

**APPROVED  
REGULAR COUNCIL MEETING  
December 9, 2008  
6:30 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I  
WARD II  
WARD III  
WARD IV

COUNCIL MEMBERS PRESENT:

Jim Craig, Jim Meidinger  
Vaughn Nun, Heath Horyna  
Chuck Warren, Cheryl Bannon  
Mark Staats, George Arnold

COUNCIL MEMBERS ABSENT:

Flag salute was led by Council President George Arnold.

The invocation was led by Pastor Paul Wilke, Woodlawn United Methodist Church.

**CONSIDERATION OF  
MINUTES**

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

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

VOTE: Motion carried 7-1, Meidinger abstain.

**PUBLIC FORUM**

**Sterling Schmidt**, stated that he recently received the Derby Horizon. He read about a plan that is now being considered by the City Council to issue a trash franchise throughout our town. The council's objective is to ensure that a curb side recycling and enhanced trash pick up services are offered in Derby beginning around June, 2009. He thinks the idea is fine but has serious reservations about the details of the implementation. The article states that the city will follow the lead of most cities in the U.S. and issue a franchise to ensure that prices are fair and consistent and the quality standards are maintained. It shouldn't make much difference what other cities do as long as we do the right thing. If any government considers it necessary to ensure prices are fair and consistent, where does this action end? Shouldn't they first ensure we pay fair prices for our food or fuel, rent or mortgage? Not in a free country. He prefers to have the liberty to negotiate price, shop elsewhere or if need be provide these things on his own. Also, in the article, concerning enhanced trash service, one of the goals is to have an option for at least two sizes of trash carts, with the smaller one offered at a lower cost. On this point he agrees, but could we not

work together with existing trash companies using public requests rather than mandate it with a law? He thinks the true goal of a conscientious government is to see just how little regulation is needed to maintain civilization in society; otherwise the people suffer losses to their freedom and liberty. On the topic of working together with trash companies instead of passing a new law, concerns were raised about the wear and tear costs to our streets by heavy trash trucks. He has seen various trucks make 3-point turns in intersections as part of their routes and agree this causes excessive wear. Could we not request that they amend their routes and circle the block instead? Overall, he thinks little reduction in street wear could be realized if only one company handled the services as the same number of households will still require service. Another point mentioned in the newsletter article, referring to the currently varying service rates says “such variation in rates is testament to the efficiency to be gained.” To him, let’s consider efficiency, wouldn’t it be much more efficient if we all drove the same make, model and color of car or had the same clothes in our closets? What about freedom and liberty? He attended the last council meeting on November 25<sup>th</sup> and obtained still more information. The council appointed six volunteers to an advisory board some months ago during which time the general public had the opportunity to give input as to any proposed plan. He agrees this provides plenty of time but wishes he had known sooner about what was going on. He is speaking tonight to voice his opinion on an issue that he thinks deserves serious attention. Our nation is too strong and wise to allow our freedom and liberty to be taken away all at one time. If we are not vigilant, little losses such as this could add up over time, sadly, perhaps unnoticed by many. Ronald Regan once said, at any one time freedom is only one generation away from extinction. Loosing the freedom to participate in the free market for our trash service is not a goal he thinks we should pursue.

**Mike Warner** is glad the city is finally addressing the trash and recycling issue. He appreciates the work the committee has done on researching and providing solid input for the council’s decision. Arguments that free enterprise is best or that we owe the trash companies a living or that all the companies have a right to his trash don’t make sense to him. He hopes the council ignores those arguments when the council is making their decision. Today, three different trash companies drove into his cul-de-sac with four houses to pick up trash, that is really inefficient and it costs him money. In the five years he has lived in his house in the Timberleaf Addition his trash costs have gone from \$32.00 to \$45.00 a quarter and he thinks that is kind of excessive. His company added a fuel surcharge this year when the fuel prices were going up which he thought was reasonable, except now that fuel is back to \$1.50 they are still charging the fuel surcharge. That’s just additional profit for them. We are glad you are considering the two sizes of carts and thinks that’s a good idea. He and his wife put out their cart once every three weeks because they don’t generate as much trash as his neighbor who puts out his cart every week and always has 2-3 extra bags. The most important thing he thinks that is being considered is the recycling. The city should do everything possible to reduce junk going into the landfill and to reduce the waste stream. His family has been actively involved in recycling since his daughter was in Girl Scouts. He does not see why everybody does not do it. They are thankful for the Dillon’s recycling center and use it every week. They also recycle cardboard, batteries and electrical items downtown in Wichita. He is also stockpiling glass until he can find somebody who’s willing to take that as well because none of that belongs in the landfill. Recycling is easy and he encourages the city to do more to educate people on the benefits and processes that make it as easy as possible. The curb

side recycling and the co-mingling of recyclable materials will also help in that regard. He has a bin in his kitchen and a trash can next to his computer, he takes that and puts it in recycling boxes a couple of times a week in his garage and once every two weeks it goes to the Dillon's recycling bins. Bi-weekly recycling is going to be a good idea and he encourages the city to go ahead and do it.

**Mayor Avello** asked when the council would discuss this again.

**Kathy Sexton**, City Manager advised she did not have a specific date but we need to issue the request for proposals, give the companies sixty days or so to get their documents together. She thinks it will be back to the council in March.

**Council Member Bannon** advised she has a friend that was recently diagnosed with breast cancer. Ladies, the best gift you can give to your families and children is to get your yearly checkup. Men, get your checkups also. The best thing we can do for everyone is our health and early detection is best.

**Council Member Warren** asked if there was anyone else in the audience that wanted to speak about the trash issue.

**Jerry Lucas** is in favor of the recycling and thinks it's an excellent idea. We are probably 5-10 years behind where we should be on it. He is against the franchise for the same reasons as the previous speaker. It is his money, his decision as to who services his trash. If the city wished to franchise with Cox Cable, for example, he still has an alternative to go with satellite or the old rabbit ears. With the trash franchise he doesn't have that option. If he doesn't like the service the franchisee provides, how does he hire them? It's his money and unless you want to pay his bill, let him make the decision. It's one of his basic freedoms of choice in this country. He is a retired Army reserve officer and has served in two combat zones fighting for our choices. This is a basic choice that he feels he has the right and the responsibility to make.

**Council Member Horyna** reminded everyone to be careful on the roads today more so than others because of the weather conditions. The Kansas Department of Transportation website, [www.kdot.gov](http://www.kdot.gov) provides a link to find out road conditions. If you don't have access to the internet you can access road conditions by dialing 511 on your phone.

**Ms. Sexton** commended Communities in Schools and Operation Holiday for their toy-a-thon they put on last Friday. They collected 2,871 toys, which was better than last years first annual toy-a-thon event. Their purpose is to make sure a toy or gift goes to each child in the Derby school district who would otherwise not have a gift for Christmas. She thanked Carla Lewallen and Shana White who co-chaired that operation along with city employee Tamie Snow. She gave an update on the recycling project that was presented at the last meeting. She was informed yesterday that information she had been given a month ago by the local material processing facility has changed. In order to have a competitive proposal process for recycling, which is what we are trying to have, it's imperative that once they collect our recyclables that there is a place to take it. With the economy the past couple of months the commodities markets have changed a lot. The

latest numbers are that plastic bottles have fallen from 25 cents to 2 cents a pound. Aluminum cans have dropped nearly half to about 40 cents a pound and scrap metal fell from \$525 a gross ton to about \$100. The person she talked to at International Paper, which is where most of the haulers would take the recyclables to be sorted and processed, last month said he could do a single stream recycling. We talked last meeting about putting out one cart with the paper, plastic and cans combined and they would take it away, the simplest way to make curbside recycling. Now, that has changed to dual stream instead of single stream. The local people that would take the collected items would like all the paper stuff in one container and all the cans and bottles in a different container. Instead of putting in our RFP minimum required, single stream, we would have to put minimum required dual stream. By the time this comes out it could be that the markets have recovered and they are going to be able to do single stream and that would be great, we obviously prefer single stream but she wanted the council to know that has changed and is really beyond anyone's control. She informed the advisory board this morning and everybody is kind of weighing in on the matter via e-mail. These will not be bids, they will be proposals so each company will put their best foot forward and when we read the proposals we will be able to get a sense of what the best recommendation to the council will be in March.

**Council Member Craig** advised the tree lighting event was a huge success and thanked everyone who was involved.

**Mayor Avello** mentioned the vandalism at the cemetery again. If anyone notices anyone there at night that seems suspicious, please call the police.

**ADOPTION OF UNIFORM  
PUBLIC OFFENSE CODE,  
2008 ADDITION**

**Doug Chambers**, Interim Police Chief presented the staff report.

**Background:**

- The City of Derby regularly adopts revisions to the Uniform Public Offense Code (UPOC) published annually by the League of Kansas Municipalities (LKM).
- The UPOC is a uniform code derived from Kansas statutes and ordinances commonly adopted by other municipalities in Kansas.
- Proposed local amendments have been drafted by the City Attorney in cooperation with the police department to tailor specific sections to local needs.
- The UPOC has been reviewed by the Ordinance Review Advisory Board, which recommends its adoption by the City Council.

**Financial Considerations:**

- None.

**Legal Considerations:**

- The 2007 edition of the UPOC was passed by Derby City Council October 23, 2007.
- The 2008 Edition of the UPOC includes revisions of specific sections to remain current with Kansas State Statutes.

**Policy Considerations:**

- Adoption of the 2008 UPOC (with amendments) would maintain Derby’s compliance with applicable Kansas statutes while also addressing specific local concerns.
- Changes in the Uniform Public Offense Code for 2008 include –
  - Section 1.1 -- Definitions -- amended to remove stainless steel, inclusion of which was a mistake in the 2007 edition of the UPOC.
  - Section 3.8.1 -- Violation of protective order –amended to make clear that an attorney representing a party to a civil or criminal proceeding may contact a protected party for purposes related to such proceeding.
  - Section 6.2 – Intent to permanently deprive – amended to include failure to return a rented vehicle under specific conditions.
  - Section 6.5 – Criminal deprivation of property – limits prosecution for this offense in municipal court to first and second offenses.
  - Section 9.11 – Funeral picketing – prohibits (1) picketing within 150 feet of any entrance to any cemetery, church, mortuary, or other location where a funeral is conducted, within one hour prior to the scheduled commencement of a funeral, during a funeral, or within two hours following completion of a funeral; (2) obstructing or hindering entry to or exit from a funeral; and (3) impeding vehicles which are part of a funeral procession. This change reflects a newly adopted statute that enacts statewide restrictions virtually identical to those previously adopted by the City Council.
  - Section 10.10 – Defacing identification marks of a firearm – deleted. This offense can still be prosecuted as a felony in the district court.
- Local amendments included in the ordinance, relating to littering and discharge of weapons, carry over from past years.
- Section 6.8 Littering has been revised to include a prohibition on allowing fireworks debris to remain on a public roadway or other public property.

ORDINANCE NO. 1967

AN ORDINANCE AMENDING CHAPTER 9.01 OF THE DERBY MUNICIPAL CODE, ADOPTING BY REFERENCE THE PROVISIONS OF THE 2008 UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES, TOGETHER WITH CERTAIN AMENDMENTS THERETO; AND REPEALING ORIGINAL CHAPTER 9.01 OF SAID CODE.

DISCUSSION:

**Council Member Craig** asked if there is a time criteria on cleaning up litter from fireworks.

**Mr. Chambers** clarified that it indicates debris must be removed promptly from the property. That will leave some open interpretation to determine at what point it becomes a problem. Commonly we will see people shooting fireworks late into the night and might leave things overnight and clean it up in the morning. In his opinion that would be promptly.

MOTION: Craig moved to adopt the 2008 Edition of the Uniform Public Offense Code, as amended. Horyna seconded.

VOTE: Motion carried 8-0.

## **2008 EDITION OF THE STANDARD TRAFFIC ORDINANCE**

**Doug Chambers**, Interim Police Chief presented the staff report.

### **Background:**

- The City of Derby regularly adopts revisions to the Standard Traffic Ordinance (STO) published annually by the League of Kansas Municipalities (LKM).
- The STO is a uniform code derived from Kansas statutes and ordinances commonly adopted by other municipalities in Kansas.
- No new local amendments are proposed this year. The ordinance includes only those local amendments previously approved by the City Council.
- The STO has been reviewed by the Ordinance Review Advisory Board, which recommends its adoption by the City Council.

### **Financial Considerations:**

- A slight financial gain to the City is expected from adopting the state's increased re-instatement fee (from \$50 to \$59).
- The state's new provision to double fines for speeding in construction and school zones will not affect our revenues because we have been doubling fines for years in these zones under the authority of the municipal court judge.

### **Legal Considerations:**

- The 2007 edition of the STO was adopted by Derby City Council on October 23, 2007.
- The 2008 Edition of the STO includes revisions of specific sections to remain current with Kansas State Statutes.

### **Policy Considerations:**

- Adoption of the 2008 Edition of the STO with amendments would maintain Derby's compliance with applicable Kansas statutes while also addressing specific local concerns.
- The state's changes in Standard Traffic Ordinance for 2008 include –
  - Section 1 – Definitions – includes a definition of “micro utility truck” (not to be confused with a work site utility vehicle). Staff recommends maintaining consistency with state law at this time, but it is likely that the Legislature will further revise statutes relating to such vehicles in 2009.
  - Section 114.2 – Unlawful operation of a micro utility truck – prohibits operation on any public street or highway except for the purpose of crossing, unless equipped with required safety equipment.
  - Section 201.1 – Failure to comply with traffic citation – increases the re-instatement fee from \$50 to \$59.

- Section 204 – Fines Doubled in Construction and School Zones – adds a provision doubling fines for speeding infractions in school zones.

ORDINANCE NO. 1968

AN ORDINANCE AMENDING §§10.04.010 AND 10.04.020 OF THE DERBY MUNICIPAL CODE, ADOPTING BY REFERENCE THE PROVISIONS OF THE 2008 STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES, TOGETHER WITH CERTAIN AMENDMENTS THERETO; AND REPEALING ORIGINAL §10.04.010 AND 10.04.020 OF SAID CODE.

DISCUSSION:

**Council Member Horyna** asked when we hold the traffic safety education course.

**Mr. Chambers** advised it is held when they get a group of kids that are interested in taking it. It tends to go in cycles but when we have 2-4 interested in taking it we get a class scheduled.

**Council Member Horyna** asked about the fee for the course, what is a reasonable fee?

**Mr. Chambers** indicated it is \$5.00 at this point, which is just enough to cover the materials.

**Council Member Warren** asked about doubling the fines in school zones, would it be difficult to post that the fines double in the hopes that people would slow down when they realize they would be looking at a healthy fine.

**Mr. Chambers** stated he does not think there would be anything to prevent us from doing that.

**Ms. Sexton** indicated she would check into it but does not see any reason we couldn't do it.

**Council Member Warren** stated he is less interested in getting double the money and more interested in getting people to slow down.

MOTION: Warren moved to adopt the 2008 Edition of the Standard Traffic Ordinance, as amended. Staats seconded.

**Council Member Bannon** asked if we bought some sort of small utility vehicle so we could get on sidewalks for city activities.

**Ms. Sexton** advised we have a couple of gators.

**Council Member Bannon** advised she was thinking of something other than a gator.

**Ms. Sexton** indicated she was not aware of anything other than the gators.

VOTE: Motion carried 8-0.

## **FIREWORKS ORDINANCE UPDATE**

**Brad Smith**, Fire Chief presented the staff report.

### **Background:**

- The fireworks ordinance was last updated and approved by the City Council on March 25, 2008. The current ordinance addresses both legal use of fireworks and the guidelines for sales and operations of Fireworks stands.
- Staff routinely reviews existing ordinances to ensure that they are accomplishing the City's needs. Recommended changes to the current ordinance include the following:
  - Instead of prohibiting sale of fireworks within 50 feet of any inhabited structure (current law), under the new ordinance, such sale would be prohibited within 50 feet of commercial or industrial structures and within 100 feet of residential structures.
  - Discharge of fireworks would be allowed on residential streets, with several important stipulations:
    - No discharge of fireworks on any state highway or street designated as an arterial or collector street.
    - No discharge from, into, out of, under, or in the direction of a car or other vehicle whether moving or stationary.
    - No discharge in a manner that impedes vehicle or pedestrian traffic.
  - No discharge of fireworks on other publicly-owned property, to include parks and property owned by other public agencies, without a permit.

### **Financial Considerations:**

- The proposed ordinance is not expected to have a financial effect on the City's permit revenue from fireworks stands.

### **Legal Considerations:**

- Regulation of sale, possession, and use of fireworks is within the general police power of the City.
- Chapter 5.36 of the Derby Municipal Code outlines the fireworks regulations.

### **Policy Considerations:**

- Given the density of residential neighborhoods and the propensity of people to discharge fireworks in the street out of concern for safety of homes and other private property, use of the street for this purpose appears to be the best possible solution.
- Proposed changes were presented to the Ordinance Review Advisory Board (ORAB) for its consideration on November 18, 2008. ORAB members asked some good questions and then recommended the changes, as presented.
- Adoption of the recommended changes to the fireworks ordinance supports the City's values of Safety and Stability as noted in the strategic plan: *"Good planning ensures stability in codes and community standards..."*

ORDINANCE NO. 1969

AN ORDINANCE AMENDING SECTION 5.36.120 OF THE DERBY MUNICIPAL CODE, REGULATING STORAGE, SALE AND DISCHARGE OF FIREWORKS WITHIN THE CITY; AUTHORIZING POLICE OFFICERS AND CODE ENFORCEMENT OFFICERS TO ENFORCE CHAPTER 5.36 OF SAID CODE; AND REPEALING ORIGINAL SECTIONS 5.36.110 AND 5.36.120 OF SAID CODE.

DISCUSSION:

**Council Member Craig** asked about discharge near vehicles and asked if that was going to cause us some problems.

**Chief Smith** advised he felt like it would cause us problems if we did not put that wording in there and that's why it was worded that way. If we get complaints about impeding traffic we have the ability to visit with those people. The Derby Police Department has been pretty good with visiting with individuals and they usually conform and do what they are told to do and follow the ordinance.

**Council Member Meidinger** asked if the park exclusion is something new.

**Chief Smith** advised it is new. We haven't in the last couple of years permitted fireworks in the parks mainly because of the show put on at High Park. We do end up with individuals who come to the park that do not live in Derby. This clarifies what we would like to be able to do.

MOTION: Warren moved to adopt the recommended fireworks ordinance as presented. Arnold seconded.

VOTE: Motion carried 8-0.

**BIDS FOR ROCK ROAD  
BRIDGE OVER SPRING  
CREEK EROSION  
CONTROL  
IMPROVEMENTS**

**Dan Squires**, City Engineer presented the staff report.

**Background:**

- A bid opening for the construction of Erosion Control Improvements for the Rock Road Bridge over Spring Creek was conducted on Tuesday, November 25, 2008 at 2:00 p.m.
- Bids were submitted by contractors after advertisement in the appropriate publications.
- The following bids were received by the City Engineer's office and witnessed by the City Clerk:

<u>Contractor</u>	<u>Bid</u>
Dondlinger & Sons	\$143,418
Wildcat Construction	\$123,067
<b>Engineer's Estimate*</b>	<b>\$152,600</b>

**The low bid of Wildcat Construction, Inc. is recommended for approval.**

\*Engineers estimate prepared by PB Americas, Inc.

**Financial Considerations:**

- The approved 2008 Budget includes \$160,000 for design and construction of the project.
- Acceptance of the recommended bid will result in a total project cost for design and construction of \$139,067 (\$16,000 design + \$123,067 construction = \$139,067).

**Legal Considerations:**

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

**Policy Considerations:**

- Wildcat Construction has submitted all required bonds and financial sureties for the project.
- Upon approval of the bid, staff will prepare the required contract documents.

**DISCUSSION:**

**Council Member Arnold** stated that in the last six months or so he has had half a dozen calls about huge trees that have fallen in Spring Creek. With the up and coming development of some new housing in that area he is concerned about the residents that live on Spring Creek. Is there any consideration for them?

**Mr. Squires** explained that there is an erosion issue underneath the bridge on Rock Road. The average citizen driving on Rock Road does not see it but if you look at the way that bridge is constructed the water flows off both sides, down a drip line and down the bridge abutments into the creek. There are crevices 8-10 feet deep where over the last 10-12 years that water has eroded the embankment away. This project actually fixes that, it's not a debris removal project, it's dealing with an erosion that will eventually cause us more significant problems with that bridge. As far as trees in the creeks, typically our public works department does have people in limited situations who will make efforts to remove log jams and debris that has accumulated in the creek if it's a problem. That is subject a lot of times to being able to get in there and do the work. Sometimes access is an issue.

**Ms. Sexton** requested that if there are calls about that specific location to let her know what they are. There has been one person she has talked to that might be one of the same people that has contacted Mr. Arnold. That particular part of the creek was not in the city, it was private property. The city will not come out and clean out everybody's creeks if they are private property or something inaccessible that we can't get to. If there are situations where we can help, we will, but not if it's in the county.

**Council Member Craig** asked if this is a similar situation to what happened on Brookforest, where it eroded.

**Mr. Squires** explained that Brookforest was a culvert.

**Council Member Craig** asked if this has been inspected by a certified person.

**Mr. Squires** advised it might be a good time to do public education on bridge inspection in Derby. We have our bridges, as we are required to statutorily, inspected by a qualified, certified bridge inspector every other year. The erosion on this instance was noted in our 2007 bridge inspection as something we should address. Our bridges in Derby are not fracture critical and are in good shape. We have kept up with our inspections over time and this is us addressing something that was shown in those inspections.

**Ms. Sexton** advised that this bridge is safe. This is a proactive project that needs to be done to ensure it continues to be safe. She doesn't want anyone to think this is a safety hazard, there is no safety hazard.

**MOTION:** Warren moved to accept the bid in the amount of \$123,067 and authorize execution of a contract with Wildcat Construction for construction of Erosion Control Improvements for the Rock Road Bridge over Spring Creek. Craig seconded.

**VOTE:** Motion carried 8-0.

## **LIBRARY HVAC CONTROLS**

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

### **Background:**

- Our Police and Court building is the first one with HVAC controls (Heating, Ventilation, and Air Conditioning). As we encountered problems with the controls originally installed in the building, which had limited capabilities, we decided to work with Trimech, Inc. to improve operations and efficiencies. Trimech is our vendor for security controls and a provider of building controls as well.
- The project evolved into our current KMC controls system, which includes a computer server and software which are capable of serving additional buildings. Since the City has invested in this system, it makes financial and operational sense to use this system as buildings are added to our inventory so that controls are consistent throughout our buildings, and Trimech personnel are familiar with our buildings and personnel.
- Last summer, Trimech provided a quote to equip the new Library with a system similar to our Police and Court building that will tie directly into our current software and equipment. This was prepared as the building was being bid (for budgeting purposes), so there may be minor adjustments to provide for actual installations.
- Some provision for inflation was built into the quote. However, Trimech has advised that a 6-7% increase is coming for orders after December 20, with the probability of another price increase in the Spring.

- We expected to start acquiring this equipment early next year. It seems prudent at this point to approve the quote and order the primary equipment (the first eight lines on the quote plus possibly a couple below) to avoid the price increase.

**Financial Considerations:**

- This item will be paid from the budget to build the Library.

**Legal Considerations:**

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

**Policy Considerations:**

- The Bid Board has considered and approved this item.

MOTION: Bannon moved to approve the quote from Trimech in the amount of \$48,320.43. Arnold seconded.

**Council Member Craig** asked if this is controlled in the building or remotely someplace else.

**Mr. Austin** advised it can be controlled anywhere through the network. The server sits in city hall and controls the police department building and will control the new building and potentially the remodel of the south end of city hall.

**Council Member Craig** asked if they can change it or does it have to be changed here?

**Mr. Austin** advised it is our choice. In some of the rooms like the individual offices it will probably be a thermostat on the wall. In the big open areas we will probably just control that on a schedule through the computer.

VOTE: Motion carried 8-0.

**FINAL PLAT OF  
WOLFES ROCK ROAD  
ADDITION**

**Bud Newberry**, City Planner presented the staff report.

**Background:**

- This property is approximately 10.8 acres in size and is located north of the Derby Marketplace development and north of Phillips Rock Road Addition. It is adjacent to the Derby City limits on the west side but has not yet been annexed into Derby.
- Properties to the north of this parcel are undeveloped with either county zoning or Derby R-1 zoning. Most of these parcels are still in the county. A parcel (approximately 40 acres) is directly east of this location, which is still in the county. Across Rock Road to the west are undeveloped parcels of property with B-2 and B-3 zoning, platted in The Oaks Addition.

- The subject property was re-zoned from R-1 to B-3 and B-2 by recommendation of the Planning Commission on December 6, 2007, and approval of the City Council on January 8, 2008. This action was subject to the property being annexed and platted.
- Platting this parcel will result in the previously approved B-2 and B-3 zoning becoming permanent. This action will cause the existing structures located on the newly created Lot 1 to become a legal non-conforming use, which is allowed to remain per the City of Derby zoning regulations.
- The Final Plat for this addition was approved by the Planning Commission on November 6, 2008 by a vote of 8-0.

**Financial Considerations:**

- Development of this property over the next few years should provide a positive effect on the City’s tax base.
- As part of the platting process, and as required by the Subdivision Regulations, the developer has submitted petitions as guarantees for construction of required infrastructure improvements (sanitary sewer, water, streets, decel lane, drainage, and sidewalks) totaling \$339,000. Of that amount, \$302,880 will be paid by the Benefit District and \$36,120 by the City-At-Large, based on the City’s policy for payment of oversizing of collector streets and arterial sidewalks.

**Legal Considerations:**

- Pursuant to Kansas State Law and the City’s Subdivision Regulations, the Planning Commission has approved this plat.

**Policy Considerations:**

- The applicant has complied with all requirements of the Subdivision Regulations including the provision of a Developer’s Agreement and a Restrictive Covenant for the use of Reserves.
- Upon Council’s approval of the petitions as submitted, Staff will submit them to Gilmore & Bell to prepare the corresponding resolutions for Council consideration in the very near future.
- Upon approval of the plat, the ordinance for changing the zoning will be published, resulting in the zoning becoming official.
- The developer has submitted a request for consent annexation associated with this plat. Upon approval, staff will publish the ordinance for the annexation.

ORDINANCE NO. 1970

AN ORDINANCE REZONING REAL PROPERTY LOCATED WITHIN THE CITY OF DERBY, KANSAS FROM “R-1” SINGLE FAMILY RESIDENTIAL DISTRICT TO “B-3” NEIGHBORHOOD BUSINESS DISTRICT AND “B-2” GENERAL BUSINESS DISTRICT, RESPECTIVELY; AND AMENDING THE OFFICIAL ZONING MAP OR MAPS OF THE CITY TO REFLECT SUCH AMENDMENT, ALL PURSUANT TO THE ZONING REGULATIONS OF THE CITY.

ORDINANCE NO. 1971  
AN ORDINANCE INCLUDING AND INCORPORATING CERTAIN LAND WITHIN  
THE LIMITS AND BOUNDARIES OF THE CITY OF DERBY, KANSAS.

DISCUSSION:

**Council Member Bannon** asked if Reserve A is for drainage.

**Mr. Newberry** advised that was correct.

**Council Member Bannon** asked what the properties on the north and south are zoned.

**Mr. Newberry** advised the property north of this location hasn't been zoned yet, it's still zoned rural residential in the county. The property directly south is all B-3.

**Council Member Craig** asked what street it is that the city is paying for.

**Mr. Newberry** advised it is the street on the east side. We are putting a street down the east end of the properties that will be a collector street. That issue actually came up last meeting when we presented the Phillips Rock Road plat. The location of that collector street was placed there by the comprehensive plan. The reason for the location is because the creek that runs through there kind of keeps it from being placed where you would usually put it, a little further to the east. This was really the best location to put that in. It provides some access to some of the shopping areas from residential areas we hope will develop to the east of there.

**Council Member Craig** clarified that this abuts up to Amber Ridge.

**Mr. Newberry** advised that was correct. They will create a street that will connect into Tall Tree and run up the east side of the properties.

**Council Member Craig** asked what kind of intersection that would be.

**Mr. Newberry** advised it will come in at a 90° angle with that existing street. We won't bring it in at a funny angle; it will come in directly and curve around.

**Mayor Avello** asked if the landowner wanted to annexed into the city.

**Mr. Newberry** advised they did. They understand they will be annexed and have provided us with a consent annexation agreement.

MOTION: Staats moved to approve the Final Plat of Wolfes Rock Road Addition and authorize the Mayor to sign the plat and Developer's Agreement; approve an ordinance revising the zoning and an ordinance annexing the property into the city; approve the petitions submitted as guarantee that certain required improvements will be installed; and instruct staff to record the

Developer's Agreement, Restrictive Covenant, Certificate of Petitions, and the Final Plat. Horyna seconded.

VOTE: Motion carried 8-0.

## **FINAL PLAT OF DOVE HOLLOW ADDITION**

**Bud Newberry**, City Planner presented the staff report.

### **Background:**

- This property is 57.4 acres in size and lies just east of property owned by First Christian Church which has previously been approved for a County Conditional Use for recreational uses.
- To the north of this property is Springcreek Addition which is zoned R-1 single family and nearly fully developed. To the east and south are generally agricultural uses with county "RR" zoning. Some suburban residences also exist along with the agricultural uses.
- The subject property also has county "R-R" zoning for rural residential use and will become "R-1" Single Family Residential with its annexation.
- The R-1 zoning is appropriate for the uses indicated on the Final Plat.
- Annexation of the subject property is being required with Final Plat approval by the City Council.
- The Planning Commission approved the Final Plat on November 20, 2008, by a vote of 8-0.

### **Financial 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, streets, decel lane, drainage, and sidewalks), totaling \$3,199,000. Of that amount, \$3,023,645.50 will be paid by the Benefit District and \$175,354.50 by the City-At-Large, based on the City's policy for payment of oversizing of collector streets, water mains, and arterial sidewalks.

### **Legal Considerations:**

- Pursuant to Kansas State Law and the City's Subdivision Regulations, the Planning Commission has approved this plat.

### **Policy Considerations:**

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

- The developer has submitted a request for consent annexation associated with this plat. Upon approval, staff will publish the ordinance for the annexation.

ORDINANCE NO. 1972

AN ORDINANCE INCLUDING AND INCORPORATING CERTAIN LAND WITHIN THE LIMITS AND BOUNDARIES OF THE CITY OF DERBY, KANSAS.

MOTION: Arnold moved to approve the Final Plat of Dove Hollow Addition and authorize the Mayor to sign the plat and Developer's Agreement; approve an ordinance annexing the property into the city; approve the petitions submitted as guarantee that certain required improvements will be constructed; and instruct staff to record the Developer's Agreement, Restrictive Covenant, Certificate of Petitions, and the Final Plat. Nun seconded.

DISCUSSION:

**Council Member Bannon** clarified that the creek goes through the property where it zig zags, is that correct?

**Mr. Newberry** advised that was correct.

**Council Member Bannon** asked if the homeowners owned the property to the middle of the creek.

**Mr. Newberry** stated he did not believe there were any lots that backed up to the creek at the very north end, there is a large reserve up there. Where there are lots that do back up to the creek they do go to the middle.

**Council Member Bannon** advised she would like to have that verified. What we are doing is creating another situation where we can't get in and clean it out.

**Kris Rose**, Baughman Company advised there is a small stream that has water running through it. The lots do back up to the middle of the stream. We do have a drainage easement along there so anyone can get in there and maintain that area.

**Council Member Bannon** asked if they would always have access.

**Mr. Rose** advised they would. There is also an access point that goes back into Reserve C.

**Council Member Bannon** pointed out that then we come down to who's responsibility it is. If it's privately owned by a homeowner we just indicated that we don't do privately owned so where would we fall on this say 10 years down the road they are faced with blockages, who's responsibility would it be at that point?

**Mr. Rose** advised it would be the homeowners associations' responsibility.

**Council Member Bannon** asked if we had that in writing.

**Mr. Rose** advised it was on the plat.

**Ms. Sexton** stated that any city council at any time could make a different decision budgetary and otherwise but that is one of the reasons why we have homeowners associations so the city taxpayers do not have a burden of all these new housing developments coming into the city. As they are developed like this they take care of their ponds, creeks and parks, etc.

**Council Member Bannon** pointed out that we do have a large subdivision in town where the homeowners association is not responsible for the ponds or creeks and that is a situation she does not want to see us in.

**Ms. Sexton** advised we are not letting that be repeated. We have all felt the pain of some past mistakes and she thinks every one being done now is being done appropriately.

**Council Member Bannon** asked what price range homes are going in there.

**Mr. Rose** advised he did not know. All of the lots are 80 feet wide so he is guessing they will be \$150,000 to \$200,000.

**Council Member Bannon** asked if there were current plans to pave 87<sup>th</sup> street no matter what this subdivision is doing right now.

**Ms. Sexton** advised that was correct.

**Mr. Newberry** added that as a part of the infrastructure improvements they are going to require the developer to put down an asphalt pad, 24 feet wide from Rock Road to the east edge of this property.

**Council Member Bannon** asked who would be responsible for taking care of that.

**Mr. Newberry** advised they have had quite a discussion about that at the planning commission meeting. What they decided was, technically the county would be responsible to keep it cleaned off but probably snow and things like that will fall to the city to keep it cleaned off.

**Council Member Bannon** asked how long an asphalt pad like that will last.

**Mr. Newberry** advised it will last several years. We expect that area to develop on through there.

**Council Member Bannon** pointed out that the church owns the property between Rock Road and this development and the only way we are going to get Kay Street across there is to go across the church property.

**Mr. Newberry** indicated the church knows they have to put Kay Street through their property.

**Council Member Bannon** asked if they were in the mood to do so.

**Mr. Newberry** advised they were.

**Council Member Meidinger** stated he has a real concern about the homeowners association. There is no guarantee that homeowners association is going to be in business 15 minutes after this thing is said and done. One has already gone broke up on north Buckner. At that point they said they weren't going to mow the grass, it's up to the city. He doesn't have any faith in a homeowners association staying in business. What this group did was go to the county and declare bankruptcy and told the city it was their problem. What guarantees will they have at this point.

**Ms. Sexton** advised that generally speaking, the way they have been setting up homeowners associations for several decades now works, 99% of the time. There are instances where different things happen like the one that decided to disband and decided they didn't want to be an HOA. There is a lot of risk to homeowners and a homeowners association is a quasi public/governmental type of unit that you voluntarily buy into when you buy that piece of property. It is a situation where people have to pay attention to their homeowner's association meetings and their officers each year and the decisions they make and the dues they charge. It's like a little government. There is some risk, albeit limited that there could be bad things happen to a homeowners association, and then it is a legal matter yet unresolved in a general sense, not just in Derby, as to who does what, when and how.

**Council Member Meidinger** advised the concern he has is that obviously the mowing needs to be done up there and that's small. As Mrs. Bannon correctly pointed out if you have to get into the creek area and the developer's agent says it's the homeowners associations responsibility, he guarantees when the homeowners association gets that bill they are going to disband quicker than the one on north Buckner did. Rather than jump into this, if we are suggesting the homeowners are going to be responsible for this we are going down the wrong road. Five years from now the council will wonder what in the world we were thinking when we did this.

**Mr. Rose** stated that if the city wants to change their policy, then change the policy. Everything they have done as far as development goes, the policy requires the homeowners association to own and maintain that. If you want to change it, then you need to change the policy. He would not try to force it on this particular issue because it has already been approved in the past on everything they have done. He does not quite understand why it is being brought up on this particular case. If the city has to go in and clean it up, they will assess the homeowners association for that.

**Council Member Meidinger** asked if that was correct.

**Ms. Sexton** stated that is probably true. It is important to realize that the city does not have an unlimited budget to clean up everybody's problems. We understand there are trees in creeks but if it's not our responsibility we won't be going in there. If we did, it would be the general taxpayer paying for more city staff and equipment. This isn't a bad thing; you limit the responsibility for that particular area to that small group of homeowners. They have the ultimate motivation, they own the properties and their property would be devalued, they wouldn't be able to sell them if they had bad neighbors or stinky ponds or whatever the problem is, they are devaluing their own private property.

**Council Member Meidinger** advised he was just going back to the property on north Buckner. That is his whole concern, when you have a homeowners association, they are a dime a dozen. There are many homeowners associations that no longer exist. They start off with great intentions but when it comes down to being financially responsible for doing something they don't do it. If the council wants to jump in bed with another homeowners association that may or may not work that's fine, but he doesn't think we should do it.

**Mr. Newberry** explained that this particular subdivision is really not on one of the main branches of the creeks that we have through there so you're not talking about the kind of water flow through here that you see in a lot of areas.

**Council Member Craig** advised there are only two entrances from the south to get into this development if Kay Street does not go to Rock Road, was there any consideration given to that?

**Mr. Newberry** advised it has been reviewed by the fire department and they are okay with the access that is shown to this subdivision. Kay Street will improve access considerably. There

really is no way to access anything to the north because there wasn't any access provided from the other subdivision.

**Council Member Craig** pointed out that over to Springcreek is a long way away from the northern edge of that so he is not too concerned about that. However, when you talk about taking Kay Street and running it to Rock Road and the property owner is okay with that, is that going to be soon?

**Mr. Newberry** advised we have had, in the last year, the church group develop a small portion of their property for a concession stand. When they are actually going to develop the rest of the property he doesn't really have any idea.

**Council Member Craig** asked that when we come to the point we want to put Kay Street through there, what are the obstacles in front of us?

**Ms. Sexton** explained we have the power to do that, to force a street in when we think it's needed. In terms of timing, we don't know when that will be but if we see the need for the street later we can do that. At this point, this development is something you're not going to see built out for a minimum of five years, probably more like ten.

**Council Member Craig** advised that bisects their property basically, north and south. He is sure they don't mind having a street running through there but wants to make sure they don't build something that's permanent in that area.

**Ms. Sexton** advised they won't.

**Mr. Newberry** added that they can't, they have been told from the very beginning that at some point Kay Street needs to run through there. They understand that they have to plat that through there.

**Council Member Horyna** advised he doesn't see any storm water retention on the map and asked if Spring Creek would provide enough volume for it.

**Mr. Newberry** explained that Reserve B is reserved for a large detention pond.

**Council Member Bannon** asked for an explanation of the exceptions on the east and west.

**Mr. Rose** advised those belong to other people.

**Council Member Bannon** clarified that Reserve C is for the playground area.

**Mr. Newberry** advised that was correct.

**Council Member Bannon** asked if that was in a flood zone.

**Mr. Rose** advised there is a flood plain along Reserve C, Reserve B is for the pool.

**Council Member Bannon** clarified that Reserve B was the detention area and pool and playground.

**Mr. Rose** advised that was correct. It was designed so there is an area for the pool and playground area.

**Council Member Meidinger** asked how this conforms to the recently adapted Park and Open Space study.

**Mr. Newberry** indicated that was also another long discussion they had at the planning commission meeting. They have adopted the policy that we no longer want to accept small parcels within these subdivisions for parks. The city would prefer to choose locations for their parks and try to get larger parcels to place their parks in. The options that were available here were for the city to request to be able to purchase a part of this property. They reviewed the area and decided that they weren't interested in putting anything in there.

**Council Member Meidinger** asked who wasn't interested.

**Mr. Newberry** advised it was the city. There may be a location somewhere on the south side that we are looking at.

**Ms. Sexton** agreed, there are locations we are looking at. We all understand that we need parks. This particular site for a housing development does not lend itself to any regional or community sized park. It is very close to High Park, which as you know is a very good sized park, and it's not something staff and the park board felt would be the right place for it.

**Council Member Craig** asked if the flood plain encroaches on any of the lots on the north side.

**Mr. Rose** advised it did, but it is covered under the drainage easement.

**Council Member Craig** asked if any of the lots would require flood insurance.

**Mr. Rose** advised they would not.

VOTE: Motion carried 8-0.

The council recessed at 7:45 p.m. and returned at 7:55 p.m.

#### **VACATION OF PORTION OF BUILDING SETBACK IN SPRING RIDGE ADDITION**

**Bud Newberry**, City Planner presented the staff report.

#### **Background:**

- Spring Ridge Addition plat was approved in October 2000. This residential subdivision is located about ¾ mile east of Rock Road, between Meadowlark and High Park.
- The latest phase of construction provided a street connection to the north end of High Park (High Park Drive). To provide an improved geometric design for this connection, the developer dedicated additional street right-of-way on the west side of High Park Drive, and the street pavement was shifted slightly to the west and connected to a roundabout. (This roundabout will also accommodate the future James Street extension.)
- As a result of shifting the roadway to the west, the subject property will have an unusually large "front yard" while having essentially no back yard due to an existing hedge row.

- The applicant requested vacation of 10 feet of the front building setback (from 25 feet to 15 feet), so the new house can be shifted westward to provide a more uniform appearance in setbacks from the curb and to provide additional “rear yard.”
- Notice of the public hearing was published in the City’s official newspaper on November 19 and 26, 2008.

**Financial Considerations:**

- None.

**Legal Considerations:**

- Petitions for vacation of a setback within the City are processed pursuant to section 1003(B) of the City’s subdivision regulations.
- The requested vacation must be granted if the Council finds –
  - o Notice has been given as required by law;
  - o No private rights will be injured or endangered;
  - o The public will suffer no loss or inconvenience; and
  - o Justice requires that the petition be granted.
- The vacation order must reserve easements for any existing utilities or other public improvements, or condition the vacation on removal or relocation of such existing improvements by the petitioner.

**Policy Considerations:**

- The Planning Commission conducted a public hearing and recommended approval of this request at its meeting on November 6, 2008.

MOTION: Warren moved to approve vacation of 10 feet of building setback on Lot 11, Block 2, Spring Ridge Addition and authorize staff to publish the Vacation Order. Bannon seconded.

VOTE: Motion carried 8-0.

**PROGRAM FOR PREVENTION OF IDENTITY THEFT**

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

**Background:**

- The “Red Flags” rule was developed pursuant to the federal Fair and Accurate Credit Transactions (FACT) Act of 2003.
- Under the rule, financial institutions and creditors must have an identity theft prevention program (“ITPP”) to identify, detect, and respond to patterns, practices, or specific activities that could indicate identity theft.
- Federal Trade Commission regulations define “creditor” to include utility companies such as El Paso Water Company, Inc. (“Company”). The City is also a creditor because it provides services – water and sanitary sewer service – for which payment is made after the product is consumed or service provided.

- The proposed ITPP was modeled on a template developed by the Kansas Municipal Utilities organization, of which the City of Derby is a member.
- Although the ITPP will become effective date January 1, 2009, staff has already begun using its procedures in the detection of so-called red flags to prevent and mitigate identity theft.
- Section 5 authorizes the City Manager to make future changes to the ITPP as needed.

**Legal Considerations:**

- Both the City and the Company are creditors as defined in applicable federal regulations.
- Although the Company will rely on the City to implement the ITPP, it is required to have a program of its own in place.
- The ITPP will be presented to the Company’s board at its January 2009 meeting for adoption by reference.

**Policy Considerations:**

- Adoption of the ITPP will comply with applicable federal regulations.
- Procedures that prevent and mitigate identity theft are valuable to the law enforcement community as well as residents of the City of Derby.

MOTION: Arnold moved to adopt the Identity Theft Prevention Program as substantially presented, effective January 1, 2009. Craig seconded.

VOTE: Motion carried 8-0.

**REPORT ON 2008  
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/stormwater 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 year-end review is an opportunity for the Council to have an update on approved projects and an opportunity to ask questions. The intention is for this year-end review to become an annual report.
- 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 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 Craig** asked if we had a sidewalk project under grant that was connected to Swaney School. There were some constituents that came in and talked about a sidewalk going down to Swaney.

**Ms. Sexton** advised there was a request for a sidewalk.

**Council Member Craig** asked if anything was done on that as far as looking for grants.

**Ms. Sexton** advised we have applied for a grant. Allison Moeding, Dan Squires as well as some of the citizens put together a grant request and we should hear back on that after January 31<sup>st</sup>.

**Council Member Craig** stated he was disappointed in the sidewalk from Meadowlark up to Tall Tree; it is now a decade old. He knows what the cost was when it was first thought about and projected, he understands now that it is designed, is that correct? He also asked how much it is.

**Dan Squires**, City Engineer advised the last estimate he saw was \$203,000.

**Council Member Craig** stated that when things like that happen, the cost grows as time goes by. It’s not that we don’t want to do it, it is mixed in with a lot of other priorities. He hopes we will be able to come close to it sometime in 2009, because it is close to ten years old.

**Ms. Sexton** advised that part of the purpose of this presentation is to be very transparent and open. She wants everyone to know we are not working on that project. We have too many open projects, and we need to finish some and then pick some new ones.

**Council Member Craig** pointed out that this is not to put anyone on the spot, but the idea this has to come to us more than just once a year. It gives us an idea of what’s really happening. It helps us as a council and also the constituents to see that things are really happening and there are a lot of things going on. The intersection of Buckner and Meadowlark and going underground with utilities is awesome, it will really help the residents in the area.

**Ms. Sexton** added that there also has been an enhancement to the bi-monthly departmental reports. If you are ever interested in monitoring certain projects it can be tracked in the reports emailed by Carolyn. There is a list of all the open projects, not only CIP but also special assessment projects, basically everything on Dan’s plate in terms of city engineering. He will be

giving us a bi-monthly update on all of those. What we are hoping is that with one report and us accessing it as we need, it will also help preserve his valuable time. He is the one person that we cannot afford to have everyone calling individually for updates on projects. Dan gets a lot of citizen calls, and we are training other staff in city hall to handle some of those calls instead of having to field informational calls to the city engineer.

**Council Member Craig** thanked Mr. Squires for helping out in a drainage problem. Dan went out of his way to try and help some neighbors resolve some problems, it took a long time but the efforts are going to pay off.

**Council Member Meidinger** asked about the cash flow with these projects. If we bid the project and KDOT says they are going to send us money, do they send money before the project is bid or is it done afterwards and what if it's not done then who is responsible?

**Ms. Sexton** explained that if we are doing the bidding we have the money here and we have an agreement.

**Jean Epperson**, City Clerk/Director of Finance, added that we have an agreement but we typically spend the money and request reimbursement.

**Ms. Sexton** stated that we rely on that agreement to know we are getting the money.

**Mr. Squires** explained we have four or five different funding mechanisms for working with the State right now. If you take a Wildlife and Parks grant, that's a grant where we will be reimbursed. On a project like the intersection project they will ask us for a check for our portion at the beginning of the project. Since it's being inspected by the county they do KDOT inspection process and contractors working for the State will apply to the State to be funded. The different projects have different funding mechanisms. Some of them we front the money for, some of them we give a portion of the money to KDOT, it just kinds of depends whether it's Economic Development money, Wildlife and Parks money, Safety money, etc. It's great to get that money but it comes with some hoops to jump through and none of them are the same.

**Ms. Sexton** added that KDOT has been relying on federal monies. That has been consistent for 18 years or so. This past couple of years the congress has not passed its Transportation Bill in the same fashion they have in the past. They keep passing continuing resolutions to get them through a few months, so that's what happened a month or so ago when the Kansas Secretary of Transportation said she can't do that anymore. They had been letting projects based on knowing the federal money was coming, but when it got to be less reliable that the money was coming, the KDOT Secretary's office released a statement to stop certain projects. The only one close to us was a K-61 project over by Hutchinson in Reno County. They had spent a lot of money designing that project and getting it ready to bid, and then they stopped it before it went out to bid. The responsible thing that they are doing is saying if they don't have an iron-clad agreement that the federal money is coming they are not going to front the money and sign a contract with the contractor. We are not in that position yet, because KDOT doesn't commit to us unless they have

the money. They are stopping it before it bids, as opposed to letting us get an actual commitment of dollars and then backing out of an agreement.

**Mayor Avello** advised he had a conversation with Commissioner Norton awhile ago about the water problem the County continues to have. He said that they were looking at some kind of plan for the entire county. Whether that's going to get instituted in the next couple of years or so, he is not sure. He knows we have problems with our creeks now, but hopefully somewhere in the future the county might be able to do something to thwart that flow.

**Ms. Sexton** stated that is one of the committees she has been appointed to. If there is a solution it will be a joint city/county solution between the county and all the cities in the county that choose to participate financially.

MOTION: Warren moved to receive and file the report. Bannon seconded.  
VOTE: Motion carried 8-0.

## **RETURN TO ITEM H**

**Ms. Sexton** indicated that we failed to open the public hearing during Item H, the Spring Ridge building setback. She suggested we go back and open the public hearing and see if anyone wants to speak and make a new motion for that item.

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

MOTION: Warren moved to approve vacation of 10 feet of building setback on Lot 11, Block 2, Spring Ridge Addition and authorize staff to publish the Vacation Order. Meidinger seconded.  
VOTE: Motion carried 8-0.

## **UPDATE TO CITY MANAGER EMPLOYMENT AGREEMENT**

**Council Member Arnold** presented the staff report.

### **Background:**

- On Jan. 20, 2006, the Governing Body entered into an Employment Agreement with Kathy Sexton to serve as city manager until Dec. 31, 2007. The agreement was amended on Feb. 13 and Dec. 11, 2007 and is effective until Dec. 31, 2008.
- The Governing Body recently completed the annual performance evaluation process, which included a review of accomplishments during 2008. We are very pleased with the successes achieved under Ms. Sexton's leadership and believe in the direction she is providing to the City organization.
  - The City Manager has been instrumental in streamlining Council meetings, reducing the property tax levy, developing a comprehensive street maintenance plan and a

park master plan, integrating the water company with the city organization, and enhancing communications with the public.

- Our process also included a market review of city manager salaries and benefits in similarly sized cities in Kansas, which indicated to the Governing Body that some enhancements of salary and benefits would be prudent both in terms of equity and as a retention tool.
- Proposed amendments to the Employment Agreement include the following:
  - References to El Paso Water Company employees are removed, because earlier this year the company chose to contract with the City for employees.
  - Reference to the planning and park boards is expanded to include the planning commission and all of the City's advisory boards. This technical change reflects current practice.

**Financial Considerations:**

- Annual cost of this amendment is \$15,160 in 2009. Funding is available in the approved budget.
- The 2009 salary increases from \$110,000 to \$120,000, which includes the 2.5% general pay adjustment provided to all City employees plus a merit raise of 6.4%. Monthly allowance for use of a privately owned vehicle increases to \$600, and the monthly reimbursement for use of a privately owned mobile phone increases to \$80. The City will match up to \$7,200 in contributions to a deferred compensation program.

**Legal Considerations:**

- Amendments were reviewed and approved by the City Attorney.

MOTION: Arnold moved to approve the amended employment agreement with the city manager, as presented. Warren seconded.

VOTE: Motion carried 8-0.

**CONSENT AGENDA**

**Library Security Controls**

**Background:**

- In 2001-2002, the City built and remodeled several buildings. At that time, research occurred regarding access control companies. The determination was made that the Compass system would best suit the City's needs for building security and access control.
- Trimech, Inc. is the vendor for the Compass system for this area and since 2002 has done an excellent job of providing for our needs.
- Last summer, Trimech provided a quote to equip the new Library with a system similar to our other buildings that will tie directly into our current software and equipment.
- This quote was prepared as the building was being bid (for budgeting purposes), so there may be minor adjustments to provide for actual installations.

**Financial Considerations:**

- This item will be paid from the budget to build the Library.

**Legal Considerations:**

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

**Policy Considerations:**

- The Bid Board has considered and approved this item.

**Recommendation:**

- Approve the quote from Trimech in the amount of \$22,832.13 to provide and install security access for the new Library building.

**Assessment Ordinance – Mowing, 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 the contracting with vendors for the mowing and trash removal service, plus a \$50 administrative fee.
- Each owner of record 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 \$934.50.

**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 to not 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. 1973

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.

**Issuance of Cereal Malt Beverage Licenses**

**Background:**

- Vendors of cereal malt beverages in the City are required to be licensed by the City.
- Fourteen applications for cereal malt beverage licenses have been received for calendar year 2009. The names of the businesses and managers are listed in Attachment A to this report.
- Six of the applicants are still under review by the Interim Police Chief for compliance with city ordinances.
- The City Council will not have another regular meeting before January 1, 2009, so it is requested that the applications still under review 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<sup>st</sup>.

**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 conditions issuance upon staff's determination that all requirements have been met.

**Recommendation:**

- Authorize issuance of cereal malt beverage licenses for the year 2009 to the applicants listed in Attachment A subject to a finding by the Interim Police Chief that such applicants have met all established requirements therefore.

**CEREAL MALT BEVERAGE LICENSES**

2009 APPLICANTS

**COMPANY**

**MANAGER**

**D & M STORE**

DBA Melba's Mart  
104 N. Baltimore  
Derby, Ks 67037

Melba Velazquez

**Derby Rock Crib L.L.C.**

1440 N. Rock Road  
Derby, Ks 67037

George Kyle Hendrix

**Dillon's #57**

200 W. Greenway  
Derby, Ks 67037

Susan Schlieiger

**Dillon's #4**

317 N. Rock  
Derby, Ks 67037

Michael Bidwell

**Cabrillo's**

400 N. Rock Rd.  
Derby, Ks. 67037

Chris Tittel

**Kwik Shop**

200 W. Patriot.  
Derby, Ks 67037

Nancy Thompson

**Kwik Shop**

1431 N. Rock Road  
Derby, Ks 67037

Scott Cook

**Pizza Hut**

101 N. Rock Road  
Derby, Ks 67037

Michael Cavanaugh (Skippy)

**Pizza John's**

208 S. Baltimore  
Derby, Ks 67037

John McCulloch

**Presto Conv. Store #21**

230 S. Baltimore  
Derby, Ks 67037

Doug Wald

**QuikTrip #314**

1430 Nelson Drive  
Derby, Ks 67037

Nyle Dockter

**Quik Trip West, Inc. #363**

2501 N Rock  
Derby, Ks 67037

James Patrick Ibarra Jr.

**Taco Tico**

Margie Karen Neer

125 N. Baltimore  
Derby, Ks 67037  
**Wal-Mart Supercenter #592**  
2020 N. Southeast Blvd  
Derby, Ks 67037

James Sexton

**Wastewater Treatment Plant Skid Loader Bid**

**Background:**

- Bids for the purchase of a new skid loader were requested by wastewater staff from three local equipment venders. The bids were requested on November 18, 2008.
- Funds for the skid loader are included in the Equipment Purchase/Replacement Plan in the 2008 Wastewater Budget.
- The following bids were received by the Wastewater Treatment Plant Superintendent Carl Rose and witnessed by Jean Epperson, City Clerk:

<b><u>Dealership</u></b>	<b><u>Bid</u></b>
White Star Machinery - Bobcat	\$26,932.96
Wichita Tractor Co. - New Holland	\$28,298.00
Foley Equipment - Cat	\$30,230.00

**Financial Considerations:**

- This purchase will be funded from monies budgeted and appropriated.

**Legal Considerations:**

- The Bid Board reviewed the bids and approved the low bid from White Star Machinery. All City purchasing procedures were followed.

**Recommendation:**

- Approve the purchase of a new Bobcat S-185 skid loader from White Star Machinery in the amount of \$26,932.96.

**Wastewater Treatment Plant Tire Bid**

**Background:**

- Bids for the purchase of four new tires for the Terra-Gator were requested by wastewater staff from the only two venders known to handle the type of tires needed. The bids were received on November 10, 2008.
- Funds for the tires are included in the Equipment Maintenance line item in the 2008 Wastewater Budget.
- The following bids were received by the Wastewater Treatment Plant Superintendent Carl Rose and witnessed by Jean Epperson, City Clerk:

<b><u>Dealership</u></b>	<b><u>Bid</u></b>
COUNCIL MINUTES	-30- 12/09/08

Don's Tire and Supply	\$13,412.00
Central Ag Wheel & Tire	\$13,107.00

**Financial Considerations:**

- This purchase will be funded from monies budgeted and appropriated.

**Legal Considerations:**

- The Bid Board reviewed the bids and approved the low bid from Central Ag Wheel & Tire. All City purchasing procedures were followed.

**Recommendation:**

- Approve the purchase of new tires for the Terra-Gator from Central Ag Wheel & Tire in the amount of \$13,107.

**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 2008 include areas that have been platted into Derby Corporate Park Addition and Hamilton Estates Addition, areas presently being platted as Stone Creek 4<sup>th</sup> Addition and Phillips Rock Road Addition, an unplatted tract on 55<sup>th</sup> Street, and Buckner Avenue right-of-way between 60<sup>th</sup> and 55<sup>th</sup> Streets.
- The boundary description of the new City Limits has been modified accordingly.

**Financial 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.

**Policy Considerations:**

- Upon approval, staff will submit the City boundary resolution, containing the legal description, to the County Clerk, County Appraiser, Election Commissioner, Census Bureau, etc. for various government functions.

**Recommendations:**

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

RESOLUTION NO. 79-2008

A RESOLUTION DECLARING, ESTABLISHING AND DEFINING THE CITY LIMITS AND BOUNDARIES OF THE CITY OF DERBY, KANSAS; AND REPEALING INCONSISTENT OR CONFLICTING RESOLUTIONS.

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

**ADJOURNMENT**

MOTION: Warren moved to adjourn at 8:45 p.m. Arnold seconded.  
VOTE: Motion carried 8-0.

\_\_\_\_\_  
Dion P. Avello, Mayor

ATTEST:

\_\_\_\_\_  
Jean Epperson, City Clerk