

**APPROVED MINUTES
DERBY CITY COUNCIL MEETING
December 28, 2010
6:30 PM**

Mayor Dion Avello presiding.

ROLL CALL:
WARD I
WARD II
WARD III
WARD IV

COUNCIL MEMBERS PRESENT:
Jim Craig, Jim Meidinger
Heath Horyna, Vaughn Nun
Cheryl Bannon
Tom Haynes, Mark Staats

WARD III

COUNCIL MEMBER ABSENT:
Chuck Warren

Flag salute was led by Council President Vaughn Nun. The invocation was led by Pastor Jonathon Hoefer, First Presbyterian Church.

CONSIDERATION OF MINUTES: December 14, 2010

MOTION: Nun moved to approve. Haynes seconded.
VOTE: Motion carried 6-1, Craig abstain, Warren absent.

PRESENTATIONS:

ACE Grant – Rock N’Route Triathlon, Kathleen Avitt, DRC.

Kathleen Avitt, Derby Recreation Commission, gave a presentation on the Rock ‘N Route Triathlon.

Council Member Bannon asked about the ACE Grant being under “in kind funding.” It wasn’t actually “in kind funding” because we don’t give out that type of grant; it’s more of a monetary grant, correct?

Ms. Avitt apologized; it was incorrectly placed in the Power Point presentation.

Council Member Bannon asked what the silver level is for contributors.

Ms. Avitt advised she would get back to Mrs. Bannon with that information.

Council Member Bannon commented that it was great to get people in town to visit our shops and restaurants. It was a great partnership.

Mayor Avello asked how many people participated in the event.

Ms. Avitt advised there were 224 participants.

ACE Grant – Derby Twins, Lisa Nelson

Lisa Nelson, Derby Twins, gave a presentation on the Derby Twins Parents Week that was funded by the ACE Grant.

Council Member Haynes commented that it's great to see how the community has welcomed the team. He asked what the record was this year.

Jeff Wells, Derby Twins General Manager, advised it was 26-23.

Ms. Nelson pointed out that during Parents Week there were 54 visitors who stayed during that week from Louisiana, New Jersey, Florida, California, Illinois and Oklahoma.

Mayor Avello asked if we have trouble getting host families.

Ms. Nelson advised they do, every year. She encouraged anyone who has ever considered it to contact them and they will provide names and numbers of plenty of people to talk to and find out exactly what it is like, the benefits and if there are any drawbacks to being a host family. We have a lot of families that host each year but we are always looking for host families.

Council Member Horyna asked about the fundraiser at the WSU basketball games.

Ms. Nelson explained that the Derby Twins is a non-profit organization but their budget is \$43,000 to pay the coaches and travel expenses. In order to raise that money they do fundraising events. The major source of revenue is from working concessions at Koch Arena during the men's basketball games. The hard part about that is we need 10-12 people every single game to volunteer. We would welcome anyone willing to give us 4 hours of their time. You can do it one time; you can do it as many times as you want to. This is one of those things that everyone in our community benefits from and somehow we have to continue to fund it.

Mr. Wells stated that next year we have players coming from coast to coast. We have one coming from Hawaii and two from New York City.

Mayor Avello stated that having the Twins in Derby has been a great addition to the community.

PUBLIC HEARING ON CDBG GRANT PROJECT PERFORMANCE

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

Background:

- The close-out process for a Community Development Block Grant (CDBG) encompasses a series of activities to verify that CDBG funds have been properly spent and that the city has completed its program in a timely and acceptable manner.
- A public hearing on the project performance is required to evaluate the performance of the CDBG grant awarded by the Kansas Department of Commerce for expansion of the Senior Center facility. This project:

- Renovated approximately 2,181 square feet of vacated library space and turned it into a new fitness room and two classrooms;
- Included new interior walls, ceiling and floor finishes, painting, cabinet and millwork;
- Updated the electrical and HVAC systems;
- Reconfigured the men’s restroom;
- Converted the old janitorial room to storage; and
- Expanded existing corridors to gain easier access to the new areas.
- Written and verbal comments will be recorded and become a part of the City’s CDBG Citizen Participation Plan.
- Grant administration for this project was provided by Ranson Financial Consultants, LLC.

Financial/Sustainability Considerations:

- In January 2010, the City was awarded a \$92,000 CDBG Grant for this project through the Kansas Small Cities CDBG program. To date, the City has received \$85,213. The remaining \$6,787 will be requested following final payment to the project general contractor.

Legal Considerations:

- Notification of the public hearing was provided in the December 15 Derby Informer.
- The steps taken to complete the grant close-out process are in compliance with Kansas Department of Commerce requirements.

Mayor Avello opened the public hearing at 6:54 p.m. With no one present to speak the public hearing was closed.

DISCUSSION:

Council Member Craig asked how much the administrative fee was.

Ms. Knebel advised it was \$9,000.

MOTION: Haynes moved to conduct the public hearing, direct staff to forward all comments to the Department of Commerce as a part of the public record for this project and authorize the Mayor to sign the appropriate grant close-out documents. Bannon seconded.

VOTE: Motion carried 7-0, Warren absent.

PARTIAL VACATION OF CUL-DE-SAC ON WEBB ROAD

Bud Newberry, City Planner, presented the staff report.

Background:

- The subject site is generally located ¼-mile south of the 55th Street South – Webb Road intersection, in Sedgwick County and is currently zoned RR Rural Residential (“RR”).

- The request area is public street right-of-way; a sand and gravel Sedgwick County section line road ending as a cul-de-sac. All abutting and adjacent properties are zoned RR Rural Residential (“RR”).
- The applicants propose to vacate 10 feet of the 75-foot radius of the Webb Road cul-de-sac, as recorded on FILM 246/PAGE 908. The proposed vacated portion of the sand and gravel cul-de-sac abuts the applicant’s property.
- Derby Subdivision Regulations require cul-de-sacs to have a 75-foot radius if located outside of the city limits. However, the minimum radius for a residential access street within the city limits is 55-feet, less than the 65-feet which will remain following approval of this vacation request. It is assumed that the residential nature of current development adjacent to this area will remain, making this a reasonable request.
- This request was presented to the Metropolitan Area Planning Commission on December 2, 2010, and was approved subject to MAPD Staff and Subdivision Committee recommendations. The report prepared and presented by MAPD staff to the Metropolitan Area Planning Commission is attached in its entirety for council member review.
- On December 16, 2010, the Derby Planning Commission approved this request by a vote of 7-0 subject to recommendations and is making a recommendation of approval to the City Council.

Legal Considerations:

- Requests of this type that are located within Derby’s Subdivision Jurisdiction must be presented to the Derby Planning Commission and City Council for a recommendation to be included with the recommendation of the Metropolitan Area Planning Commission when this request goes before the Board of County Commissioners for final approval.

Policy Considerations:

- If a recommendation from the Derby City Council is for denial of this request, the BOCC will then be required to vote unanimously to approve this request.

DISCUSSION:

Council Member Bannon asked if 65 ft. of dirt is sufficient for fire trucks and school buses to turn around.

Mr. Newberry advised that Sedgwick County Emergency Services have looked at this request and approved it.

Council Member Craig asked if the 75 ft. and 55 ft. are based upon whether it’s dirt or pavement. Seventy-five ft. radius is 150 ft. diameter, which is half a football field.

Mr. Newberry explained that in the city we require 75 ft. in industrial areas so large trucks can turn around. That is the reason we require it in the county because normally we don’t know at the time it’s approved whether it will develop residentially or commercially so we require the 75 feet. Should it be developed commercially there will be enough room.

MOTION: Craig moved to approve this vacation request as recommended by the Metropolitan Area Planning Commission subject to MAPD Staff and Subdivision Committee recommendations, and forward to the Board of

County Commissioners with a recommendation of approval. Horyna seconded.

VOTE: Motion carried 7-0, Warren absent.

AMENDMENTS TO MH-1 MANUFACTURED/MOBILE HOME PARK DISTRICT REGULATIONS IN ARTICLES 2 & 4 OF THE ZONING ORDINANCE

Bud Newberry, City Planner, presented the staff report.

Background:

- The Planning Commission periodically recommends amendments to the Zoning Ordinance when changes are warranted and do not conflict with state law or other ordinances of the City.
- The owners of Rolling Green Mobile Home Park made application with the City to add recreational vehicles as a permitted use for the MH-1 district.
 - That request was presented to the Planning Commission, which generally supported allowing RVs to use the park but opposed making RV parking an outright permitted use in the district.
 - Following extensive discussion during the November 18 meeting, this item was tabled to allow staff time to digest comments made by the Commission and make a new recommendation.
 - On December 16, staff recommended allowing this use in the MH-1 district, but only as a Special Use.
 - Approving RV parking as a Special Use would allow the Planning Commission to control the location of allowed spaces for this use within a park, as well as how many spaces and what type of RVs would be allowed.
 - Amendments to the Zoning Ordinance include adding a definition of Recreational Vehicle in Section 202 and the words “Recreational Vehicle Parking” to the list of Special Uses (Section 407 B).
 - The Planning Commission approved these changes on a 7-0 vote following a public hearing held on December 16, 2010.

Financial/Sustainability Considerations:

- Allowing recreational vehicles to use the mobile home park will attract new visitors who will patronize Derby businesses and generate additional tax revenues.

Legal Considerations:

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

Policy Considerations:

- Derby does not currently have any facilities available for use by visitors or family members who want to visit but prefer to stay in their RV. Approving this request will provide an option to staying at an RV park outside the City.

ORDINANCE NO. 2053

AN ORDINANCE AMENDING SECTION 202 OF THE ZONING ORDINANCE OF THE CITY OF DERBY, KANSAS, SETTING FORTH DEFINITIONS TO SUCH ORDINANCE, AND SECTION 407 THEREOF, PERTAINING TO USES PERMITTED IN THE MH-1 MANUFACTURED/MOBILE HOME PARK DISTRICT; AND REPEALING ORIGINAL SECTION 407 OF SAID ORDINANCE.

DISCUSSION:

Council Member Horyna asked if we will provide fill and dump stations at this location or are there alternative locations, or are there no services available at all.

Mr. Newberry advised that by making this a special use it provides the planning commission and city council the opportunity to require the applicants to provide that type of service. In this particular case there is a section of the park that already has sewer and water lines installed so those facilities will be available.

Council Member Haynes asked if someone who uses the park has to ask for permission to park or do they just show up and park.

Mr. Newberry advised that if this is approved they can advertise that they have spaces available for temporary parking. It will be just like any RV park, you will have to rent a space.

Council Member Haynes advised this is something Derby needs and has needed for quite some time and hopes this is the first step. We have a lot of traffic here, a lot of military here; we have a lot going on in Derby.

Council Member Bannon asked if there will be specific sites set up for nightly or weekly rentals or will they be allowed to move an RV in for the winter. We have all seen those up on north K-15 with the hay bales and metal around the bases. Are we preventing that to any degree? Are there going to be specific spots left open for RV renters? Do we have a year limit on how old the RV can be? Generally there are limits on how old a trailer is that is moved in on a mobile home lot.

Mr. Newberry explained those are things that will be discussed when the planning commission is discussing the special conditions under which the campers will be allowed to come in. We have discussed almost everything Ms. Bannon mentioned. The owners of the park have said they are willing to comply with whatever requirements we ask of them. The experience we have had with these ladies is they have always done what we have asked them to do.

Council Member Bannon indicated that under their ownership she is sure everything will be fine. Everyone knows that things tend to change hands and since we are taking these steps those are some bases she would like to see us cover.

Mr. Newberry advised there is a part of their park that will be specified as to where these RV's can be parked.

Council Member Bannon stated that is something people have been wanting in this town for quite some time. She asked if this will come back to the council or will the planning commission have the final say.

Mr. Newberry advised it will be back to the council.

Council Member Haynes asked if we have a number of lots that will be available.

Mr. Newberry indicated that hasn't been determined yet. We have talked about 10-15 lots.

Council Member Craig asked if the planning commission will discuss the length of time someone can stay in the park.

Mr. Newberry advised that has been discussed already. What the applicants want to provide is overnight stays or up to 6 months if someone wants to stay there while they are working in town.

Council Member Craig asked where the park is located.

Mr. Newberry advised it is on South Buckner.

Carol Burkett, Rolling Green Mobile Home Park, advised it is west of K-15 on Kay Street over the tracks to Buckner, then two blocks south.

MOTION: Nun moved to approve an ordinance amending Sections 202 and 407 of the Derby Zoning Ordinance as recommended by the Planning Commission. Bannon seconded.

VOTE: Motion carried 7-0, Warren absent.

REPORT ON 2010 CAPITAL IMPROVEMENT PROJECTS

Kathy Sexton, City Manager, presented the staff report.

Background:

- The City of Derby has an aggressive Capital Improvement Plan (CIP) including many improvements to streets, new bike paths, solutions to drainage/storm water runoff problems, park enhancements, wastewater treatment, and facility projects.
- Each year, the City Council reviews projects and plans early in the year at the budget/CIP workshop. Throughout the year, individual projects routinely come before the Council for design and construction contracts, and occasionally project changes or updates are presented to the Council as well.
- This third annual year-end review is an opportunity for the Council to have an update on approved projects and an opportunity to ask questions.

- The expectation is that such a review will also result in a shorter Council Budget/CIP workshop in the Spring. (That workshop usually lasts four hours.) The workshop would be able to focus more on future plans than on status reports on approved projects.

Financial/Sustainability Considerations:

- The CIP represents a major portion of the City's budget and the City's outstanding debt load. The year-end report adds some transparency and accountability to the process of implementing the CIP.

Legal Considerations:

- None.

DISCUSSION:

Council Member Horyna asked if a school crossing is included in the cost of construction for the Phase 6 bike path at Tall Tree at the school.

Dan Squires, City Engineer, advised there is no plan for a signal at that location. There will be a crosswalk and school crossing signs.

Council Member Haynes asked if we have considered a light there.

Mr. Squires advised there is a signalized pedestrian crossing about 100 ft. further to the west of that location. To put two would be redundant from a cost standpoint and not very efficient from a traffic standpoint. When you put an actuated signal crossing at an intersection it creates conflict at that intersection. That location is within the established school zone in that area so it would be a reduced speed limit during school hours.

Council Member Haynes asked about the bike path from the golf course to Woodlawn. Have we started communication with the homeowners along Woodlawn?

Ms. Sexton advised that would start very soon. Along Woodlawn, south of this area of concern communication has begun. We have communicated with property owners in this area in the past about putting it behind them. They don't know about this new idea for the route, there aren't very many property owners there and we don't anticipate a concern but that is our next step going forward.

Council Member Haynes asked about the items we have recommended moving to 2012, the money we budget for those, will it carry over or will we use that money for something else?

Ms. Sexton advised the money, as far as the budget, we keep moving the projects out but in terms of how we actually do public budgeting; the money is available to spend if we have the money in the year it is budgeted. The ones that are already budgeted for 2011, the money will be there so what we will be doing in the next couple of months is working on our 2012 budget and CIP and we will make assumptions about how much of that money budgeted for 2011 won't be spent in 2011. Then we will be able to budget that money to be spent in 2012.

Council Member Haynes advised he would like to see that money carry over, he does not want to take it away from the 2012 budget.

Council Member Craig stated that we have one company that is doing a lot of things in town and some people have asked him about it. When they get back in the spring time and start to re-establish some of the dirt in the area, are they not required to put it back to original and plant grass seed? He is referring specifically to the fiber optic lines being put in by AT&T.

Mr. Squires advised they are.

Council Member Craig stated he has been contacted by some people about how it has been left right now but he can understand in the cold weather there is not much you can do about it right now. He stated that when they put in the big cabinets they do a good job getting those level but the pedestals look really bad.

Mr. Squires indicated that is something he can bring up with the utility company. As with our library links project, you can do grading right now but not scatter grass seed.

Council Member Meidinger would like to see a quarterly report on the CIP projects showing the money budgeted and the actual bid on the project. For example, the engineer's estimate is \$100,000 and the bid comes in at \$75,000, what happens to the \$25,000? Some of these projects have been delayed because of funding or time and if we had that knowledge it might make next year's planning a little bit easier.

Mayor Avello advised that sitting in on several SCAC meetings with state representatives, he is concerned about the KDOT funds and grant money for bike paths. What would be the possibility of a new legislative body saying to KDOT that they need to stop funding? Do we have any indication of what might happen?

Ms. Sexton stated that the state has its share of financial problems and concerns. We are more confident today than we were a few months ago because the legislature passed a transportation bill with a funding source, so we know now what we didn't know last year and that is what's going to go on with KDOT for the next few years. We have been very fortunate to be able to be approved for so many KDOT grants and we are trying to get some of them spent. We have been approved for our Phase 9 bike path in a couple of years, but obviously that is pending funding being available. They passed the sales tax last year to be used partially for the transportation plan, which is a 10-year program. Could this legislature take that all back and undo the sales tax? It's possible; there has been talk of it by individual legislators, but my personal crystal ball says that's probably not going to happen because the whole state benefits from transportation. This transportation program is very small compared to Governor Hayden's from 20 years ago and Governor Graves is from 10 years ago. When new legislators get in and get informed of the details and realize this was probably a very prudent plan for statewide transportation planning she doubts it would be repealed, but it's possible.

Mayor Avello asked about South Buckner, are we going to do anything north of Kay Street?

Ms. Sexton advised we don't have a planned project yet north of Kay Street. We did the part north of K-15 last year, we are doing the part south of Kay Street this year so there is that piece in the middle. It will be even more noticeable than it is now that there is more need on that and many other streets, especially on the west side of town.

Mayor Avello stated that at Meadowlark and Woodlawn, it is rapidly deteriorating right in the middle of the street.

Ms. Sexton advised the area would be checked out.

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

VOTE: Motion carried 7-0, Warren absent.

PRESENTATION OF THE 2011 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 the Regional Economic Area Partnership (REAP), Visioneering Wichita, and the League of Kansas Municipalities. The priorities of these partners are included in this legislative agenda.
- The proposed 2011 Legislative Agenda presents Derby's core legislative principals and legislative priorities. Priorities for this legislative session are to: 1) maintain current transfers and restore previous transfers to local governments, and 2) use casino revenue for its intended original purposes.
- Changes from the 2010 Legislative Agenda are:
 - Core Principals:
 - Deleted clean indoor air since the 2010 Legislature approved a new state law governing clean indoor air.
 - REAP Legislative Priorities:
 - Deleted the graduate medical education program at the Wichita Center for Graduate Medical Education as requested by the non-profit consortium.
 - Deleted the Comprehensive Transportation Plan since the 2010 Legislature approved a new state-wide transportation funding plan.
 - Unified Legislative Agenda:
 - Deleted the Wichita Center for Graduate Medical Education program as requested by the non-profit consortium.
 - League of Kansas Municipalities:
 - Deleted Transportation from the League's Action Agenda since the 2010 Legislature approved a new state-wide transportation funding plan.

- Included a request to the adjutant general to review the role of cities in the state emergency management plan to ensure that implementation strategies promote cooperative efforts.

Financial/Sustainability Considerations:

- Restoration of transfers to local government and receiving casino revenues would have a positive effect on City resources.

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 2011 session.
- Adopting a legislative agenda further strengthens communication between the City of Derby and our legislative delegation.

DISCUSSION:

Council Member Horyna asked when this will be mailed to our legislators.

Ms. Knebel advised she would start on it tomorrow.

Council Member Haynes stated that with the recent events of Hawker Beechcraft, our community is very dependent on aviation. We don't need to become so dependent on aviation even though it has a great history here and will continue to be. We need to start looking at other avenues and it starts here in Derby. If we put our minds and our heads together and drive this forward we can accomplish some great things. We need to look at other economic development opportunities. Composites in aviation are a huge product, but there are also opportunities for composites in the medical field. Several automotive plants have sprung up all over the United States in the last 10-20 years and we need to start spreading that word and we need to bring those opportunities to this area. We need to start looking outward, advertising and marketing. We have a great marketing plan in place for Derby. That's not to say Derby can go out and support all these opportunities and bring them all to Derby but we are a voice that can stand up and working together with other communities we can bring some of these opportunities here. Electronics is huge, what's in today might be out tomorrow.

Mayor Avello advised that every item mentioned by Mr. Haynes is being looked at by REAP. It is very competitive when cities go out and try to bring businesses in. When they had their meeting with Representative Howell he said we have to look at corporate taxes in this state, they are too high. We have composites, we have wind energy and we are looking at a lot of different areas and industries to bring into this community. Diversification has to happen because airplanes are not built just in Wichita, KS anymore, they are built all over the world, and it's a highly competitive field. It's a complex issue that we have been working on for 8 years; every city has come together because there is strength in numbers. When we first started this Johnson County was dictating to the state what was going to happen. Today Johnson County is saying they need to do what Sedgwick County is doing because we have become the leaders.

MOTION: Horyna moved to adopt the 2011 Legislative Agenda. Staats seconded.

VOTE: Motion carried 7-0, Warren absent.

CONSENT AGENDA

Kathy Sexton, City Manager, presented the staff report.

Addendum to Agreement with Larry Linn for Prosecution Services

Background:

- Larry Linn, an attorney in private practice, has served as city prosecutor for many years.
- Since 2006, Mr. Linn has served pursuant to a contract.
- The Council recently approved contracting with Travelers for liability and other insurance coverages beginning in 2011.
- Travelers asserts that because Mr. Linn is an independent contractor, he would not be covered under the policy the City has agreed to purchase.
- Although Travelers' position on this matter is contrary to the Kansas Tort Claims Act (KTCA), the dispute can be resolved by amending Mr. Linn's contract to include a provision entitling him to protection under the KTCA.
- The proposed addendum to Mr. Linn's contract provides that he would be entitled to the protections of the KTCA to the same extent as other employees; otherwise, the agreement is unchanged.

Financial/Sustainability Considerations:

- None, other than ensuring that claims arising out of Mr. Linn's performance of his duties would be within the scope of the City's insurance coverage.

Legal Considerations:

- While there is no doubt that Mr. Linn is already an "employee" for purposes of the KTCA, addressing the subject in his contract adds clarity for purposes of insurance coverage.

Policy Considerations:

- The City generally insures against the tortuous acts or omissions of its employees and officers.
- While the role of city prosecutor does not carry with it inordinate risk of liability, the risk does exist and should be insured against.

Recommend a Motion to:

- Approve an addendum to the City's contract with Larry Linn for prosecution services in substantially the form presented.

MOTION: Craig moved to approve an addendum to the City's contract with Larry Linn for prosecution services in substantially the form presented. Horyna seconded.

VOTE: Motion carried 7-0, Warren absent.

The council recessed to the El Paso Water Company meeting at 8:11 p.m.

The council meeting was brought back into session at 8:18 p.m.

EXECUTIVE SESSION:

MOTION: Nun moved to adjourn to executive session at 8:18 p.m., following a short break to discuss personnel matters of non-elected personnel, specifically the employment agreement with the city manager and acquisition of real estate for a future street project for a period of 40 minutes and resume the meeting no later than 9:05 p.m. Bannon seconded.

VOTE: Motion carried 7-0, Warren absent.

The council returned at 9:16 p.m., and Nun advised no binding action was taken.

ADJOURNMENT:

MOTION: Craig moved to adjourn at 9:18 p.m. Staats seconded.

VOTE: Motion carried 7-0, Warren absent.

Dion P. Avello, Mayor

ATTEST:

Jean Epperson, City Clerk