

**APPROVED
REGULAR COUNCIL MEETING
December 8, 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
Tom Haynes, Mark Staats

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

CONSIDERATION OF MINUTES

Minutes of the November 10, 2009, Regular Council Meeting.

MOTION: Warren moved to approve. Horyna seconded.
VOTE: Motion carried 7-1, Craig abstain.

PUBLIC FORUM

Scott Osborne stated he has been in this community for about 10 years and it is a special community. His first encounter with this community was with the police department when he had a rear light out. The officer was very kind but he was very thorough and wanted to know what he was doing out so late at night. He liked that because it made him think somebody was paying attention. He found out later that Derby is known in some circles as a very strict place. That doesn't bother him because that lets him know that his family, friends and fellow citizens are somewhat safe because we have people who care and are trying to do a good job. He comes tonight as a concerned citizen. It has been said to stand for what you believe in. He finds that very unique because we have lost the understanding that there is and always will be absolute truth. He does not come tonight to speak about what he believes in but to speak about what he knows and has found to be true. In this Christmas season we tend to forget the influence of Christianity on this nation. He never intended to be a Christian, he was an atheist. Through a number of situations he came to a strong Christian understanding. In Christmas, with all of the plurality of our society we tend to put Christianity on the back burner, especially at Christmas. He would like to stand as one concerned citizen, especially in the last 10-12 months he has talked to several people who have shared with him the concern of the decline of this nation. The moral underpinnings of this nation are coming unhinged. He cited several quotes about the history and future of our nation. He appreciates the efforts of the council to keep this community as strong and conservative as it is.

Council Member Bannon thanked everyone for their patience with the new trash roll out. She is finding that she is recycling a lot more than what her husband ever expected. The library is open. The first Saturday it was open, 3,300 people attended. It was a great day. The average at

the old facility was about 450 a day; the new facility is averaging over 900 a day. The demographics are changing; there are a lot more men, a lot of teens, guys in business suits. People are scattered all over but you don't notice because of the size, and everyone has space. There are some new services. Especially during this weather you might want to make use of the drop off window for books. If you have books on hold you can drive up to the window and they will bring them to you so you don't have to get out of your car in this weather. We hoped it would become the city's living room and when she saw the Saturday football game on the TV she knew it had.

Council Member Horyna thanked everyone, especially the staff for the tree lighting ceremony. He also wished his youngest daughter happy birthday tomorrow, she will be two.

Mayor Avello agreed with Mr. Horyna about the Christmas tree lighting. We started a couple of years ago and there might have been 100 people out there crammed into the utility building. Last Thursday we had 1,500 people. He thanked the citizens for making it a success.

Mayor Avello moved Item H to the second item of the evening.

PRESENTATION

Derek Smith, Derby Community Coalition Promoting Healthy Choices, gave a presentation regarding their receipt of an ACE Grant.

DEFEASANCE OF GENERAL OBLIGATION BONDS SERIES 2003-A

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

Background:

- In 2002, Derby voters authorized a ½ cent city-wide retail sales tax for the construction of an aquatic park and a \$1,500,000 operating reserve.
- The following year, General Obligation Series 2003-A Bonds were issued in the amount of \$7,000,000 and are scheduled to mature June 1, 2017.
- Currently, bonds of \$4,825,000 (principal amount) remain outstanding and are not subject to call until June 1, 2011.
- Due to outstanding growth in commercial businesses in Derby, sales tax receipts exceeded initial projections, and the operating reserve was fully funded in 2005. Initial projections were based upon actual sales tax data provided by the Kansas Department of Revenue and then further verified by an independent feasibility analysis.
- Resolution 3-2005 authorized the establishment of a bond redemption account for the purpose of accumulating sales tax revenue for the eventual defeasance of the bonds.
- Adequate funds have now accumulated in the bond redemption and debt service accounts to provide for defeasance of the G.O. 2003-A Bond Series (the "Bonds"). In order to defease the Bonds, an escrow account will be set up, and

verification obtained from an independent certified public accountant that funds are adequate to retire the Bonds on June 1, 2011.

- Once the Bonds are defeased and the reserve account is fully funded at \$1,500,000, the sales tax dedicated to the aquatic park will sunset at the end of a quarter. It is recommended that the defeasance occur in December, and the aquatic park tax sunset on December 31, 2009.
- Once the aquatic park sales tax sunsets, the library sales tax shall go into effect the first day of the following quarter, so there is no lapse in administration and collection of the tax.
- The proposed ordinance provides for defeasance of the Bonds and establishment of the escrow account. UMB Bank in Wichita, Kansas will be named as the trustee of the escrow account.

Financial/Sustainability Considerations:

- A funding requirement of \$5,365,946.28 is estimated to provide for defeasance of the Bonds, payment of the outstanding special assessments associated with the aquatic park property and costs associated with this process.
- A breakdown of the funding requirements follows:
 - Bond defeasance \$5,035,504.98
 - Special Assessment payments 314,341.30
 - Professional fees 16,100.00Total \$5,365,946.28
- Professional fees include bond counsel, financial advisor, escrow verification, escrow trustee and Kansas bond redemption fees.
- Redemption of the Bonds will have a favorable effect on the available debt capacity of the City and a key debt ratio of Statutory Direct Debt as a Percentage of Assessed Valuation. An updated debt ratio will be provided during the meeting.
- Sales taxes received this month and the first two months of 2010 will be applied to the operating reserve account and are estimated at approximately \$500,000. Taxes received during January and February 2010 represent sales taxes collected in November and December 2009.

Legal Considerations:

- The instruments pursuant to which the Bonds were issued authorize the City to undertake this defeasance and establish the procedure for doing so.

Policy Considerations:

- Defeasance of the Bonds will allow for the sunset of the aquatic park sales tax as required in the 2002 ballot question.
- Redemption of the Bonds in 2011 will result in prudent cash management to eliminate interest costs associated with Bond maturities in 2012 through 2017.

ORDINANCE NO. 2001

A ORDINANCE AUTHORIZING THE EXECUTION OF AN ESCROW TRUST AGREEMENT TO PROVIDE FOR THE PAYMENT OF THE OUTSTANDING GENERAL OBLIGATION BONDS SALES TAX BONDS, SERIES 2003-A OF THE CITY OF DERBY, KANSAS; REQUESTING THE SECRETARY OF REVENUE TO TERMINATE THE ONE-HALF PERCENT CITYWIDE RETAILERS' AQUATIC

PARK SALES TAX APPROVED BY THE ELECTORS OF THE CITY AT AN ELECTION HELD ON NOVEMBER 5, 2002; AND AUTHORIZING CERTAIN ACTIONS TO BE TAKEN IN CONJUNCTION THEREWITH.

DISCUSSION:

Mrs. Epperson explained that the statutory direct debt as a percentage of assessed valuation will drop to 22.89% once the bonds are defeased on December 29th. Garth Herrmann of Gilmore and Bell was introduced as a representative of bond counsel who prepared the bond documents.

Council Member Craig asked when the date comes around that they are defeased and it drops to 22.89, does that remain there even though the next tax sunrise on the first of January?

Mrs. Epperson advised it has no effect. The library temporary notes are in the 22.89% and whether the tax exists doesn't affect that calculation.

Council Member Craig asked if that will go up in 2010.

Mrs. Epperson advised we have less than \$1 million in bonds that were in the CIP, when we performed that estimate in the budget process that's the thing that comes to mind. All of the temp notes are already in this calculation. The projects that would be assessed at some point are already in there.

Council Member Craig stated that drop of 4% puts us in better shape than we were. We were really stretching it to the limit.

MOTION: Haynes moved to approve an ordinance directing defeasance of the Bonds as presented. Meidinger seconded.

Mayor Avello asked if this affects our credit rating with Moody's.

Mrs. Epperson advised that when we last talked with them they already knew this was going to occur.

VOTE: Motion carried 8-0.

REVISION OF FEES AND CHARGES

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

Background:

- Fees and charges by the City of Derby are authorized by resolution and various ordinances.
- Most of the city's fees and charges are accumulated into one resolution, which was comprehensively reviewed in September 2008 and authorized via Resolution 45-2008.

- The proposed resolution primarily clarifies fees previously authorized and incorporates two new fees, the need for which was discovered this past year.

Financial Considerations:

- Section 2 – Based upon research of the fees of several cities in the surrounding area, an increase of \$5 is recommended for Temporary Use Permits, Peddler/solicitor licenses and food vending licenses. Business registrations (business licenses) are not recommended for revision due to a review of the business license structure planned in the future.
- Section 2 – Due to the changes in solid waste collection in Derby, a license fee is only issued for non-residential solid waste haulers. All residential solid waste is collected by a franchisee of the city, and licensure is incorporated into its contract.
- Section 3 – A note clarifying that no fees are charged for extension of premises for liquor and cereal malt beverage sales which is compatible with the State of Kansas fee schedule.
- Section 4 – Contractor licenses were reviewed by the Board of Construction, Trades and Appeals (BCTA), and increases between \$5 and \$25 are recommended for the various annual licenses. License fees charged by the City of Wichita and Sedgwick County were used for comparison and the recommended fees are very similar to Sedgwick County’s fees. Contractor license fees for the City of Wichita are higher, but it is a much larger city with a higher volume.
- Section 5 – Incorporation of the water service connection permits into the fee resolution as well as revision are recommended. Water service connection fees were last updated in 2006 with the understanding that costs were to be monitored quarterly so that fees charged could be updated in the future to ensure they cover all costs incurred. Current fees are shown in parentheses in the resolution. The revised fee includes changes in costs of material as well as the cost of equipment compatible with the new automatic meter reading software.
- Section 5 – Staff recommends the addition of a \$100 fee for the annual inspection of grease interceptors which most of our restaurants have. This fee is comparable to the City of Wichita and covers the staff time involved in the inspection. There are approximately 40 inspections per year so the annual revenue increase would be \$4,000. Revenue from this fee would go into the Wastewater Fund because the inspections are performed by personnel paid out of this fund. Annual inspections aid in the maintenance and function of the system as well as identification of potential blockages of lines which could negatively affect the restaurant and other sewer users in the area.
- Section 5 – Another new fee is a \$5 fee for the release or return of confiscated signs due to violations of the sign ordinance. Currently, signs that are confiscated due to violations are just picked up at city hall, whereas this minimal fee would offset staff costs plus add some deterrence to violators. Due to the minimal amount of the fee and the anticipated decline in frequency of occurrence, the revenue impact will be minimal.
- Section 9 – Staff recommends increasing the platting exemption, variance and appeal fees associated with land development by \$50 each to cover more of the staff costs

expended on each case. The frequency of transactions is approximately two per year, so the revenue impact would only be \$100 annually.

Legal Considerations:

- The City Council is empowered to establish, by resolution, fees and charges to be imposed in connection with services provided and programs authorized and implemented by City ordinance.

Policy Considerations:

- Section 11 of the resolution provides for the biannual review of the fees and charges of the City of Derby but more frequent revisions are permitted if necessary.

RESOLUTION NO. 40-2009

A RESOLUTION AMENDING RESOLUTION NO. 45-2008 OF THE CITY OF DERBY, KANSAS; ESTABLISHING FEES, CHARGES AND TAXES AUTHORIZED PURSUANT TO CITY ORDINANCE FOR SERVICES RELATED TO LAND USE. APPLICATIONS; BUSINESS AND CONTRACTOR LICENSING AND BUILDING INSPECTION; ADMINISTRATIVE SERVICES; OPERATION OF THE MUNICIPAL COURT; AND OTHER SERVICES RENDERED BY OR THROUGH CITY FORCES; AND REPEALING ORIGINAL RESOLUTION NO. 45-2008.

DISCUSSION:

Council Member Bannon asked about the sign fee, do we need to add “per sign” if that is the intention? A lot of times if someone gets a sign picked up it is one of many.

Mrs. Epperson agreed that’s a good idea. That can be accomplished.

Council Member Craig agreed with the \$5 charge for the signs and thinks it will get their attention. He asked about section 2, on the peddler/solicitor licenses, people come into town and sell their goods in a parking lot, are they supposed to display that license?

Mrs. Epperson explained that if they are selling in a private parking lot that is a temporary use permit.

Council Member Craig asked if someone comes to his door, if he asks them a question do they have a copy of the license to solicit.

Mrs. Epperson advised they should carry it with them.

Council Member Craig commented that with some of these things there are multiple people involved in the solicitation project; do they need a license for everybody?

Mrs. Epperson advised it’s per organization; they carry a copy of that license on them. She asked if Mr. Craig was thinking of the non-profits?

Council Member Craig indicated he was just interested if we have the right to ask someone who comes to sell something at your door if they have a license.

Mrs. Epperson stated absolutely.

Council Member Craig asked how many of these licenses we issue in a year.

Mrs. Epperson stated it is maybe 5-10 per year.

Council Member Haynes asked if this license applies to Derby Junior Football selling discount cards or Girl Scouts selling cookies.

Mrs. Epperson explained there is an exemption for non-profit organizations in the city code.

Council Member Haynes asked about signs, he would hesitate to get into a number count of how many signs we take up a weekend. We have a lot of church groups and other entities that put signs out and pick them up. For whatever reasons they may not be able to pick their signs up that day and for whatever reason city staff comes by and picks up their signs. He doesn't know if we need to go that route with certain entities, yes we need to monitor it and that's what the ordinance is for, but we need to exercise some caution when we start talking about \$5.00 per sign, or whatever amount we come up with.

Kathy Sexton, City Manager, stated that timing on this is a little difficult. We only bring this resolution for fee increases to the council once a year at the most. The reason we'd like to go ahead and do it is we wanted to make sure the council is on board for that. It is not something that we would be enforcing right away. We have an amendment to the sign code in draft form and being presented to the planning commission in January and the council after that. We are right now shopping the updates around to a number of different groups. It is a situation where our sign code has some issues, and it's going to take talking to a lot of different groups to make sure we can start treating different groups more equally, but that means it's going to change for some groups. We will make sure that we present the council a good recommendation for a good quality code and then start enforcing it after we have informed everybody; small businesses who put out a million signs on Saturday mornings, realtors and housing developments that put signs along Rock Road, sometimes directing people outside of Derby. There are a lot of issues that we are trying to address with this sign code update. You have my commitment that we are figuring those issues out; we will present it to the planning commission and council for approval and consideration before we would start enforcing that. That also is a reference to the earlier comment about weekend signs. There are organizations putting out signs on the weekends that don't all technically fall under our current rules that we are not enforcing on the weekend. The new plan that will be presented in a couple of months will include enforcement on the weekends and we will make that very clear to everybody so people don't read the new code and say never mind, they aren't going to enforce it on the weekend anyway. It's part and parcel of the plan to change the hours of some of the inspectors so we can have inspectors working on the weekends. She thinks that will clear up a number of issues that have been raised about equity issues and about the look of our streetscape on the weekends. The streetscape looks pretty good all week long and come Thursday night we get garage sales. On Friday we get developments and open houses all thru Sunday and now we have all the Saturday morning breakfasts and the events on Sunday afternoon. What we are trying to come up with is a fair system that will help organizations and business get the word out in a way that doesn't clutter our streets. Once that's

all implemented and communicated, if people don't respect it, it's \$5 a sign when our inspector picks them up. She thinks people will see that the new system will be much more fair. Right now we don't enforce on the weekends, like with the church that's been mentioned because it's very difficult to explain to an organization why one organization can put a sign out and the other one can't, right beside it. It's just some old codes that need cleaned up.

Council Member Haynes stated he would like to see that revised ordinance before he signs up for \$5 per sign. Also, something that would affect everyone up here, within that ordinance, political signs are also covered, or is that exempt?

Ms. Sexton advised we don't have any changes in the works for political signs.

Council Member Staats addressed Mr. Craig's questions about solicitor's licenses. There are organizations that show up in town in a van and drop 6-7 people off and they go around selling magazines. Each person does have to have a license and the police department does a background check on each of them to be sure they are okay to be in the neighborhoods. A couple of years ago he had a solicitor at his house. He didn't have a license so the police were called and he went to jail about an hour later when they found him because he had been issued a ticket in Derby about two years prior to that and failed to go to court. He recommended people ask solicitors for their license and if you feel comfortable, call the police, call the police; it happens all the time.

Council Member Craig commented regarding Mr. Haynes's comments, different businesses contract with sign companies and they visit Derby on Friday evenings and put signs down everywhere. We have sent messages to them and communicated with them. If we put this into being now there will be something to back it up when they get ready to bring the full program to us. He is in favor of \$5 per sign because he thinks they will forfeit it. They pay less for the sign than they do for the penalty to pick it up. They will forfeit it and get the message very quickly as this whole program comes together. As we have heard numerous times from the police department, you have to have something that actually does something before people respond to it.

MOTION: Craig moved to approve a resolution amending Resolution No. 45-2008 of the City of Derby establishing fees for various services. Bannon seconded.

Council Member Warren asked Mr. Haynes if he wanted to make a motion about the \$5 per sign.

Council Member Haynes explained he understands where Mr. Craig is coming from but he would like to see a review of the updated ordinance before we start slapping \$5 per sign for all these entities. There are too many variables here.

Mayor Avello asked when the ordinance will be ready.

Ms. Sexton indicated it would be several months. She asked Mr. Haynes if he was suggesting an amendment to the motion to remove that item.

Council Member Haynes indicated he was suggesting we do \$5 total instead of \$5 per sign but he hadn't quite made up his mind yet if he wanted to turn that in to a motion.

MOTION TO AMEND: Haynes moved to reduce \$5 per sign to \$5 total. Warren seconded.

VOTE ON AMENDMENT: Nun no, Bannon no, Haynes yea, Craig no, Horyna yes, Warren yes, Staats no, Meidinger no. Motion failed 3-5.

Mayor Avello advised he was at St. Mary's school last week for a question and answer session and was asked what he was going to do to clean up the city. That was a difficult question to answer because how do you clean the city up? How do you pick the litter up? How do you get people to stop throwing McDonalds or Arby's bags out the window and putting signs out. People are watching, even in grade schools and it's an important subject we are looking at. It might not be that way on the surface to some people but it is to our great city. It's an important thing.

VOTE ON ORIGINAL MOTION: Motion carried 8-0.

Council Members Nun, Warren and Mrs. Epperson left the meeting to attend the DRC meeting.

PUBLIC WORKS FACILITY CONSTRUCTION BIDS

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

Mike Siewert, WDM Architects gave a presentation describing the facility. There will be an eight month construction period with move in in September.

Background:

- The Public Works Facility project went out for bid on October 7, 2009. This was a two-part bid which included a base bid for the principle structure and an Add Alternate #1, which included the metal shell building and all infrastructure necessary for snow removal operations.
- An optional pre-bid conference was held on October 13, 2009. Eleven general contractors were present and expressed their interest in bidding.
- Bids were received on November 19, 2009 with 13 general contractors submitting bids. All contractors were qualified and submitted the appropriate sureties.
- The aggregate bids ranged from \$3.227 million to \$3.754 million. Please see the attached bid tabulation.
- Dondlinger & Sons Construction Co., Inc. provided the low bid of \$3,277,000. This bid is below the architect's estimate and has been reviewed by staff and the architect for completeness, with no problems found.

Financial Considerations:

- Financing for this project of \$4.0 million was included in G.O. Bond Series 2009-A, which is sufficient to cover the identified project costs.
- As with all building projects, there are additional costs associated with the project that are not part of the building contract, such as the architect, furniture, phone systems, etc. This bid leaves adequate room in the project for these additional items.

Legal Considerations:

- The City followed all applicable statutory and procurement procedures in financing, planning and soliciting bids for this project.

Policy Considerations:

- Acceptance of this bid continues the process of complying with Council direction to build a new Public Works Facility.

DISCUSSION:

Council Member Bannon asked where the safe room was located.

Mr. Mendoza advised the safe room is actually the locker room. It is a freestanding concrete vault with concrete ceilings and walls.

Council Member Bannon asked about the total cost, including furniture, phone lines, etc.

Mr. Mendoza advised it will be no more than \$4 million.

Council Member Bannon pointed out we came in under budget for the construction cost. How much do we expect to spend for total costs?

Ms. Sexton indicated we have not gotten that far. We know there will be change orders.

Council Member Bannon clarified that September means September 2010. You must be looking at a fairly quick dig on this.

Mr. Mendoza advised it would start as soon as the weather allows and contracts are signed, they're going to be on site.

Council Member Craig advised he has seen a lot of projects in excess of \$3 million and he has never seen three bids with a less than 3% spread. That's incredibly on target for three companies to do that.

Ms. Sexton stated that when we interviewed architects several months ago almost all of them laughed when we told them the budget. She complimented Mike and his team at WDM because we have been pushing them and trying to take advantage of this construction market, not wanting to go to spring bidding because of the USD 259 school bond projects and other things coming up. Clearly they hit the mark and did all the things we asked them to do.

Council Member Horyna stated this looks much nicer than some of the photographs we had seen previously, it has really come together.

MOTION: Horyna moved to authorize the City Manager to enter into a contract with Dondlinger & Sons Construction Co., Inc. for \$3,277,000 to construct a Public Works Facility. Craig seconded.

VOTE: Motion carried 6-0, Nun and Warren absent.

REAL ESTATE PURCHASE AGREEMENT AT DERBY BUSINESS PARK

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.
- John and Linda Bode currently own and operate BRG Precision Products at 600 N. River and want to purchase Lot 6 Block B for the purpose of constructing a warehouse to support their future business needs. BRG estimates the size of the warehouse will be a minimum of 20,000 square feet.
- The terms of this contract are generally consistent with past contracts with the following exceptions:
 - Price per square foot is sixty cents for a total price of \$54,066. This amount is ten cents less than the usual asking price of 70 cents/SF and reduces the lot price by \$9,011. In exchange for the lower price, BRG Precision Products has agreed not to request future incentives for this expansion.
 - Construction must be completed within 24 months, or the City has the option to buy back the property plus the cost of any improvements. The standard contract typically calls for completion within 12 months with a possible 3-month extension.
 - The inspection period has been extended from 30 days to 45 days.

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.
- No estimates for job creation or capital investment have been made.
- Closing costs will be shared 50/50 by both parties.

Legal Considerations:

- The contract has been prepared by the City Attorney and reviewed by the buyer and the buyer's attorney.
- The City is empowered to enter into contracts for the sale of real property.

Policy Considerations:

- It is the City's desire to expand and diversify the economic base of our community, and development of this property will help an existing business expand within the city.
- No provisions for incentives are included in the real estate contract and none are anticipated at a later time.
- BRG is currently operating under an economic development agreement with the city and has met the requirement to construct a 42,000 SF building and is on pace to create 103 jobs over the 10-year abatement period.

DISCUSSION:

Council Member Bannon thinks this is great. In these economic times they may not be adding a lot of employees, but they aren't losing any employees and are buying land for future building. She doesn't mind the extra year because they are currently in the process of finishing some basement space in their current building before they build this facility.

MOTION: Bannon moved to approve the proposed real estate purchase agreement with BRG Precision Products, Inc. in substantially the form presented and authorize the city manager to execute the agreement and take such other actions as may be necessary. Staats seconded.

VOTE: Motion carried 6-0, Nun and Warren absent.

AMEND THE SCOPE OF THE PHASE 6 BIKE PATH PROJECT

Kathy Sexton, City Manager presented the staff report.

Background:

- For several years, the Capital Improvement Plan has included a project to extend the City's hike and bike path system from Market Street north to Patriot Avenue along Woodlawn Boulevard to Meadowlark and then along Dry Creek to Patriot Avenue. This project also includes a path along James from Woodlawn Boulevard to Buckner Street.
- Design on the project is nearing conclusion, and the City is preparing for construction during Summer 2010.
- A public open house was held in 2006.
- Another open house was held on November 19, 2009 specifically for property owners in the developing Oaks Addition along the northern most ½ mile of this project, because they did not own their lots in 2006 and generally had not been briefed on the project.
 - Much information was shared at last month's open house event between property owners and city officials regarding residents' concerns and the City's plans for the project.
 - While many people favor extending the bike path system throughout the city as a quality-of-life amenity, many residents near the northern ½ mile of this proposed phase had unique concerns about this particular section.
- While this section has some clear benefits also, it is not a critical part of the bike path system. In deference to the concerns of the neighboring property owners, removal of this section from the project is recommended.

- Sidewalks (5 feet wide) along Tall Tree Road will take walkers and bike riders to both Triple Creek Drive and Woodlawn north to connect to the bike path along Patriot Avenue or to take them east to the bike path on Rock Road.

Financial/Sustainability Considerations:

- The project is funded primarily by a KDOT grant of \$1,127,250 with a City match of \$375,750. KDOT has been informed of the proposed amendment to the scope, and the City awaits a response as to KDOT’s approval. If an amendment is approved by the Council, a revised project estimate will be developed based on the smaller scope.

Legal Considerations:

- KDOT will likely require an amendment to our project agreement with them.

Policy Considerations:

- If the Council concludes that this amended project will still meet the spirit of the goal to connect the north and south ends of the city with a quality bike path connecting several public parks, schools, and the Derby Recreation Center, then the staff’s focus will shift to continuing design of the rest of the Phase 6 project.
- The remainder of Phase 6 (Tall Tree to Market and James to Buckner) is considered critical to the overall citywide path system.
 - Most of it is along a major street (Woodlawn), although the north 1/2 mile is along Dry Creek (from Meadowlark to Tall Tree).
 - This creekside portion of the path gives us the diversity of a wooded, natural area with shade and visual interest not available in the rest of the path system. It is more viable than the far north piece recommended for removal from the project because:
 1. It is bounded on the east by the golf course (hole #12 and a pond) and a vacant commercial lot with lots of trees (at the corner of Woodlawn & Meadowlark).
 2. Residents on the west side were informed of the project several years ago, and most have either backyard fences or many trees and the creek between the path and their property line. The project will include adding trees to ensure proper screening where needed.
 3. The only easement needed is from the golf course owner (Jim Lindsey), and we've been working with his representative to ensure their comfort level with the trees and screening between the path and the course. All indications are that he will voluntarily grant the easement once he is satisfied with the screening from the golf course.
 4. This portion includes only 1 low-water crossing.
- Due to its creekside nature, the plan includes gates at either end to restrict access at night and during times of high water, bollards to prevent vehicular traffic (other than emergency vehicles and city-authorized vehicles) from driving on the path, signs informing the public of path rules, and trees and other screening from residences on the west and the golf course on the east.
- City park staff will maintain the path, including clearing any debris after high water. City police will patrol the area daily to prevent trespassers or vandalism.
- Another open house is planned for Thursday, December 17 from 4:00 to 6:00 p.m. at City Hall for anyone interested in the project to learn more about its details. Invitations were

sent to all property owners and residents adjacent to this 1/2 mile section of the path along the creek so that they can better understand the plan for the path. Information to be shared will include:

- The average home burglar strikes during daytime hours and parks in the front driveway.
- Other communities that have constructed similar paths along creeks or in wooded areas have not experienced spikes in crime in the area. Generally, crimes have been typical of that in most any other park or open space.
- Bike paths are used generally by honest citizens who report crimes or suspicious behaviors that they observe while exercising.

DISCUSSION:

Council Member Haynes thanked the citizens for coming to the open house. He appreciates all the comments and concerns as we strive to have open communication. The one thing he finds very refreshing about the city council and city staff and what we are trying to accomplish here is open communication. We have already received the funding for this and are looking now to see how much money we are going to have to give back; do we have any idea on the figure yet?

Ms. Sexton advised we don't have a figure yet. What we will do now, if this amendment is approved, is finish design and put the project out for bid and then we will know exactly where we are at. We could get a different estimate, but honestly at this point it really doesn't matter very much. Just like the previous item, contractors are hungry right now and the sooner we can get this out the better price we will get, even if people know they won't be doing the work until next year. Right now we are not focusing so much on an updated estimate as we are just getting it out to bid and see who will lock in a price.

MOTION: Meidinger moved to amend the scope of the Phase 6 Bike Path project to remove the north ½ mile from Tall Tree to Patriot from the project.
Horyna seconded.

Council Member Craig thanked everyone who attended the open forum and the way everyone conducted themselves.

Council Member Bannon indicated she had received emails from people indicating they protested this issue but thought the council would do what we want anyway. We do listen; your opinion does matter; city hall does listen.

VOTE: Motion carried 6-0, Nun and Warren absent.

FINAL PLAT OF STONE CREEK 4TH ADDITION

Bud Newberry, City Planner, presented the staff report.

Background:

- This property is 42.5 acres in size, is located approximately ½ mile west of Rock Road and ½ mile north of Patriot and is Zoned R-1 Single Family Residential, the appropriate zoning for this development. This property was annexed into the city on August 26, 2008.
- Residential properties lie to the west and south of this parcel with B-3 and I-1 zoning to the east. Firefly Estates, a completely developed large lot (5 acres) residential subdivision, lies to the north of this property in Sedgwick County.
- The Final Plat for this addition was approved by the Planning Commission on August 20, 2009, by a vote of 8-0 with 2 abstentions.

Financial/Sustainability Considerations:

- Development of this property over the next few years should provide a positive impact on the City’s tax base.
- As part of the platting process, and as required by the Subdivision Regulations, the developer has submitted the typical petitions as guarantees for the construction of required infrastructure improvements (sanitary sewer, water, storm water sewer, streets, drainage, and sidewalks) totaling \$2,446,000 with 100% paid by the benefit district.
- A small portion of the subject property was assessed a portion of the costs for sanitary sewer in the Stone Creek Addition to the west. A re-spread agreement has been submitted to distribute that existing special assessment equally to 17 of the new lots.

Legal Considerations:

- By approving the proposed plat, the Planning Commission has determined that it conforms to Kansas law and Derby’s subdivision regulations.

Policy Considerations:

- The applicant complied with all requirements of the Subdivision Regulations including provision of a Developer’s Agreement and a Restrictive Covenant for the use of Reserves.
- Upon Council approval, staff will submit petitions to Gilmore & Bell to prepare the corresponding resolutions for Council consideration in the near future.

DISCUSSION:

Council Member Haynes stated that once this takes place there will be an emergency entrance on Nancy Lane. We have recently started procedures to bring that community into the city because they are 100% surrounded by city limits. Do we have a time frame of when that will open up? Are we communicating with the people on Nancy Lane to let them know what is going on?

Mr. Newberry indicated that all of the discussion on that particular subject happened on the night when we considered the preliminary plat, so you didn’t get to see a lot of the discussion that took place in the minutes that were in the packet. We had a large group of those residents from the Town and Country Addition show up that night, and they brought up that subject. He had to go back and read the discussion that took place that night to remember exactly what was promised. What we are agreeing to do is leave that gate in place until some point in the future when Nancy Lane is improved so it would be able to handle the additional traffic. At some point in the future there will be a petition or the city will do some improvements to Nancy Lane, install curb and guttering and a new street. At that time the gate will come down and it will be a thru street to the subdivision.

Council Member Bannon asked if the homeowners would have to ask for the improvements or would the city automatically make them.

Mr. Newberry stated he doesn't think the owners out there will ever ask the city to improve the streets until such time they deteriorate to a point they need to be replaced. The city's policy in the past has been not to force those types of improvements. They made an agreement with the county to install that, and it's really just an asphalt mat.

Council Member Bannon clarified that what we are saying is that Nancy Lane will not be an emergency access for quite some time. They will go in on Emerson, hang a right, hang another right and there will be a dead end street there.

Mr. Newberry agreed.

Council Member Bannon asked if most of Reserve A is drainage, is it in a flood zone?

Mr. Newberry advised it is not in the flood zone but drainage is a big issue in this part of town.

Council Member Bannon stated if she is looking at the plat correctly there is a small triangle of access to both reserve A and reserve B, is that correct?

Mr. Newberry advised that was correct.

Council Member Bannon indicated there were concerns in the planning commission minutes about maintenance and mowing on those. They are far back and not visible. She understands it is supposed to be homeowner driven, but we also have some areas in town where the homeowners association no longer exists because they don't have anything else to maintain. This looks like it could get into the same situation. There is no homeowner's association park, there is no pool, there's no big entry or concrete wall to maintain so what you have are these two reserves where there is nothing else there. What is in place to ensure maintenance of this?

Mr. Newberry advised the restrictive covenant covers the responsibility of the homeowner's association to maintain those areas. As in all subdivisions now, we require language that says those areas will be maintained.

Council Member Bannon asked what happens if the homeowners association no longer exists. We have had some areas in town where that happens, especially when they don't have any other amenities to maintain.

Mr. Newberry indicated he is not sure what the city's position on that would be. We would ask them to maintain those areas.

Ms. Sexton stated that we have codes that say you have to mow the grass, so somebody's going to have to mow the grass. If a HOA decides that they are not responsible, then we will probably have to go through some proceedings to assess it to everybody out there. We had an HOA a

couple of years ago decide to go defunct and at that time we could not really figure out a way to undo that, they just went to the courthouse and did it. It is still a concern of ours but she doesn't know that we have found a way to address it in any proactive way other than most people tend to take care of their property and their responsibilities. It's not a problem we have very often but we haven't figured out a way yet to make that not a problem.

Council Member Bannon commented that she appreciates the larger lot sizes, once we do the setbacks this is looking pretty good. She hopes the builders take advantage to make a little wider house on there. She asked what the price range of the homes is.

Mr. Newberry advised he did not.

Council Member Horyna agreed with Mrs. Bannon's concerns about access to the retention ponds. In a lot of housing developments you find those common areas are shrinking to take up lot sizes. He wants to be sure these two reserves have access for proper maintenance. That was a big issue that came up at a recent REAP conference in Hutchinson.

Mr. Newberry advised the access is plenty wide enough to get back to those areas.

Council Member Meidinger agreed with Mrs. Bannon, when a homeowners association decides not to do it the city ends up doing it, is that correct?

Ms. Sexton advised they will be responsible as the owners and if they claim they don't have an HOA they will either as an owner of the property have to find a new owner of that property who would be responsible or we would just figure out a way to assess it to everybody who lives out there.

Council Member Meidinger asked if we should put that in the language this evening, that if the homeowners association does go broke then the 100 or so homes would be responsible for that maintenance, therefore there are no surprises.

Ms. Sexton advised the motion references the developer's agreement, so you don't need to change your motion tonight. We need to take another look at the developer's agreement and see if we can't beef up the language in that agreement.

Council Member Haynes agreed we need to take a hard look at that. If the homeowners association disbands, the people on Thorn Apple and Emerson will have a hard time justifying paying for something all the way across the subdivision. He would like to take a good look at that so we don't get ourselves in any kind of trouble if they disband and we decide to bill all the homeowners a certain percentage of the cost.

Council Member Bannon asked if it would cause any problems if we tabled this to get the verbiage correct in the developer's agreement.

Ms. Sexton suggested passing the motion because it says you are approving the developer's agreement. Unless you want to see the language we will get it as close as we can to what you are saying. We understand the concern.

Mayor Avello agrees with Mrs. Bannon and Mr. Haynes. In the subdivision he lives in, they are going through a hard time with the homeowners association and we don't know what we are going to do. He would like to see some strong language in something like this before we vote on it. He suggested tabling it.

MOTION: Bannon moved to table. Meidinger seconded.
VOTE: Motion carried 6-0, Nun and Warren absent.

REHABILITATION OF SANITARY SEWER LINES

Bud Newberry, City Planner presented the staff report.

Background:

- Each year the Wastewater Department identifies sections of the existing sanitary sewer system in need of rehabilitation. This rehabilitation is accomplished using a process called Cured in Place Piping (CIPP).
- Requests for quotations were submitted to contractors, and the following bids were received:

<u>Contractor</u>	<u>Bid</u>
Wildcat Construction Company, Inc., d/b/a Utility Maintenance Contractors	\$103,750
Insituform Technologies	\$119,500
SAK Construction	\$155,000

Financial/Sustainability Considerations:

- The 2009 Wastewater Budget includes funding for this project.

Legal Considerations:

- The City followed all applicable procedures in planning and soliciting bids for the project.

Policy Considerations:

- Wastewater staff does not have the equipment or expertise to complete this work.
- The Bid Board recommended approval of the low bid from Utility Maintenance Contractors, which has completed several similar projects in Derby and has submitted all required bonds and financial sureties for the project.

DISCUSSION:

Council Member Meidinger asked what the engineer's estimate was on this.

Mr. Newberry advised they don't do an engineer's estimate on this. It's a yearly thing and we know approximately what it's going to cost.

MOTION: Staats moved to authorize the City Manager to enter into an agreement with Wildcat Construction Company, Inc., d/b/a Utility Maintenance Contractors for rehabilitation of sanitary sewer lines in the amount of \$103,750. Horyna seconded.

VOTE: Motion carried 6-0, Nun and Warren absent.

COX NETWORKING AGREEMENT

Ted Austin, Director of Operations, presented the staff report.

Background:

- Late this summer we initiated discussions with COX and AT&T concerning providing services to the new corporate park, including the Public Works facility. This prompted a review of our current services.
- In September, COX advised that our current agreement for fiber services with a term ending date of 12-31-09 would not be renewed. For the last seven years they have provided “dark” fiber between our buildings, and we have purchased and maintained the equipment to “light” and connect the segments. We currently have gigabit connections between each building.
- COX no longer wishes to provide “dark” fiber, instead offering to provide complete connectivity solutions. COX reviewed our computer network and proposed a solution with three 10-megabit connections and two 1.5-megabit connections on a 60-month term. Costs for this solution are nearly triple the current rate for much slower connections.
- Given the tight time frame, our IT staff has researched several alternate solutions. We have talked to three additional vendors and put together ten scenarios that could be achieved by the 12-31 deadline. Staff has determined that the current COX proposal provides the most stable and secure network, in most cases with faster connections. We identified ways to keep network traffic minimized, provide for future connectivity goals, and maintain or improve performance. Additional internet connections are recommended to help in these areas.
- Neither COX nor our IT staffs currently have the ability to do detailed measurement of our speed requirements between buildings (this was not an issue with the current system). Staff is concerned that the connectivity rates proposed by COX will cause delays in our network and will probably require changes to our backup system, but given the budget impact, we are recommending the COX-proposed solution and internet connections to each building.
- We expect that speed requirements will continue to increase over time. Our IT staff will do more detailed analysis and put together recommendations for future budget cycles so that appropriate changes may be in place prior to the end of the 60-month term.

Financial/Sustainability Considerations:

- With the current arrangement the 60-month cost would be \$70,500. With the proposed solution, adding the internet connections and providing for changing the backup equipment, the estimated 60-month costs are \$226,700. Annual costs are increased approximately \$31,200.

- The 2010 budget will have to be amended to provide for the increase in expenditure. Funds will come from reserves or from savings in other utility areas.
- Future budgets will need to reflect the increase.

Legal Considerations:

- The City Attorney has reviewed the proposed agreements from COX and finds them acceptable. These agreements contain a cancellation clause to comply with the cash basis law.
- This clause requires that unrecovered construction costs incurred to provide this service be paid in the event of early termination by the City. During the first year, this cost is \$39,000 for each site (five sites) and reduces each year.

Policy Considerations:

- The City Council may approve entering into agreements for services. All applicable procedures have been followed.

DISCUSSION:

Council Member Bannon clarified that we are only counting one fire station.

Mr. Austin stated that we serve fire station #1 out of the police station. Its hard-wire connected so we don't have to have their connection to it. We have already done it.

Council Member Bannon asked what the construction is that we are giving up? What are they constructing if the fiber is already there?

Mr. Austin explained that they will have some changes in the way the fiber is configured to go through their equipment. They will provide the equipment at each building to put the light on the fiber to change the data into fiber data from wired data that's in our buildings and they have to construct the entire system from their north point to the new public works facility.

Council Member Bannon clarified that it's not a true cost per site; they are just rolling it up and dividing it.

Mr. Austin advised that was correct.

Council Member Bannon stated she assumes Cox was not willing to extend our current agreement for any length of time.

Mr. Austin advised that was correct.

Council Member Bannon indicated that unless she is missing something we don't have much choice but to go with this. Going from a gigabyte down to the megabytes you are talking about sounds a little dicey to her.

Mr. Austin stated they did calculations based upon the equipment we have and we did calculations as well. Without having analyzing software running on the system to see what's

actually going across he can't guarantee anything. We think it will work or he wouldn't recommend it, he just knows it's going to be tight. That's why we are looking for ways to get that load off of the system so it will continue to work.

Council Member Bannon asked if Cox has any allowance on their side for growth during the five years.

Mr. Austin indicated they can offer faster bandwidth if we need it but it costs more money.

Council Member Craig asked what impact this has on law enforcement. He gets antsy when we have to pay more money for less service. You are paying more and they have us in a trap. Five years is a long time to shake hands with someone. Is there anything less than that they would agree to? You don't know if this is going to cough or not when it's all said and done.

Mr. Austin indicated they offered a 36-month solution but the cost goes up. Essentially when they put that additional cost into their system they want to recoup it over the term of the agreement.

Council Member Craig advised this certainly seems to be something that is being held hostage.

Ms. Sexton indicated she understands the feeling but reminded Mr. Craig that Ted said he talked to other vendors and had a total of 10 different options. Some were with AT&T and a couple of other companies. This is the best financial option and the best service option of all the others. It just happens to be we are still with Cox. The competitors in this marketplace could not give us a better deal.

Council Member Craig stated that if it can't handle the traffic to move data from one point to the next, their next option is for us to pay more money to have a faster capability. Is that correct?

Mr. Austin indicated that is one option, we have others, but they cost money too.

Council Member Craig advised he gets real antsy when you have a rapid capability of transfer data and now you're going to have to downgrade instead of upgrade. He's a little concerned about that, especially when it comes to data that we transport from location to location.

Ms. Sexton advised it will be more taxing on Ted and his staff to manage the resource better. It's like money, if you have plenty you don't have to worry about how much things cost. If you have plenty of space in your pipe then you don't have to worry about it. If we get a smaller pipe we might have to change some backup systems, redirect some traffic and monitor things more closely.

Council Member Craig stated that if we are going to project to the future the data is only going to increase. The amount of data that is going to be used by the city as we grow will get larger and larger unless we find some incredible way to streamline things.

Mr. Austin indicated that is part of the hope that the transport systems become better.

Council Member Haynes agreed with the council concerns. It seems like we are getting less service and paying more money. That concerns him; it concerns him that Cox would take this position with us. He has always known them to be very customer service oriented and it concerns him they would take this position with the city and not consider extending our existing contract we have in order for us to look at something better. He does not like the idea of taking the capacity we have now that seems to be working and shrinking that down to where we could not have any capacity, computer failures, loss of information for more money. He encouraged Cox to help us out, this really troubles him. City staff has worked tirelessly to get to this point and he is very disappointed with Cox. If this is something we have to do he would like to see a shorter contract and he definitely would like to see some different avenues in going with a different company. If we are going to be treated this way, how long have we had service with Cox?

Mr. Austin advised we have had TV service since they came to town in the early 90's. We have had both AT&T and Cox internet through the city and have had this fiber arrangement for about 7 years.

Council Member Haynes stated they have had a customer for that long and they are backing us into a corner. They are putting us in a position to where even if we have to go with a five-year contract, after five years we are definitely going to look somewhere else. He doesn't know if anyone from Cox is out there listening, but this is not a good thing for the city or the people of Derby. We go from \$70,000 to \$226,000, that's three times more and it's not good business. You may have some short-term business, but long term that's not good and he doesn't like this at all.

Council Member Meidinger asked if in a couple of years Cox gets new communications, do we have to pay for that. Something they might come up with that would be more capable of handling information we need, do they take that into consideration without charging us?

Mr. Austin indicated this agreement is this agreement. They will provide this service for 60 months, and it won't change unless we both agree to it. There is wording in there that if they wanted to offer some new service that we could look at that.

Council Member Meidinger asked what the next cost would be if this doesn't work.

Mr. Austin advised it depends on what portion doesn't work. It's not like it all won't work, we will have trouble somewhere between city hall and PD or backups. We will just have to see what that is. He is pretty confident.

Council Member Bannon indicated she doesn't feel the city has an option at this point. We have to maintain our services and this isn't anything that makes the council happy but sometimes it is what it is.

MOTION: Bannon moved to authorize the City Manager to enter into a 60-month agreement with COXCom, Inc. to provide networking services between

five city buildings and provide internet service to each of those buildings, and to make necessary changes in backup and network equipment. Horyna seconded.

Council Member Craig asked if there were some type of performance period for the transition from what we are doing now and what they will be doing.

Mr. Austin indicated there have been preliminary discussions of us being able to function as we switch over and they know that. One good thing they did for us, if the backup at the fire station does not work out then he won't need that fast speed at the fire station because the only thing we have is connectivity to the fire program, and they will have internet. If that doesn't work we can reduce that connection which will save us some money there on that speed which we will have to spend on the additional back-up equipment. So they have in that sense tried to work with us. We will have to work on phasing it in between buildings so we can continue to operate. They know that's a requirement.

Mayor Avello indicated he deals with this everyday, that's the face of the world today. You pay for what you are going to get.

VOTE: Motion carried 6-0, Nun and Warren absent.

CONSENT AGENDA

Kathy Sexton, City Manager presented the consent agenda.

Issuance of Cereal Malt Beverage Licenses

Background:

- Vendors of cereal malt beverages in the City are required to be licensed by the City.
- Twelve applications for cereal malt beverage licenses have been received for calendar year 2010. The names of the businesses and managers are listed in Attachment A to this report.
- Two of the applicants are still under review by the Police Chief for compliance with city ordinances, and it is requested that those applications be considered subject to completion of staff review.
- If a business does not receive a new license on or before January 1, 2009, that business must cease sales of beer on December 31.

Legal Considerations:

- City ordinances establish qualifications for cereal malt beverage licenses.
- A license may not be issued until all qualifications have been met.

Policy Considerations:

- When a cereal malt beverage license applicant meets all qualifications established by ordinance, the City is obligated to issue the license.
- The Council has established the practice of authorizing issuance of cereal malt beverage licenses based upon applications submitted but not yet fully reviewed,

but issuance is conditioned upon staff's determination that all requirements have been met.

Recommendation:

- Authorize issuance of cereal malt beverage licenses for the year 2010 to the applicants listed in Attachment A subject to a finding by the Police Chief that such applicants have met all established requirements therefore.

Assessment Ordinance for Mowing and Trash Removal

Background:

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

Financial Considerations:

- The costs incurred in connection with the parcels to be assessed total \$867.50.

Legal Considerations:

- City ordinance authorizes staff to mow properties with excessively tall vegetation and remove trash when owners fail to do so.
- City staff seeks to collect mowing charges through informal efforts so as to avoid the need for formal remedies.
- Charges not timely paid may be assessed against the properties on which the work was performed.

Policy Considerations:

- City ordinance has established the policy that requires maintenance of grass and weeds not to exceed the height of ten inches to protect the health and safety of citizens.
- Ordinances are brought before the City Council for action as soon as possible so that recovery of the city's costs can occur from the owner of record at the time of assessment.

Recommendation:

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

ORDINANCE NO. 2002

AN ORDINANCE LEVYING A SPECIAL ASSESSMENT UPON CERTAIN REAL PROPERTY HEREINAFTER DESCRIBED AS THE COSTS INCURRED BY THE CITY IN CUTTING WEEDS, REMOVING DEBRIS AND OTHERWISE ABATING NUISANCES FOUND TO EXIST THEREON.

Resolution Establishing City Limits

Background:

- As mandated by State Law, the Council must adopt a Resolution establishing the official City limit boundary. The boundaries are amended annually to include lands annexed into the City. Annexations completed in 2009 include areas that have been platted as Wolfes Rock Road Addition and Dove Hollow Addition and the area presently being platted as Stone Creek 5th Addition.

- The boundary description of the new City Limits has been modified accordingly.

Financial Considerations/Sustainability Considerations:

- This resolution has no financial impact on the City. The City Council has previously considered the financial impacts of each individual annexation already approved.

Legal Considerations:

- Adoption of the annual boundary Resolution is mandated by State Law.

Recommendations:

- Adopt Resolution establishing the official corporate limits of the City of Derby.

RESOLUTION NO. 41-2009

A RESOLUTION DECLARING, ESTABLISHING AND DEFINING THE CITY LIMITS AND BOUNDARIES OF THE CITY OF DERBY, KANSAS, AND REPEALING ORDINANCES INCONSISTENT OR IN CONFLICT WITH THE TERMS OF THIS RESOLUTION.

Proposed Respread Agreement – Derby Marketplace 3rd Addition

Background:

- Derby Marketplace 3rd Addition is a replat of the original Derby Downs Addition at the northeast corner of Meadowlark and Rock Road.
- Several infrastructure projects (1 street project, 1 storm sewer, 3 phases of sanitary sewer, and 3 phases of water lines) were constructed to accommodate the commercial developments (Dillon’s, one multi-tenant building) on the Derby Downs lots and the developments further north.
- Special assessments for those infrastructure projects were assessed to the various lots in Derby Downs Addition by ordinance, consistent with the resolutions approved by the City Council.
- With the approval of Derby Marketplace 3rd (replat of Derby Downs), the Sedgwick County Clerk may re-distribute the Derby Downs special assessments to the newly created Derby Marketplace 3rd Addition lots on a square footage basis. This process involves extensive calculations and multiple letters of explanation and could lead to errors or misallocation of the specials.
- As an option, the County Clerk has requested and the developers have approved, a legal document re-distributing these specials on a fractional basis rather than the normal square footage basis. This is commonly called a “respread agreement”.
- The respread agreement is being presented to the City Council for consideration as a courtesy to the Sedgwick County Clerk’s office. Approval of the respread agreement will simplify the preparation of tax statements by their staff.
- The respread agreement has been prepared and submitted for City Council approval.

Financial Considerations/Sustainability Considerations:

- There is no financial impact to the City. The amount of special assessments collected will be the same whether on the square footage basis or the fractional basis.

Legal Considerations:

- The proposed respread agreement will accomplish the same objective as would an ordinance, but with substantially less work.

Recommendation:

- Approve the re-distribution of existing special assessments from Derby Downs Addition to Derby Marketplace 3rd Addition in accordance with the respread agreement presented.

MOTION: Horyna moved to approve Consent Agenda as presented. Staats seconded.

VOTE: Motion carried 6-0, Nun and Warren absent.

EXECUTIVE SESSION

MOTION: Staats moved to recess to executive session at 8:35 p.m. following a ten minute recess for 45 minutes to consider personnel matters of non-elected personnel, specifically the employment agreement of the city manager for 2010. Craig seconded.

VOTE: Motion carried 6-0, Nun and Warren absent.

Council Members Warren and Nun and City Clerk Jean Epperson returned during the executive session.

MOTION: Staats moved to extend the executive session for 15 minutes at 9:20 p.m. Nun seconded.

VOTE: Motion carried 6-2, Bannon and Meidinger abstain.

The council returned at 9:43 p.m. Council Member Staats indicated no binding action was taken.

Council Member Warren gave an update of the DRC meeting. They have asked that we put together a committee of two council members and a staff member to meet with a couple of DRC Board Members and a member of the DRC staff to finish negotiations on the Rock River Rapids management agreement. We are close and opened up some lines of communication and got some misunderstandings out of the way, so hopefully we can have that resolved close to the end of the year.

ADJOURNMENT:

MOTION: Craig moved to adjourn at 9:45 p.m. Haynes seconded.

VOTE: Motion carried 8-0.

ATTEST:

Dion P. Avello, Mayor

Jean Epperson, City Clerk