate the cost of signs and banners without exceeding the original budgeted amount.

- The cost of the south sign including lighting, installation and landscaping will be around \$9,500. Adequate city right-of-way exists for this sign. Right of way acquisition for the north sign would likely be required later.

DISCUSSION:

Council Member Bannon stated that the sign on the south end doesn't really cause much issue. Regarding the banners, since we don't have any businesses on the north end she in no way wants the homeowners to feel like they are being given a bum's rush out the door. This is, first and foremost still a residential district. Sometime in the future if any of them want to sell to a business they now have that opportunity. She is afraid if you start putting banners that say business district up and down the whole road, where the majority of the north end is residential, she hates to see the message we are sending on that. What is the timing for that second phase?

Mrs. Moeding stated it would depend on budget constraints. We did talk about trying to coordinate any banners that we order with the purchase of other banners to replace existing ones we have throughout the city. It might happen sometime this spring. We would not necessarily need to put up all the banners at one time. We may just choose to do the banners in a certain section of that corridor.

Council Member Bannon asked how much the banners are.

Mrs. Moeding indicated we have not priced them yet. It would depend on how many we order.

Council Member Bannon advised if she was a homeowner in a residential area and I start to see "business district" banners go up on light poles outside my house, I wouldn't like it and it might confuse some people. She doesn't have a problem with it down by Dillon's and the businesses on the south end but she's not ready for Phase II.

Council Member Craig clarified that the sign being depicted is the one that would be on down the road.

Mrs. Moeding advised that was correct.

Council Member Craig asked where the one on the south would be.

Mrs. Moeding stated the one on the south end would be somewhere along the existing right of way where Buckner curves. We wanted to place it where it wouldn't be a hazardous location. That's one of the things the landscape architect is working with us on, to make sure we pick an appropriate location.

Council Member Craig agreed with Mrs. Bannon that we don't want to give the impression that we are trying to get someone to move. The one on the south will be across the street from Taco Bell and by Auto Masters.

Council Member Meidinger agrees with Mr. Craig and Mrs. Bannon. He is also concerned that these appear to be pole signs. It was his understanding we were trying to move away from pole signs and go more toward monument signs.

Mrs. Moeding indicated we are looking at different options at this point.

Bud Newberry, City Planner, explained that we have classifications of signs that allow you to put them up for identification and information. This would be okay for something like that.

Council Member Meidinger stated it looks to him like it would be hard to differentiate between K-15 and this business district. You are going to put the sign very close to where K-15 is located. He is trying to find some consistency in our sign ordinance.

Council Member Horyna thanked staff for all of the hard work put into this. When he first started looking at the Buckner Business District he didn't know what to expect. Seeing it come together in these illustrations does help. He asked if we could do any of the signage in house.

Mrs. Moeding advised that is one option we will be looking at, particularly for replacement and maintenance. We will take that into consideration along with pricing.

Council Member Warren appreciates the planning going on here. When the day comes that businesses come in knowing how we are going to do it it will be a big plus. He would be hard pressed to call the sign a pole sign. When he sees pole signs on K-15 he thinks of something that raises up 20-25 feet. This is more like a monument sign in sense of its height. Putting it to scale it looks like we are looking at 9-10 feet maximum. Is there any description as to what the maximum height would be?

Mrs. Moeding stated she doesn't believe we have looked at any maximum heights but given the scale of the neighborhood, it's a relatively small area and our intention is not to attract business away from K-15 to this area but once you are there to kind of announce you are entering the Buckner Business District. It is meant to be smaller in scale and fit in with the single story homes and smaller businesses along there.

Council Member Warren advised that sometimes we get hung up on terms and image. We say "pole sign" or "monument sign" and an image comes to mind. Looking at this, this has more of a monument image to him than a pole sign. He doesn't want to get hung up on labels and he would prefer that we concentrate on the image we are trying to put forth. This is very different from our K-15 district and very different from our Rock Road district. The signage is different and he thinks this signage reflects the kinds of low impact, low density businesses that our zoning allows. He likes the design aspect of it.

Council Member Meidinger stated that if you take this monument sign and tie it in with street lighting, you have a common theme throughout the area. If you just put this sign up and 35-foot poles for telephone poles you have kind of lost the intimacy of this business district that you are trying to propose. Along with the sign, carry the theme all the way through.

Mrs. Moeding appreciates that point. One of the things we talked about with our business participants was taking whatever symbol we put on the sign and making it available to the businesses so they could maybe use that on their wall signs for their particular business and maybe integrate that more into some districtwide activities.

Council Member Meidinger stated this is the first business district we are going to be supporting and we should be really careful on the design and suggestions we have and really put some thought in to it. It will be unique and will probably be the only business district other than the neon signs we have everywhere else, this could be really unique.

Ms. Sexton also preferred the smaller street lights you would see in a typical downtown in an older city. We checked that out months ago when we did the street project and found that to be cost prohibitive. What will match this is the black color. The style will be more in keeping with the entire city's light poles. The newer ones that have been put up on Rock Road and Patriot have been black in color and this neighborhood will have black whereas older streets don't have the black, it's kind of a new thing so that at least will match. It would have been nice to do some fancier street lighting but it was cost prohibitive.

Council Member Craig stated you got a lot of flavor from the comments made. He is optimistic about how this is going to develop because it's going to take a long time. It's not something that's going to be done quickly. We want this to at least blend into the area.

MOTION: Craig moved to receive and file report. Horyna seconded.
VOTE: Motion carried 7-0, Haynes absent.

ADOPTION OF THE 2009 EDITION OF THE STANDARD TRAFFIC ORDINANCE

Robert Lee, Chief of Police, presented the staff report.

Background:

- The City of Derby annually adopts revisions to the Standard Traffic Ordinance (STO) published by the League of Kansas Municipalities.
- The STO establishes ordinances based upon Kansas State Statutes and ordinances commonly adopted by municipalities in Kansas.
- As part of the review and adoption process, amendments are drafted by the City of Derby Legal Department to tailor specific sections to local needs.

Financial/Sustainability Considerations:

- None.

Legal Considerations:

- The Police Department is responsible for enforcing the STO.
- The 2008 edition of the STO was passed by the Derby City Council December 9, 2008.
- The League of Kansas Municipalities has published the 2009 Edition of the Standard Traffic Ordinance which incorporates amendments to state statutes regulating traffic.
- Adoption of the 2009 Edition of the Standard Traffic Ordinance (with amendments) would bring Derby city ordinance in compliance with applicable Kansas statutes.

Policy Considerations:

- The 2009 Edition of the Standard Traffic Ordinance (with amendments) has been reviewed and recommended by the Ordinance Review Advisory Board. Several changes have been incorporated in the 2009 Standard Traffic Ordinance.
- Drivers are required to remove their vehicles from multi-lane roadways following an accident, when it can be done safely and there are no injuries or hazardous materials involved.
- Prohibition against operating golf carts and work site utility vehicles on city streets unless authorized by the City.
 - An amendment is included to authorize these “specialty vehicles” to operate on public streets under strict conditions. Those conditions include liability insurance and driver’s license requirements; operation limited to streets posted 30 mph or less; restrictions against operation on federal and state highways; a requirement to register specialty vehicles with the police department prior to operation on public streets; golf carts are restricted to the area of The Oaks for travel directly between home and the golf course during daylight hours only.
 - While preparing to draft this amendment, police department staff members consulted with staff from USD 260, DRC, and Derby Public Works regarding their use of specialty vehicles for maintenance work.
 - Police department staff also conducted research into measures taken by other cities to address the use of specialty vehicles on public roadways.
- Following conviction of a person for violating restrictions on his or her driver’s license, the court is required to suspend the driver’s license.

ORDINANCE NO. 2003

AN ORDINANCE AMENDING §10.04.010 AND 10.04.020 OF THE DERBY MUNICIPAL CODE, ADOPTING BY REFERENCE THE PROVISIONS OF THE 2009 STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES, TOGETHER WITH CERTAIN AMENDMENTS THERETO; AND REPEALING ORIGINAL §10.04.010 AND 10.04.020 OF SAID CODE.

DISCUSSION:

Council Member Meidinger asked what would happen if someone received a golf cart for Christmas that lives outside the parameters just described? Will they be able to use it going to the golf course?

Chief Lee advised if they are outside of the boundaries that we have proposed here, they would not. They would have to trailer it to get it to the golf course. Our concern is Patriot to the north and attempting to cross that wide street where speeds are fairly significant. Our effort was to establish some kind of a boundary and to base it on trying to keep the boundaries encompassing the streets where the speed limit is 30 mph or less.

Council Member Bannon stated that we have all been taught since we learned how to drive, if you have an accident you sit and don’t move. Are you looking at doing any education with insurance companies or new high school drivers in conjunction with changing this? Our plan is not to begin issuing tickets for awhile but not many people have accidents on a regular basis.

Chief Lee stated that being reasonable is the key to the proposed amendment. Obviously the goal is to let traffic continue through an area without congestion occurring and other accidents occurring. Are we going to be educational and try to get people to where they know the law. Writing citations is probably a last effort for us for quite some time.

Council Member Bannon asked if we had plans on file to notify insurance agents or anybody that might communicate that. She gets mailers from her insurance agent quite a bit about things that are changing in the world.

Chief Lee indicated they had not discussed notifying insurance agents. His guess is they probably are aware of it but we can certainly make an effort to utilize the media and our website to make those very accessible.

Council Member Bannon stated that everyone needs to understand that unless there are injuries or hazardous material, you move your vehicle.

Chief Lee added, or if it's going to cause more damage to your car to drive it. Or if there's a chance of any kind of personal injury you don't move it. We are going to be very receptive to listening to why people may not move their cars.

Council Member Craig asked if the changes for young drivers are incorporated into this also.

Chief Lee stated there are significant changes occurring for young drivers. The violation of restrictions will encompass any violation such as only having one sibling under the age of 18 in the car is a new restriction for young drivers. There are significant changes that are coming on the first of the year.

Council Member Craig asked about Stone Creek across the north side of Patriot, are there people there that have carts that would be coming from the north? A lot of people have specific crossings for those folks because they are in a 30 mph zone just north of it and are crossing perpendicular to the 45 mph.

Chief Lee indicated he was told they have one person with a golf cart north of Patriot.

Council Member Craig asked if that person would have to trailer.

Chief Lee advised they would.

Ms. Sexton asked if Mr. Hopper indicated whether they would house carts owned by members of the golf club in their barn.

Chief Lee advised he did not go into that aspect of the conversation.

Ms. Sexton stated that sometimes clubs do give space to a member for their own cart.

MOTION: Warren moved to adopt the 2009 Edition of the Standard Traffic Ordinance, as amended. Horyna seconded.

VOTE: Motion carried 7-0, Haynes absent.

ADOPTION OF THE 2009 EDITION OF THE UNIFORM PUBLIC OFFENSE CODE

Robert Lee, Chief of Police presented the staff report.

Background:

- The City of Derby routinely adopts revisions to the Uniform Public Offense Code (UPOC) published by the League of Kansas Municipalities.
- The UPOC establishes ordinances based upon Kansas State Statutes and ordinances commonly adopted by municipalities in Kansas.
- As part of the review and adoption process, amendments are drafted by the City of Derby Legal Department to tailor specific sections to local needs. No new amendments are proposed this year.

Financial/Sustainability Considerations: None

Legal Considerations:

- The Police Department is responsible for enforcing the UPOC.
- The 2008 Edition of the UPOC was passed by the Derby City Council December 9, 2008.
- The 2009 Edition of the UPOC includes revisions of specific sections to remain current with Kansas State Statutes.
- The proposed local amendments are substantially identical to the amendments adopted by the Council in the 2008 Edition of the UPOC.

Policy Considerations:

- The 2009 Edition of the Uniform Public Offense Code (with amendments) has been reviewed and recommended by the Ordinance Review Advisory Board. Notable changes from the 2008 code include the following:
 - Stalking may now be charged in Derby Municipal Court.
 - Regulation of scrap metal dealers is enhanced, which the state legislature deemed important to crime-fighting efforts especially during times of high commodity prices.
 - The law against cockfighting is strengthened by including attendance at cockfighting events and possession of cockfighting paraphernalia as illegal activities.

ORDINANCE NO. 2004

AN ORDINANCE AMENDING CHAPTER 9.01 OF THE DERBY MUNICIPAL CODE, ADOPTING BY REFERENCE THE PROVISIONS OF THE 2009 UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES, TOGETHER WITH CERTAIN AMENDMENTS THERETO; AND REPEALING ORIGINAL CHAPTER 9.01 OF SAID CODE.

DISCUSSION:

Council Member Warren advised he fears that if a parent heads out of town for the weekend and their child uses the house, what is the definition of “recklessly?” When would a parent be subject to prosecution if you take off for the weekend and your 17-year-old decided to throw a party?

Chief Lee suggested that if you have no knowledge that alcohol is going to be served, it’s not a regular occurrence at your residence and you’re going to leave your 17-year-old home alone for the weekend and they go ahead and do that, it probably won’t fit the definition of reckless. He asked the city attorney to weigh in.

Phil Alexander, City Attorney, explained that the notion of “reckless disregard” easily boils down to essentially a “knew or should have known” standard. A person that knows the facts or circumstances, for example, someone with a history of behavior that would put them in the posture that they should have known, whether they actually did or not.

MOTION: Staats moved to adopt the 2009 Edition of the Uniform Public Offense Code, as amended. Horyna seconded.

VOTE: Motion carried 7-0, Haynes absent.

ZONING AMENDMENT ENLARGING QUAIL RUN ADDITION PLANNED UNIT DEVELOPMENT DISTRICT

Bud Newberry, City Planner presented the staff report.

Background:

- Quail Run Addition is located on the south side of Madison Avenue and east of Webb Road.
- Quail Run Addition was platted and zoned in 2007 as a Residential Planned Unit Development (PUD) district, a zoning district that includes requirements approved for, and specific to, the building lots in the Quail Run Addition.
- The amendment would increase the size of the zoning district but would not change the development requirements already established for the district.
- The amendment would add 13.64 acres to the district and re-route the main collector street, resulting in a net increase of 22 lots.
- Amendment of a PUD requires public hearings for both the preliminary and the final PUD.
- The Planning Commission conducted the required public hearings on October 1, 2009, and November 19, 2009, after notices thereof were published in the City newspaper and sent to nearby property owners.
- The Planning Commission recommended approval of this amendment by a 8-0 vote.

Financial/Sustainability Considerations:

- Approval of the proposed amendment will not result in additional city expenditures.
- Approval of the proposed amendment increases the number of building lots available for the construction of new homes, 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:

- The proposed rezoning is consistent with the City’s comprehensive plan.
- No protest petition was filed within the prescribed 14-day protest period.

ORDINANCE NO. 2005

AN ORDINANCE REZONING CERTAIN REAL PROPERTY FROM SEDGWICK COUNTY ZONING DISTRICT RR “RURAL RESIDENTIAL DISTRICT” TO PUD “QUAIL RUN ADDITION PLANNED UNIT DEVELOPMENT DISTRICT” UPON ANNEXATION THEREOF BY THE CITY OF DERBY, KANSAS; 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 Bannon asked if these are going to be half acre lots and larger on that end?

Mr. Newberry advised the northern part of the subdivision is where the large lots are located. They are not half acre lots but all of them are at least 11,000 sq. feet, which is 30% bigger than what the city requires. A lot of them are 15,000 sq. feet and the largest of the lots are around 20,000 sq. feet, so they will be nice large lots.

Council Member Bannon asked how many lots total are in this subdivision.

Mr. Newberry advised there are 401.

Council Member Bannon asked how soon this will be started.

Phil Meyer, Baughman Company, stated he did not have an answer for that. There are a couple of conditions, with the present economy he is not eager to jump into it but is looking forward to starting it. He is also kind of waiting for the sewer. He’s not pushing for the sewer because with the economy we don’t want to jump on it right away but he would hope we would start in late 2010, maybe early 2011.

Council Member Bannon asked if they would start on the north end and work south.

Mr. Meyer advised that was correct.

MOTION: Craig moved to approve an ordinance rezoning two unplatted tracts from Sedgwick County Zoning District RR “Rural Residential” to PUD “Quail Run Addition Planned Unit Development”, based on the findings of fact made by the Planning Commission, subject to annexation and platting said property within one year, such ordinance to be published upon recording of the plat of such property. Horyna seconded.

VOTE: Motion carried 7-0, Haynes absent.

REPORT ON MOWING IN STREET RIGHT OF WAYS

Kathy Sexton, City Manager presented the staff report.

Background:

- Earlier this year, the City received a letter of concern from Derby resident Carl Houchin about whether the City's policy about mowing in street right-of-way areas was fair to all residents.
- Research about this matter has occurred and will be presented to the Council for consideration at this meeting.

Financial/Sustainability Considerations:

- Consideration of the financial effect of any changes in City policy is important given natural funding constraints.

Policy Considerations:

- Equity/fairness to all is a core value of the City of Derby. City policies should promote equity. Periodic consideration of long-standing policies is important to ensure equity is maintained.

DISCUSSION:

Council Member Horyna stated he is going to need some time to digest this information to decide which way to go. He suggested that city staff look at these areas and determine which are critical areas that need to be addressed by the city, areas where residents really don't have the capability to get in there and maintain it, more from a safety aspect.

Ms. Sexton advised she feels pretty confident that the difference between the red ones and the yellow ones on the map indicate that. The ones that are really about the fences are the three general areas in red. Rock Road between James and Madison on the west side of Rock might be like that although she thinks there's a fence. It's the back yard of some duplexes. That might be one that one could argue should be red, but it's not fenced in. That one could be considered for change a little easier than the fences.

Council Member Horyna asked if any of mowing activity on these properties has been seen as a conflict when we mow somebody's property that isn't taken care of at all?

Ms. Sexton clarified if he meant if citizens observed city mowers out there.

Council Member Horyna said yes.

Ms. Sexton explained that we don't send out Public Works crews and city trucks to mow those; we have a contracted landscape mower. We bid it every year and usually have a different one every year.

Council Member Warren stated that the Oak Forest Addition, the Tanglewood Addition, which would take in the mowing along Madison and the Derby Hills Subdivision, which would take in the mowing we are doing on the north side of Meadowlark, were three subdivisions that were

developed at a time when the city was making a change in terms of what they were doing platting-wise. If you look at some of the other areas close to that you will see a lot more access onto Madison. If you take Madison and go back to the east there are a lot of side streets coming out and houses with a side yard or front yard onto a busy street. The city said it's not a good idea to have these houses facing out onto a busy street; we're going to change the way we do that. Tanglewood and Oak Forest were examples of that where a lot of houses backed up to Madison rather than having a number of streets coming out, thereby reducing the number of intersections that we have on Madison. The bad part about that is it was a time before homeowners associations. We didn't have homeowner's associations, developers weren't used to doing that and the city didn't require it, so we ended up creating this no man's land as a result of that. In 1989, maybe 1988, the city tried to put the mowing onto the homeowners in that area, but there were fences set up and it was going to be difficult for homeowner's to do that. A number of homeowners along Meadowlark objected to that. They said if it's mine to maintain I will maintain it my way and they killed the grass with Round Up. The city at that point decided to continue to maintain those areas so we didn't have that. Subsequent to that we have required homeowners associations to maintain the areas. The concern he has is what happened in the Duck Creek area. The homeowners association disbands and we get this put on us. He asked Mr. Alexander if we have in place, or can we put in place that if a homeowners association disbands that we can put that cost on a special assessment? Certainly going in to the future we can put something in place to make the homeowner's pay for the maintenance if a homeowners association disbands. Can we retroactively go back and do something about Duck Creek?

Mr. Alexander stated that when we plat property in the city we execute a developer's agreement with the developer and there may be restrictive covenants in the plat itself. Often those put responsibility on to the homeowners association. History has shown that those associations sometimes never get organized; sometimes they get organized but eventually go away. Typically homeowners associations have no property to assess, or if they do assessing it would be pointless. For example, they may own a wall reserve that has no market value as a practical matter. We could assess it but in due course one possibility is nobody will pay the assessment and it will end up for tax sale. Nobody in their right mind will buy it because the only thing it represents is a responsibility, not a value. That whole practice of putting responsibilities on homeowners associations has some drawbacks to it. Coincidentally we are working with staff to develop some different practices for going forward with new plats in terms of how to deal with this. He has never himself found anything in our city ordinance book that requires property owners to maintain adjacent street right of ways, although Mr. Mendoza says it's there and he has a high regard for Mr. Mendoza. It's been the position we have taken quite often, but he has yet to see it. That is of interest to him because he is always looking for an enforceable obligation. Even when we have had to try and enforce it, sometimes property owners have the position that they will maintain that and their means of maintaining it will be with Round Up. That is not typically something we think is a very good idea. We have not to this point been entirely effective in addressing the problem.

Ms. Sexton stated that the question was, if we had a system where we are expecting an HOA to do it and they disband, do we have the authority to go back on an old HOA, established 20-30 years ago and make all the property owners pay through assessment if they don't want to mow it themselves.

Mr. Alexander stated he did not have an answer for that tonight. The mechanism would be to treat it like we are currently treating mowing obligations and tell them if you don't do it, we will, and we will charge you for it.

Ms. Sexton indicated that Mr. Alexander brings up a really good point. A couple of weeks ago at the council meeting we had a Stone Creek 4th Addition plat, which you tabled and asked staff to build into either the plat language, restrictive covenants or the developer's agreement and that is the meeting Phil was referencing. The good news is this won't be a future problem, and as Mr. Warren indicated it hasn't been a problem for some years now in terms of new developments that have walls and HOA's. It is this one time period of these several in the middle of town that didn't have HOA's, and it's a little murky. The question of "can we retroactively assess everyone in the whole development" is not extremely clear but it doesn't look good, or assessing just the adjacent property owners, the ones that have this as their backyard area. You can argue whether you think that's fair or not, but there might be some options to consider there. What we found with Duck Creek several years ago, and the train had left the station by the time we found out about it, they had gone down to the county courthouse and filed the paperwork, then came and told us they had disbanded. It was their understanding that the city would mow the right-of-way area when they did all this so they were a little shocked when they were told they would have to mow it all. She doesn't know if they felt they were given poor information or if they thought they knew and never asked the city but for several years we have been doing that. Another example is Ridgepoint. This past summer the developer figured out that he was still paying his mowing guys to mow this area. He realized that was not his responsibility to mow anymore, it's similar because they didn't have a homeowners association so we tried to do the research and figure it out. There's no HOA, so we sent a letter to everybody in the development to let them know what's going on and to tell them they need to figure out what to do. She doesn't know what they ended up doing but we only heard from one or two people. This isn't the same either because that one has a wall, a consistent developer-provided wall, so even that's a little different. She just poses that because it is the most recent one we have dealt with. We'd already done most of this research when that one came up so we kind of had a better sense of what we were dealing with and the people were very understanding in terms of knowing they need to take care of mowing. She doesn't know if they decided to share that responsibility or if someone came forward who didn't mind doing it, or if they pay a company to do it. The Duck Creek one could happen with a few others but there are some pretty unique situations in the city because our codes have changed over the years to keep up with development. She does not think we have as much future liability as one might think might be hanging out there.

Council Member Meidinger stated that the 1989 policy had a lot of wisdom and forethought put into it. The problem area we had was on Meadowlark. The fence was put up and there weren't any access gates put in so the person who lived in the middle would have to go clear to one of the east or west points. That's when the city started mowing. It gets down to the point where if somebody thinks that the city isn't fair, life isn't fair sometimes. Some of these things are built in and we can't change them, they are probably very unique and Mr. Mendoza is doing the best he can. He doesn't mean it as a flippant answer but it is the same as the guy who has a golf cart outside of the boundaries, it just happens that way. When we are talking about Stone Creek, at least we are trying to address that issue. As far as trying to go back and hassle with

current homeowners on north Buckner he doesn't know if it's worth the hassle. He would think that we would want to plan in the future so when we get to this new point and get to homeowner's associations, put in the deed that if your HOA goes broke then individual lots will be taxed. That's going to be really tough, especially in the Stone Creek area because one of the areas was a five-acre plot way over there and you live way over here and you are going to be paying for that. That is the difficult part. There really is not an easy answer.

Council Member Craig stated that even though the HOA disbanded in Duck Creek he thinks we tried to make things right with those homeowners. Its important as we move into future developments that when they do build these four-block-long walls that they make access so the person doesn't have to go all the way to the other end to take care of it. One thing that came out of these discussions quite a few years ago is that when we end up annexing an area that doesn't have a standard street we would put in a development with ditches on each side. It becomes an element of safety as far as how that is maintained and we are obligated to look at that. Robert has done that. The one that came to mind is the one west of K-15. The county did it for them for years and then we annexed them and all of a sudden no one did anything and everything grew up. We will have to look at that also. When we do go to annex it would be our obligation to look at those areas with substandard roads and ditches on both sides because he thinks we would be somewhat obligated to have sufficient equipment to help with that.

Ms. Sexton agreed with Mr. Craig that recent growth of the city has been partially by annexing, already-built structures which are basically a ranch home or home that was built by county standards. The homes are oftentimes nice, but it's the street, ditch and infrastructure that is much different. Certainly a lot of those folks paid for those streets the first time so even though they are not what we build now nobody really wants to go in and rebuild them either, unless the folks there want to. There has to be a certain level of flexibility in city policy when you are annexing county housing.

Council Member Craig pointed out the county comes through a lot of those areas and runs bush hogs through the ditches on both sides. Some of those roads are rough asphalt paved and the homeowners themselves paid to have that put in and the county comes in and helps them keep the growth down.

Council Member Bannon advised on Rock Road just north of Madison on the west side there is an area there that is actually businesses. She wonders why we are mowing for businesses.

Mr. Mendoza indicated that we do not mow that area; we maintain the sculpture areas at the corner where the old Dillon's is.

Council Member Bannon pointed out that on the map the yellow area is indicated as being just north of Verus Bank.

Ms. Sexton advised we will check on where the crews start but she has never seen our crews up by the strip center.

Mr. Mendoza explained there is a section there that is the entrance to the Walnut Valley drainage area that we take care of.

Council Member Bannon stated that she would hate to see us take on any more projects but she does not know of any good way to go back and make life equitable for everybody. We are making some good headway on future subdivisions, not that there won't be a homeowners association go belly up between now and the new subdivisions we are just now platting. Those will have to be seriously looked at. She understands and feels for the gentleman who has made the complaint and can understand why he would feel frustrated but she doesn't see a good answer.

MOTION: Bannon moved to receive and file the report. Craig seconded.

Mayor Avello stated he would like to see in the future some kind of gates. Can we dictate or suggest openings in the fence to allow access and indicate to the homeowners association that is what has to be done? His fear is that we will wind up like special assessments, nobody told us we had to do that when they go belly up.

Council Member Warren advised one of the problems you bring on if you start opening up gates is that you have 15 homes with gates and 15 homes with the right idea of what maintenance is. On Patriot near the golf course you have a very nice subdivision in there with a homeowners association that is doing a really nice job. He is not sure you would want 15 different ideas on how to maintain that. If the homeowners association is responsible for maintaining that and they go belly up then people throughout that subdivision should continue to have the responsibility for maintaining it in the future. We need to make sure we have a mechanism in place so if they go belly up that whether we hire it done or we do it that we can assess it to every homeowner that previously was taking care of it so you have continuity on how it's maintained and fairness in maintaining it in the future rather than putting it on the homeowner that just happens to back up to it. It kind of depends on the subdivision; in some of the other areas it might be a little bit different.

Council Member Craig indicated that sometimes when a homeowners association disbands it is not because of financial hard times. They just decided to abandon the homeowners association so they can do other things with their problem and pull away from covenants, which can happen. If you develop a homeowners association people pay money to be able to take care of those common areas and if they do disband they are still financially responsible to do that, whether through the homeowners association or contracting with someone to be able to do that, or do it themselves.

Ms. Sexton agreed that a homeowners association is set up as sort of a pseudo-government to charge fees to its members to take care of a public good. It's fair for the citizens of this city to expect them to maintain their end of that financial bargain. There are different reasons for disbanding. Many times it's a leadership issue, and it's hard to find people in neighborhoods who want to serve as that president. She admires these people; they do a lot of work on a volunteer basis to keep up their neighborhoods. Sometimes you just don't find people to do that, then some people don't pay their dues, and it's a downward spiral from there.

VOTE: Motion carried 7-0, Haynes absent.

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

2010 LEGISLATIVE AGENDA

Stephanie Knebel, Assistant City Manager, presented the staff report.

Background:

- Maintaining communications with legislators and tracking legislative issues are important administrative functions to ensure that the City stays aware of and involved in state and federal legislation affecting the organization and the community.
- In Derby, legislative relations are achieved partially through relationships and partnerships such as Visioneering Wichita, the Regional Economic Area Partnership (REAP) and the League of Kansas Municipalities. The priorities of these partners are included in this legislative agenda.
- The proposed 2010 Legislative Agenda presents Derby's core legislative principals and our legislative priorities. Priorities for this legislative session are to: 1) restore all transfers to local governments, and 2) retain the use of casino revenue for their intended original purposes.
- There were no notable changes in the 2010 legislative agenda from Visioneering Wichita or REAP. However, the League of Kansas Municipalities deleted its priority supporting legislation giving cities the ability to approve alternative motor vehicles, such as golf carts, on city streets and replaced it with supporting the 911 public safety system by continuing current funding levels.

Financial/Sustainability Considerations:

- Restoration of the LAVTR program would have a positive effect on city revenues.

Legal Considerations:

- None

Policy Considerations:

- Adopting a legislative agenda sets the priorities that the City of Derby would like our legislators to focus on during the 2010 session.
- Adopting a legislative agenda further strengthens communication between the City of Derby and our legislative delegation.

MOTION: Bannon moved to adopt the 2010 Derby Legislative Agenda. Horyna seconded.

VOTE: Motion carried 7-0, Haynes absent.

CHARTER ORDINANCE – POWERS AND DUTIES OF THE CITY MANAGER

Kathy Sexton, City Manager, presented the staff report.

Background:

- In 1980, the City Council adopted Charter Ordinance 16, creating the office of City Manager and modifying certain powers of the office of Mayor.
- Charter Ordinance 16 did not specifically adopt any of the city manager plans provided by Kansas law.
- Since adoption of Charter Ordinance 16, the Council has adopted charter ordinances 25, 31, 36, and 38, further refining the City's council-manager plan of government.
- The powers and duties of the city manager are currently found in section 1 of Charter Ordinance 38.
- The proposed charter ordinance would amend the powers and duties of the office of City Manager to be consistent with City financial and management practices.

Financial/Sustainability Considerations: None.

Legal Considerations:

- The Council is authorized to exempt the City from provisions of state law relating to employment of a city manager and other officers and employees.
- The proposed charter ordinance is within the power of the Council to enact.

Policy Considerations:

- Over time, some particulars of the City Manager's role have been modified and no longer strictly conform to Charter Ordinance 38. One example is the Manager's authority to approve budgeted expenditures up to \$10,000 according to the purchasing policy. Another is periodic review of insurance policies rather than the annual review specified in Charter Ordinance 38.
- Charter provisions describing the division of responsibilities and authority between the Governing Body and the Manager should reflect current practice.
- The City Manager's employment agreement is in process of being amended to incorporate this proposed charter ordinance.

CHARTER ORDINANCE NO. 48

A CHARTER ORDINANCE PRESCRIBING THE POWERS AND DUTIES OF THE CITY MANAGER OF THE CITY OF DERBY, KANSAS; AND REPEALING SECTION 1 OF CHARTER ORDINANCE NO. 38 OF THE CITY.

MOTION: Staats moved to adopt a charter ordinance amending the powers and duties of the City Manager as set forth in Charter Ordinance 38 of the City. Nun seconded.

VOTE: Motion carried 7-0, Haynes absent.

CONSENT AGENDA

MOTION: Warren moved to remove the list of surplus items from the consent agenda for purpose of discussion. Horyna seconded.

VOTE: Motion carried 7-0, Haynes absent.

Kathy Sexton, City Manager, presented the consent agenda.

Agreement with Derby Public Schools

Background:

- Of primary importance to community life in Derby is ensuring our young people are provided a healthy educational environment. The first steps in alcohol and drug abuse prevention, intervention, and treatment in students are often performed by the Student Services Team at Derby High School.
- In addition to academic concerns and career counseling, the Student Services Team, comprised of counselors and social workers, intervenes proactively in personal social issues, which sometimes involve drug or alcohol use or abuse by students or members of their family. Team members identify concerns and refer students, parents, and caregivers to area treatment centers.
- The recommended funding agreement will assist in the continuation of the Student Services Team and applicable drug testing by providing partial funding from the City of Derby's Special Alcohol and Drug Program Fund to the Derby Public Schools.
- The recommended agreement would strengthen the efforts by Derby Public Schools to identify drug and alcohol abuse by students or family members. It would also show the community's support of its schools' effort.

Financial Considerations/Sustainability Considerations:

- 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 part 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." Currently, the fund is primarily used to support the DARE program and related prevention activities performed by the Police Department. Much of the revenue goes unexpended and is carried over each year. Also, new receipts each year are increasing due to the addition of restaurants and clubs in Derby.
- In consideration of the services to be provided by the Student Services Team, the City shall pay Derby Public Schools the sum of \$70,000; \$35,000 in 2009 and \$35,000 in 2010.

Legal Considerations:

- By partnering with other public agencies, the City is able to more cost effectively provide drug and alcohol prevention, intervention, and treatment programs.

Recommendation:

- Approve the agreement with Derby Public Schools.

HOME Rehabilitation Grant Bids – December 2009**Background:**

- In late 2006, the City of Derby received a \$225,000 grant award from the Kansas Housing Resources Corporation for a HOME Rehabilitation Program, followed by a second grant of \$200,000 awarded in 2007. The HOME Program provides funding for improvements

to houses in a specified target area whose owners and their households earn no more than 80 percent of the Sedgwick County median gross annual income.

- Applications are reviewed and ranked by the city’s selected grant administrator to determine a priority list. This priority list determines the order in which homeowners receive assistance, as long as funds are available.
- Each house is bid as a single project. A list of all improvements to be made to each home is provided by SCKEDD’s project inspector to the contractors on SCKEDD’s list of registered contractors.
- A bid opening was held at Derby City Hall on Thursday, December 10 at 1:15 p.m. The following bids were received:

Contractor	House #1 128 W. Emma	House #2 1108 N. Derby
Arambula Construction	\$30,575	<u>\$22,115</u>
New Windows for America	<u>\$29,875</u>	\$24,975
Stringer Construction	\$32,050	\$28,575

- The lowest bid for each house, shown in bold type and underlined, is recommended for approval by the City’s Bid Board.
- This is the final phase of homes to be completed under the 2007 HOME grant; eight homes have been completed with money from the 2007 grant. We only rehabilitate a few homes at a time to ensure we are able to spend down the grant amount as close to the award amount as possible.

Financial Considerations:

- The HOME Grant funds will cover two-thirds of the total project expenses. A matching contribution by the City will pay for the remaining one-third of the project. Funds from two other state programs, K-WAP (Kansas Weatherization Assistance Program and KAMP (Kansas Accessibility Modifications Program), will also be levied when the homeowner qualifies and state funds are available.
- The City will pay the contractors directly after the work is completed and approved by the SCKEDD project inspector and the City building inspector. The City will request reimbursement from the State of Kansas, thus drawing down funds from the grant award.

Legal Considerations:

- As the City’s selected grant administrator, SCKEDD oversees the project to ensure that all HOME Program requirements are followed, including federal procurement (competitive bidding) practices.
- All contractors are or will be licensed by the City of Derby prior to beginning work. All contractors meet the requirements set forth by the State of Kansas for participation as a contractor for the HOME program.

Policy Considerations:

- Upon approval of the bids, SCKEDD will prepare the contracts for the city manager’s signature.
- SCKEDD personnel will coordinate the scheduling of work and record the progress on each property.

Recommendation:

- Approve the bid of New Windows for America in the amount of \$29,875 for improvements at 128 W. Emma and the bid of Arambula Construction in the amount of \$22,115 for improvements at 1108 N. Derby.

Issuance of Cereal Malt Beverage License

Background:

- Vendors of cereal malt beverages in the City are required to be licensed by the City.
- An application for a cereal malt beverage license has been received from the Walgreen Company to operate at 458 North Baltimore Avenue.

Financial Considerations:

- The license fee of \$100 has been received in accordance with City of Derby resolution No. 40-2009 for limited retail. A limited retailer is permitted to sell only retail cereal malt beverages in original and unopened containers and not for consumption on the premises.

Legal Considerations:

- City ordinances establish qualifications for cereal malt beverage licensees.
- A license may not be issued until the applicant meets all qualifications.

Policy Considerations:

- When a cereal malt beverage license applicant meets all qualifications established by ordinance, the City is obligated to issue the license.
- Normally, the Council authorizes issuance of cereal malt beverage licenses based upon applications submitted but not yet fully reviewed, but conditions issuance upon staff's determination that all requirements have been met.

Recommendation:

- Authorize the issuance of a cereal malt beverage license for the year 2010 to Walgreen Company for the location at 458 North Baltimore Avenue, contingent upon the licensee meeting all of the requirements of state statute and city ordinance.

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

VOTE: Motion carried 7-0, Haynes absent.

Declaration of Surplus Inventory

Background:

- With the move of the Library, replacement of computers throughout the City, and replacement of a few vehicles, certain items have become surplus and need to be removed from inventory.
- All items have been evaluated for use in other City operations and have been deemed surplus.
- It is anticipated that these items will be auctioned or sold through a sealed bid process.

Financial Considerations/Sustainability Considerations:

- Declaration of surplus items is followed by a sale process which will yield revenues to the City.

Legal Considerations:

- The City Council may deem items surplus to facilitate disposal.

Recommendation:

- Declare the items listed as surplus and eligible for auction or other eligible disposal method.

Council Member Warren asked about the vehicles on the surplus list. If we ended up with some really low bids, on the motorcycle for example, do we have the ability to pull it off and find another way to sell it or are we obligated to let it go for the bid.

Mr. Alexander advised we have unlimited options as to how to dispose of items. Regarding the motorcycle, he believes Chief Lee intends to dispose of the motorcycle, if at all possible, to another department.

Ms. Sexton added it's a police package motorcycle with a lot of equipment on it. Most of the stuff will go to Purple Wave, but this is one we make available to the state-wide chief's association to see if anyone is in the market for a motorcycle. Some departments still use motorcycles, we just over time decided to stop using that. It does have a lot of police-specific equipment that adds value to it.

Council Member Bannon asked about the 1959 Ford fire pumper, she has a little concern about that going to regular auction based on its antique value.

Ms. Sexton indicated we may not dispose of that one through Purple Wave either. The first line on that one is to see if another department wants it. She asked if Mrs. Bannon was thinking more of a collector's item.

Council Member Bannon advised some of the gentlemen on the fire department had talked about that over the years, that it has some sentimental value.

Ms. Sexton explained the only action of the council today is to declare it surplus. She will check into and get some information back to the council on the process we want to use for the fire truck.

MOTION: Warren moved to declare the items listed as surplus and eligible for auction or other eligible disposal method. Horyna seconded.

VOTE: Motion carried 7-0, Haynes absent.

Mayor Avello recessed the council meeting at 9:00 p.m. to conduct the meeting of the El Paso Water Company.

The council meeting resumed at 9:02 p.m.

EXECUTIVE SESSION

MOTION: Staats moved to recess to executive session for 20 minutes at 9:02 p.m. to consider personnel matters of non-elected personnel, specifically an employment agreement with the city manager for 2010. Warren seconded

VOTE: Motion carried 7-0, Haynes absent.

The council returned at 9:28 p.m. and Staats advised no binding action was taken.

Mayor Avello wished everyone a Merry Christmas and Happy New Year. He hopes everyone has a better year next year than they had in 2009. We lost some real good people this year. He and Ms. Sexton have had some good discussions about the budget. We have saved some money on construction and are looking real good. We will be wary of what's going on, at the slightest sign of having to pull back on a project; we are going to do that.

Council Member Horyna commented that those with water backflow devices connected to your house make sure you have them shut off and flushed out of water, or you will come home and find a geyser of water because they have broken. Be sure to get your irrigation system winterized.

ADJOURNMENT:

MOTION: Craig moved to adjourn at 9:30 p.m. Horyna seconded.
VOTE: Motion carried 7-0, Haynes absent.

ATTEST:

Dion P. Avello, Mayor

Jean Epperson, City Clerk