

**APPROVED
REGULAR COUNCIL MEETING
February 10, 2009
6:30 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I
WARD II
WARD III
WARD IV

COUNCIL MEMBERS PRESENT:

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

Flag salute was led by Council President George Arnold.

The invocation was led by Pastor Joplin Emberson, Cross Way Church.

**CONSIDERATION OF
MINUTES**

Minutes of the January 27, 2009, Regular Council Meeting.

MOTION: Arnold moved to approve minutes of January 27, 2009 Regular Council Meeting. Meidinger seconded.

VOTE: Motion carried 7-1, Craig abstain.

PUBLIC FORUM

Kathy Sexton, City Manager congratulated Gage Chiropractic on their recent anniversary. On Saturday morning, February 14th we will be hosting the Sedgwick County Association of Cities (SCAC). SCAC is a group of elected officials, mayors and city council members of the twenty cities in Sedgwick County that meet monthly on Saturday mornings. The meeting will start at 8:30 a.m. for networking and the business meeting will start at 9:00 a.m. It is a public meeting anyone in Derby is welcome to attend that. The City of Derby will also be participating in the Wichita Area Builders Association Home Show at Century II this weekend. We have volunteers from the school district, mostly administrators and principal's of all of our schools in Derby as well as the Derby Recreation Commission and the Chamber of Commerce. Our business partner is Tendercare Lawn and Landscape and they are helping us set up a really nice booth at the home show. Derby businesses have also donated items that have been placed in a basket to be raffled off at our booth and we will be distributing seed packets with information about our community printed on the package. The council was also given information about "Proposition K". Some people around the state have put together an idea to change the property appraisal system for the state and the council has been given a three page executive summary, as well as the pro and con article that was in Sunday's Wichita Eagle. She made a request to the WSU Hugo Wall School of

Public Administration and to Sedgwick County to see if they were going to be putting out more information on this topic. As you know, cities are not in the appraisal business. We take the appraisals given to us. The county does appraisals based on state law and there are more people who know a lot more about this subject than she does and she was assured today that the county is putting together some information that they will be sharing with us and they hope to have that ready next week.

Council Member Craig thanked everyone for the cards, thoughts and prayers for the recent loss of his wife Suzanne's mom.

Council Member Bannon advised she was involved in a fashion show over the weekend. We have brand new businesses in town that nobody knows are open, including one of your council members. There are some businesses that had been opened and she didn't even know they were here yet. Shop local, check out Derby Marketplace, look over the hill, there are some businesses back over the hill a little bit. She suggested to staff that we list the new businesses that have opened in the Derby Horizon and perhaps in one of the water mailers we could list retail businesses organized by category to go out to all the houses. People in town do not know these businesses are open. The first thing everyone is going to say is that might be a Chamber job, that could be true but not every business in town is a member of the Chamber and in these economic times she thinks it is going to be in our best interest to promote Derby and Derby businesses to the best of our ability. She would appreciate not only staff and council's help to stimulate the economy.

Council Member Warren stated that a couple of his nieces were involved in an automobile accident last Friday. He thanked those that have given support to his family for that. The girls ultimately will be fine, there were no life-changing injuries, but they did have some broken bones and their recovery is going to be long, but it should be complete and we are very thankful for that.

Council Member Horyna advised the trip to Topeka on City Hall Day went really well. He thinks the one-on-one meetings with Representative Myers and Senator Kelsey really helped drive home our message on the 2009 Legislative Agenda for Derby. It was nice to know that there are a lot of other cities out there with the same attitude as ours. Hopefully if we keep our voice loud enough the squeaky wheel will get greased.

Mayor Avello stated he will not be available for his regular office hours tomorrow. If you need to contact him you can send him an e-mail or call him and he will get back to you.

PROCLAMATIONS

Mayor proclaimed Wednesday, February 11 as **Eagle Scout Day** in the City of Derby.

Mayor Avello presented proclamations to Eagle Scouts Wyatt Smith, Cameron Gibson, Andrew Thompson, Jacob Henderson and Jeffrey Mason, as well as Boy Scout Troops 683, 692 699 and 636.

Gary Shiffenbein accepted the proclamation and explained that Jeffrey Mason was a challenge. He got into scouting at a very late age and had two months to spare. When he got his eagle he had two weeks and he was going to go to summer camp with his church. We persuaded him to concentrate on his eagle. Anybody can get eagle if they challenge themselves and that is what Jeff did and he is proud of him.

Mayor proclaimed February 15 through February 21 as **National Engineers Week** in the City of Derby.

Mayor Avello presented a proclamation proclaiming the week of February 15th thru February 21st, 2000 as National Engineers Week. Chris Young, Pat Baer, Bruce Barnes and Charlie Brown accepted the proclamation.

PRESENTATION

Ace Grant Recipient – Derby Twins.

Lisa Spillman representing the Derby Twins, along with the Twins General Manager Jeff Wells, Kris Dorset and Jim DeGarmo made a presentation about the Twins and their receipt of the Ace Grant. Lisa presented information about the Twins season last year and advised the highest attendance was on the evening sponsored by the Derby Baseball Association who brought their winning teams to the game to be recognized from the field. The City of Derby sponsored night was the second highest attended game and was on the Fourth of July. She advised they were really glad to be in Derby last year for the Fourth of July, it was great to be able to do that. She stated they are very fortunate to have the support of businesses in Derby to allow them to offer free game nights so people can come and enjoy a night at the ball field and not have to worry about how much it would cost to bring their entire family. Businesses that support the Twins last year were; The City of Derby and the Ace Grant they received, Damm Pharmacy, Derby Baseball Association, Wal-Mart, Auto Dent Repair, New York Life and Madrocks. We are very thankful for their support. This year they had twenty host families who kept the baseball players. The players who come to town live with local families in Derby. Those families feed them, give them a place to stay and take very good care of them while they are away from home. There were 33 players that came through the Twins organization last year, that is because players come and go, they get hurt or go home for whatever reason. We generally have about 28 on a team at any given time. Last year we had a player from Derby and are excited to announce that this upcoming year our plans are to have three players from Derby. The Twins finished 2nd in the Jayhawk league, just behind Hays. She pointed out that there were 11 community volunteers used at each game; those are people working in the concession stand, working the gate, selling programs and merchandise. It takes a village to run a non profit organization and the Derby Twins summer baseball team is no different. We are very thankful for all the organizations and individuals who donated their time for hours at a time to help support each of our game nights. During parents week, which is the time the Ace Grant covers and the games are all sponsored because of the funding received through the Ace Grant, we had 17 players who brought their families in from out of town. Those players visited from Texas, Missouri, Iowa, Alabama, Colorado, Indiana, Illinois, Kentucky, Arizona, Oklahoma and California. One of the things we talked about last year when we reported to the council was that in 2008 their plan was to do a zip code study to get a feel for the different areas that people came from to visit our community during parent week which tends

to be when we get the most visitors from out of town. That information was gathered at the July 5th game and shows all the different areas that people came from to attend the game. Ms. Spillman advised she was very proud of the Twins team and their willingness to reinvest in the community when they come to town. She has projects that she needs the players to work on while they are here and for the most part they do it with a really willing heart and she is very thankful for that. They were in the Derby Days parade as well as an autograph session and Kid Fest at the Derby Days event. They came to the Fourth of July community celebration and signed autographs. This year she was very proud of three young men who went with her to Cooper Elementary to give a presentation to kids in the summer camp program. The boys talked to those kids about how important it was to stay in school and that athletics is fun and can sometimes take you to fun and exiting places. The most important thing was they were going to have a life after baseball and that life included the fact they had to finish college and get their degree.

Jeff Wells stated this will be the Twins fourth year in Derby. It doesn't seem like it has been that long, it seems like they just started last year. It was a decent season, but not one like they thought they were going to have going into the season. This year we are really excited, we will have a new coaching staff this year, Bill Shaw is going to retire after this year so we had to get a new coach. We hired Jason Santangelo who has been a top assistant coach for Emporia State and is a Kansas native. He played for the Twins for one season when they were in Wichita. He is very enthusiastic and is excited about coming to Derby. He has asked a host family if he can bring his wife and their 1½-year-old son, so they will be spending the whole summer in Derby beginning the first of June. We also have a pitching coach from Emporia State and an assistant coach from Hutchinson Community College. We also have four returning players from last year. They have more players who call wanting to come back than we have ever had before and they really love being in Derby. They currently have about 27 guys signed, four of them returning from last year. He also advised they have had great success with the host families and have had many compliments on the City from parents and families of the players.

Council Member Warren commented that the Twins coming to Derby has been a tremendous boost for our city. It is great, inexpensive entertainment and is going to be as important this year as any. The quality of the young men that have come through the Twins program has been phenomenal; they are great kids and always have a smile on their face. They are true role models to the younger kids in our community. It has also been good PR for the city; they travel around the state and represent the city very well. He is proud of the support we have been able to give them and is proud of the support that they have given back to the city.

Mayor Avello appreciates that the Twins represent Derby so well. Yesterday he went to Park Hill Elementary School to read to three classes. These kids are amazing and probably one of his favorite things to do as a mayor is to go to that school. The questions they ask him are amazing.

Council Member Staats asked who the three Derby kids are that will be playing with the Twins this summer.

Mr. Wells advised they are Cole Waddell, Bret Bascue and Drew Rainey will be trying out. If they see some Derby players at some of the colleges they certainly look at them strongly. We

always invite them to tryout but a lot of times when we ask them they have already committed to a team. We continue to try and bring in as many Derby players as we can.

BIDS FOR CHANNEL IMPROVEMENTS TO SERVE OAK RIDGE ESTATES

Charlie Brown, Director of Community Development presented the staff report.

Background:

- A bid letting for the construction of Channel Improvements for Oak Ridge Estates was conducted on Tuesday, February 3, 2009 at 2:00 P.M. An invitation for bids was disseminated to qualified contractors. The following bids were received by the City Engineer’s office and witnessed by the City Clerk:

<u>Contractor</u>	<u>Bid</u>
UCI	\$419,357.00
Nowak Construction, Inc.	409,038.50
Wildcat Construction, Inc.	373,253.00
Mies Construction, Inc.	289,039.70
Engineer’s Estimate	\$271,806.50

*Engineers estimate prepared by Ruggles & Bohm, P.A.

Financial/Sustainability Considerations:

- The total project costs, including construction and design engineering is \$322,539.70. The City’s CIP 2008 budget includes a total of \$400,000 in G.O. Bond financing.

Legal Considerations:

- The City has followed all statutory procedures in planning the project, securing financing, and soliciting bids for the project.
- All easements and other rights required to complete the project have been secured.

Policy Considerations:

- This project was added to the Capital Improvement Plan after major rainstorms in 2008 resulted in some property damage to nearby homes.

MOTION: Bannon moved to recommend approval of a contract with Mies Construction, Inc. in the total amount of \$289,039.70 for channel improvements to serve Oak Ridge Estates. Staats seconded.

DISCUSSION:

Mayor Avello asked if the trees on the back of his property were going to be taken out. **Mr. Brown** advised they moved around some of the major trees. There are some trees at the north end by Sharon and that property owner has been made aware of the tree removal and he is

okay with it. It was his home that flooded, so he is happy to lose some trees in exchange for some channel improvements. We are saving as many trees as we can.

VOTE: Motion carried 8-0.

AMEND SUBDIVISION REGULATIONS

Bud Newberry, City Planner presented the staff report.

Background:

- Derby's present Subdivision Regulations were adopted in 1997. Several amendments to the regulations were approved by the Planning Commission on February 7, 2008.
- In recent months, members of the City Council have expressed their concern over the lack of information provided to new home buyers in regard to Special Assessments levied against new subdivisions in the city.
- The Special Assessment is the method used by municipalities to allow for the reimbursement of eligible expenses paid by the city for the construction of infrastructure in new subdivisions. Special Assessments are typically assessed over a period of fifteen years and are collected at the same time and in the same manner as ad-valorem taxes.
- The proposal is to add **Section 804 "NOTICE OF PROPOSED SPECIAL ASSESSMENTS ON RESIDENTIAL PROPERTY"** to the city's Subdivision Regulations which will require the developers of any new residential subdivision within the City of Derby to post a sign at each entrance stating that the subdivision is subject to the levy of Special Assessments.
- The Notice of Public Hearing was published in the city's official newspaper on December 24, 2008 as required.
- The required Public Hearing was conducted during the Planning Commission's regularly scheduled meeting on January 15, 2009, with no public comment being presented.
- At that time, the Planning Commission approved a resolution supporting this amendment by a 7-0 vote.
- The proposed ordinance has been drafted by the City Attorney for the City Council's consideration.

Financial/Sustainability Considerations:

- In an effort to provide uniformity in the signs required throughout the city, the Public Works Department will provide and install the required signs for existing subdivisions at an estimated cost of \$85 per sign for a total of about \$1,360.

Legal Considerations:

- All conditions precedent to consideration and adoption of an amendment to the City's Subdivision Regulations have been met.

Policy Considerations:

- The Council rightly seeks to ensure that buyers of property in the City are fully informed with respect to levy of special assessments.
- The timing of certain public improvements virtually assures that most lots within a subdivision will be sold and built upon before assessments for such improvements can be levied.
- The proposed change to the subdivision regulations is a practical means of making full information regarding public improvements and associated special assessments available to prospective purchasers of lots and homes.

ORDINANCE NO. 1974

AN ORDINANCE AMENDING THE SUBDIVISION REGULATIONS OF THE CITY OF DERBY, KANSAS, BY ADDITION THERETO OF A NEW SECTION 804, REQUIRING DEVELOPERS OF RESIDENTIAL SUBDIVISIONS TO POST NOTICE THAT PROPERTY WITHIN SUCH SUBDIVISION IS SUBJECT TO LEVY OF SPECIAL ASSESSMENTS TO UNDERWRITE CONSTRUCTION OF PUBLIC IMPROVEMENTS.

DISCUSSION:

Council Member Bannon advised the Planning Commission minutes indicate Mr. Baer commenting that these signs could be there for 15-20 years. In the minutes Mr. Newberry indicated that once the subdivision was complete and the assessments levied they could come down but we have some areas such as Timberleaf and Bel Arbor where there is a very good chance that the 10-year specials that were assessed originally in that area will be paid off before the accel/decel lane will even be assessed.

Mr. Newberry stated that what he really intended to say was that when all of the projects have been completed and all assessments have been assessed against the property then the signs can be taken down, which could be a very long time.

Council Member Bannon advised she thinks this is a good step in the right direction but her concern is, if someone comes in to buy a home and sees this sign and closes on their home there will be specials, but then down the road they get an assessment for a bridge or accel/decal, should we put some sort of list on the sign?

Mr. Newberry does not think we would probably have room on the sign for that kind of information.

Council Member Bannon indicated she knew this was just the first step to get some information and knowledge out there but she wants to make it as comprehensive as possible.

Mr. Newberry advised the Planning Commission had some questions about the effectiveness of the sign and he thinks what they finally decided was that it's certainly better than doing nothing. It probably does not address every concern that we could come up with but at least it's an effort on the council's part to try and get those people to ask the question about assessments.

Council Member Bannon stated she noticed in part of the report it indicates that people could call the city office. Are we putting city hall contact information on the sign?

Mr. Brown advised this is an additional attempt to provide additional information and education to people as they shop for homes. It is not going to save everybody every possible question. The sign will basically say “Notice, the properties in this subdivision are subject to existing and/or future special assessments” with contact phone numbers. In the cases where we have an active developer, we would like to put the developer’s phone number on there so they get the phone calls. They are really the ones that are responsible. We do have, in some cases, some developments where the developer is not that active or has sold out and we will be glad to put our phone number on those.

Council Member Bannon agrees that when developers are no longer active in a development that city phone numbers should be on the sign.

Mr. Brown advised our sign department has the capability to make these signs and update them as we need to.

Ms. Sexton added that we may be saying “phone number” but sometimes we might be printing website addresses. Some of the developers have active websites and of course they would rather direct people there and that is more convenient for a lot of buyers too. It’s not about the current special assessments because if you are going to buy a house you find out about the current specials. The sign is going to be up as long as there is a petition out there for a future item that has not yet been assessed. Once everything has been assessed the signs can come down because everybody finds out current assessments, hopefully before they close but certainly when they are buying the property.

Council Member Meidinger advised he thinks this is a real good idea because he thinks there are only two states that have special assessments and when people come in from out of state they don’t have a clue what specials are until they are spread. This will probably not catch everything but it’s a step in the right direction.

MOTION: Meidinger moved to approve an ordinance amending the Subdivision Regulations of the City of Derby by adding new Section 804. Nun seconded.

Council Member Warren stated the reality is that what we are doing is something that will make us feel real good and will give us cover sometime down the line when someone comes in and says no one told them, we can say we had the sign up. If people don’t know about specials that sign isn’t going to mean a whole lot to them, they may think that “specials” means they are getting a good deal. They don’t know and understand and this probably won’t change that a whole lot but at least it gives us some cover. He thinks it will be a little unattractive but thinks we can live with that to give us some cover.

Council Member Craig is surprised no one showed up at the public hearing during the planning commission meeting. This puts the onus on the developers to do this sign if it’s a new

development. The consternation that some folks had in this room about specials that occur after they have moved in, he is not sure this will alleviate it all but as Mrs. Bannon and Mr. Warren said, this is a step in the right direction. There is still some more work to be done that might help these new homeowners a little better because some of them will not know that still, even though there is a sign out there. If he was the developer he would have shown up at that meeting to find out what their responsibility as a developer is going to be.

Mayor Avello asked Ms. Sexton if we had notified the developers.

Ms. Sexton indicated that staff had talked to several active developers as well as the builders association when we were developing all of this. There might be some who will be surprised but mostly we talked to three or four developers who are active in Derby.

Mayor Avello asked if we had put anything in writing to them.

Ms. Sexton advised that would be done when this is passed.

VOTE: Motion carried 8-0.

**REQUEST FOR
REZONING LOT 1,
BLOCK A, BAYLESS
INDUSTRIAL PARK
ADDITION**

Bud Newberry, City Planner presented the staff report.

Background:

- The subject site is the location of Dennis Insulation, an existing commercial business that is located between K-15 highway and the Old Ranch Commercial Addition, which remains undeveloped to date. This site is in the Derby city limits and is zoned R-1.
- The platted property is approximately 1.59 acres in size, with the plat being recorded as a county plat on April 13, 1978.
- This property was unilaterally annexed by the city in May of 1997. Although the existing use is non-residential, the property came into the city as “R-1” Single Family Residential as prescribed in the city’s Zoning Ordinance. Consequently, the existing land use on the application area is presently defined as a legal nonconforming use. By being classified as a “nonconforming use”, restrictions exist regarding expansion of the commercial use that now exists on the property. Also, any change in use would be subject to a determination as to it being a comparable change of use under the Zoning Ordinance regulations for non-conforming situations. As such, the applicant has requested a zone change from the residential zoning district to a zoning classification that is compatible with the site’s existing use.
- The property contains two primary structures being used for office space and storage of insulation materials.

- Prior to the city’s annexation, the property was zoned “Limited Industrial” per the county zoning regulations and was also subject to an additional overlay district designated A-O III-S because of its location in relation to McConnell Air Force Base. The B-5 zoning district requested by the applicant is a comparable district to the previous zoning and was created by the City of Derby to be used in the McConnell Air Force Base “Accident Potential Zone”.
- The “Notice of Public Hearing” was published in the Derby Informer on December 24, 2008. Notices were also sent to neighboring property owners (within 200 feet) as prescribed by state law. The official ownership list is on file at City Hall.
- During the Planning Commission meeting held on January 15, 2009, the Public Hearing was conducted with no public comment being presented. There was a motion and second to rezone this property from R-1 to B-5, and it was approved by a vote of 7-0.
- No verbal or written comments have been received concerning this case.

Financial/Sustainability Considerations:

- Approval of the requested zone change will not result in any expenditures by the City.

Legal Considerations:

- All conditions precedent to consideration of this proposed zone change by the Council have been met.

Policy Considerations:

- Derby’s newly adopted Comprehensive Plan calls for all property located in the McConnell AFB Accident Potential Zone to be zoned B-5.
- The Planning Commission’s policy has been to allow only the B-5 zoning in the MAFB Accident Potential Zone.

ORDINANCE NO. 1975

AN ORDINANCE REZONING REAL PROPERTY LOCATED WITHIN THE CITY OF DERBY, KANSAS, FROM “R-1” SINGLE FAMILY RESIDENTIAL DISTRICT TO “B-5” RESTRICTED COMMERCIAL, WAREHOUSE AND LIMITED MANUFACTURING DISTRICT; AND AMENDING THE OFFICIAL ZONING MAP OR MAPS OF THE CITY TO REFLECT SUCH AMENDMENT, ALL PURSUANT TO THE ZONING REGULATIONS OF THE CITY.

MOTION: Warren moved to approve an ordinance for rezoning Lot 1, Block A, Bayless Industrial Park Addition from “R-1” Single Family Residential to “B-5” Restricted Commercial, Warehousing and Limited Manufacturing District, based on the Findings of Fact presented by the Planning Commission. Horyna seconded.

VOTE: Motion carried 8-0.

**REQUEST FOR
REZONING LOT 1,**

COUNCIL MINUTES

-10-

2/10/08

**BLOCK A, MID STATES
OF DERBY ADDITION
AND ADJACENT
UNPLATTED TRACT
FROM R-1 TO B-5**

Bud Newberry, City Planner presented the staff report.

Background:

- Mid-States of Derby Addition is located between K-15 highway and Oliver Street, just south of 61st Street South. The unplatted tract proposed for rezoning is located immediately to the east across Oliver (see attached map).
- The platted property is 2.15 acres in size, with the plat being recorded in September of 1979. The unplatted parcel on the east side of Oliver is 4.78 acres in size.
- This property was unilaterally annexed by the city in November of 2006. Although the existing use is non-residential, the property came into the city as “R-1” Single Family Residential as prescribed in the city’s Zoning Ordinance.
- Consequently, the existing land use on the application area is presently defined as a legal nonconforming use. By being classified as a “nonconforming use”, restrictions exist regarding expansion of the commercial use as now exists on the property. Also, any change in use such as presently involves the site would be subject to a determination as to it being a comparable change of use under the Zoning Ordinance regulations for non-conforming situations. As such, the applicant has requested a zone change from the residential zoning district to a zoning classification that is compatible with the site’s existing use.
- As part of the annexation process, it was intended that this property immediately be rezoned to “B-5” Restricted Commercial, Warehousing and Limited Manufacturing District. However, a proposed street vacation case requested by the applicant delayed action by the Planning Commission. That vacation case never materialized and the applicant is now requesting the zone change case be considered. However, he is requesting M-1 Industrial District zoning this time.
- The subject property was originally developed while in the county. Prior to the city’s annexation the property was zoned “Limited Industrial” per the county zoning regulations and was also subject to an additional overlay district designated A-O III-S because of its location in relation to McConnell Air Force Base. The property is partially developed with an office for an oil distribution company and an older metal building used for material storage associated with a car wash installation business. Across the street to the east is an additional metal building, also presumed to be used for material and equipment storage associated with those two businesses.
- The “Notice of Public Hearing” was published in the Derby Informer on November 12, 2008. Notices were also sent to neighboring property owners (within 200 feet) as prescribed by state law. The official ownership list is on file at City Hall.
- The public hearing for this case was begun during the Planning Commission meeting on December 4, 2008, but was tabled to allow staff time to create a comparison table for the LI, B-5, and M-1 districts. Two area property owners spoke in support of Mr. Wayman’s request for M-1 zoning during this Public Hearing.

- On January 6, at 6:30 PM, the Planning Commission held a work session to review the comparison table and discuss possible changes in the B-5 uses due to a revision of that zoning district which is planned for early 2009. Since it was a work session, no decisions were made during that meeting.
- During the next scheduled Planning Commission meeting held on January 15, 2009, the Public Hearing was reopened, concluded and closed with no further public comment being presented. Subsequently, a motion was made and seconded to rezone this property to B-5, and it was approved by a vote of 5-2.

Financial/Sustainability Considerations:

- Approval of the requested zone change will not result in any expenditures by the City.

Legal Considerations:

- All conditions precedent to consideration of this proposed zone change by the Council have been met.

Policy Considerations:

- Derby’s newly adopted Comprehensive Plan calls for all property located in the McConnell AFB Accident Potential Zone to be zoned B-5.
- The Planning Commission’s policy has been to allow only the B-5 zoning in the MAFB Accident Potential Zone.

ORDINANCE NO. 1976

AN ORDINANCE REZONING REAL PROPERTY LOCATED WITHIN THE CITY OF DERBY, KANSAS, FROM “R-1” SINGLE FAMILY RESIDENTIAL DISTRICT TO “B-5” RESTRICTED COMMERCIAL, WAREHOUSING AND LIMITED MANUFACTURING DISTRICT; AND AMENDING THE OFFICIAL ZONING MAP OR MAPS OF THE CITY TO REFLECT SUCH AMENDMENT, ALL PURSUANT TO THE ZONING REGULATIONS OF THE CITY.

DISCUSSION:

Council Member Craig clarified that it is the piece of property to the east that we are considering right now.

Mr. Newberry advised that was correct.

Council Member Craig asked if the triangle shaped piece of property was in the city.

Mr. Newberry advised it was.

Council Member Craig pointed out that we had a quasi deal with Mr. Wayman about that piece of property to clean that up. He personally has not seen that much improvement in it and thinks that should be reemphasized to Mr. Wayman. He is for rezoning it properly like we are going to but he believes that he can help us out by improving the looks of that one piece of property. He asked us to do something for him, and we did and he hasn’t seen too much improvement.

Mr. Newberry stated he had read some old minutes and is aware of the agreement that was made. It has been so long since that property was initially zoned by the county that it's impossible for us to find out if the property was ever in compliance with the county's zoning district with the outside storage of old materials. When the property was annexed into the city, it was brought in as an assumed legal non-conforming use which makes it really hard for us to try to go back and enforce things on him. We are aware of that situation and will continue to try and work with him to try and get it cleaned up.

Council Member Bannon asked if there is any way to clarify the M-1 and B-5 zones, because there are some uses allowed that we really think should be in B-5 that aren't, and the matrix really needs to be updated. Are there plans to do that?

Mr. Newberry advised there were. We tried our best to simplify the matrix but when you are comparing zoning districts, a use is described differently. It may be the exact same use but it's described differently, so it's really hard for us to come up with something. He checked today just out of curiosity and saw that 2/3 of the uses allowed in M-1 are allowed in B-5. There really isn't a tremendous amount of difference between the two. We intend probably within the next 60 days to be back to the planning commission with some recommendations to clean up B-5.

Council Member Bannon stated it was during the street vacation request that Mr. Wayman came to this council and as far as she is concerned, regardless of what they may or may not have grandfathered in, when the question was posed to the property owner if he would clean up this property and his answer was yes. That creates somewhat of a contract, and they need to do that. We are spending a lot of dollars in this town to create gateways in our city, this is actually our north gateway and we need to enforce what was publicly agreed to.

Mr. Newberry advised that is one of the reasons that we were so insistent on B-5 because there are very few uses in M-1 that we really didn't want to see in that location that would make the city less attractive as you came into town.

Council Member Bannon commented that not only because of that but also the decision in the comprehensive plan of staying within the B-5 in the AICUZ we have to go with that.

MOTION: Bannon moved to approve an ordinance for rezoning Lot 1, Block A, Mid States of Derby Addition and adjacent unplatted tract from "R-1" Single Family Residential to "B-5" Restricted Commercial Warehousing and Limited Manufacturing District, based on the Findings of Fact presented by the Planning Commission. Craig seconded.

VOTE: Motion carried 8-0.

**ORDINANCE
ESTABLISHING
STIPENDS FOR CITY
COUNCIL MEMBERS**

Kathy Sexton, City Manager presented the staff report.

Background:

- At the Governing Body’s annual retreat on Jan. 20, discussion occurred as to whether it is time to consider nominal stipends for city council members. The Council last addressed the issue in 2004, and no action was taken.
- Many other cities in the area and across the state provide a stipend of \$50 - \$150 per meeting or per month, with some variations as noted in the attached two tables.
- A stipend would show appreciation to volunteers and defray personal expenses incurred from such service, including transportation to meetings and events, babysitting, and monthly internet charges. Use of e-mail for City business is now routine and reduces the City’s costs in postage, paper, and delivery of documents.
- A stipend is not intended to be a salary or to compensate for the value of time in service. A stipend is intended to be a token of recognition and appreciation.

Financial/Sustainability Considerations:

- Stipends of \$100 per month for eight council members would cost a total of \$9,600 per year.
- If payments are processed through the payroll system payroll taxes such as social security would add annual costs of \$735. Staff is researching whether to pay the stipends through payroll or as an accounts payable transaction.
- While the 2009 budget does not specifically include this amount, it does include \$12,200 for supplies, dues/memberships, and travel.
 - Some of this budget could be diverted to defray the budget impact of the stipend expense, so the net budget impact could be less than \$9,600.
 - In 2008, only \$2,756.17 (22%) of the amount budgeted for such expenses associated with the governing body and appointed boards (\$12,300) was spent. Expenditures were especially low because we did not attend the National League of Cities meeting.

Legal Considerations:

- The Council has the authority to pass an ordinance of this nature.

Policy Considerations:

- The goal of a stipend is to help ensure that people of all income levels are able to serve as Council members and that concern about personal expenses does not deter people from running for elected office.
- A City Council should reflect the demographics of the community as much as possible. It would not be ideal to have Council members all in the same age or income bracket.

**ORDINANCE NO. 1977
AN ORDINANCE AMENDING §2.04.010 OF THE DERBY MUNICIPAL CODE,
ESTABLISHING STIPENDS FOR MEMBERS OF THE CITY’S GOVERNING
BODY; AND REPEALING ORIGINAL §2.04.010 OF SAID CODE.**

DISCUSSION:

Council Member Meidinger advised he is opposed to this. Derby has long had a history of volunteering. He thinks we are changing the rules in the middle of a budget term. If this was so important that we have compensation to serve on city council it should have been put in the budget, that way if there are any objections that the people might have to paying people to spend their money they could have addressed it in August when we put the budget together. Now we are in a budget year and changing some of the rules on how we are going to spend the money. He looks at this as integrity in our budget process. As most of us have been around for a while we understand the budget process, staff presents a budget and city council looks at it then there's a public hearing and everyone gets together and says it's a good idea. What we are doing here is skipping part of that process and not allowing public input. He thinks if we are going to do this we should put the issue on the April ballot and let the people decide if they would like to pay the city council a stipend. That way no one can accuse the city council of giving themselves a raise. He looked at our City of Derby governing manual under ethics, he doesn't think this is unethical and obviously it's legal but he doesn't think it's the right thing for the council to vote themselves a raise. Once it's \$100, a bit down the road it will be \$200 and will go from there. He is in favor of putting this on a ballot in the April election.

MOTION: Meidinger moved to put this item on the ballot for the April election. Bannon seconded.

Council Member Craig advised the last time we did something like this the governing body decided something for the mayor which he had no control over. This staff report talks about whether the payments would come from the payroll system or an accounts payable transaction, that might be a moot point, but it makes a difference to him. If it's going to be coming from payroll there are taxes involved in that. On the other hand, if it's accounts payable it puts him in a different category as a self-employed person. Therefore he has some obligation to report this in a different manner and there is double taxation that is involved in this which he doesn't approve of. We are taxing people to give money to someone if you pay it out of accounts payable that he has to pay taxes on and claim that it's self employment because it is \$100 a month and that is the threshold for that type of monies received as income. That is a question that has to be answered. Right now he thinks this is a self-serving type situation, ethics comes into it and for him personally he feels it is a conflict of interest in approving something that he is going to receive monetary gain from. He doesn't think that is the way we want to go. He considers it a privilege to serve on the council and knew that when he threw his hat in the ring and he asked for no compensation. Those folks in the audience that think we are not compensated, that is incorrect. We are, we have workshops where we receive meals, Mrs. Bannon and Mr. Staats have been on a trip, costly trips to different conferences that the city pays for. Those are some real good things that are made available to council members with virtually no cost to them. This has never been done before for this city. The mayor has always received a stipend and the mayor doesn't have a problem with that because he is self employed. He might have a problem with that if someone is trying to consider him self employed for \$100 a month that might cause more than he wants. He advised he will vote no. If anyone on the council is considering voting yes he thinks it sends the wrong message at this time to the constituencies that we have and are responsible for. \$9,600 is not much money in the grand scheme of things but it's the principle of the thing he is looking at. Derby does some things different and he is very proud of that, he doesn't think we have to be like

everybody else. If this by chance tonight passes he will ask the city to not send this money to his social security number but he will send it either to the Foundation, Youth Horizons or some other agency that would benefit from it far better than he would. He doesn't think it's right, and he can't support this. Those that do, he doesn't think that's the proper thing to do. For an elected official to vote on an item that amounts to personal gain is not in the best interest of this governing body.

Council Member Bannon read the definition of conflict of interest from the governing body manual. She advised we are profiting from this decision. This decision is not in the best fiduciary responsibility of what we were all elected for. Council members do receive certain benefits, such as tickets to the Home Show. They are not big things but if you don't have the money to do something, whether that's be on the council or go to the store and buy something, don't do it. That's what it boils down to. We don't have much cost to be on here, we have time. We are not the only people in this town who give time; planning commission members give a lot of their time, library board, and forestry board. She does not feel she is any more or any less important. How about our volunteer firefighters, not only do they give lots of hours every month to stay up on it, but every time they report to a fire they can have loss of life, damages, injuries, lots of things. They are not compensated, they may get a dollar or two and that all goes into a pot and they have a party at the end of the year. She asked Ms. Sexton if that was correct.

Mrs. Epperson explained that money goes into the firefighter's relief association which is used to purchase insurance. It is a very low number.

Council Member Bannon stated her point is this board is not any more or any less important than anyone else that serves in this town and gives their hours. This is not a good economic time, the market was down 300 points today, more layoffs were announced and we are not sending a good message to the community. She does not believe it needs to be done. If this is something the people want to do that is fine, that's why she seconded Mr. Meidinger's motion to put it on a ballot.

Council Member Warren understands the arguments that have been made so far in terms of conflict of interest. There are a few times in his life where he has become a flip flopper, there aren't very many, but if somebody wants to put that tag on him at this point they can do that. He has served in excess of nine years on this council, as this issue has come up in the past he has opposed paying council members during that time, very much for the reasons that were brought forth tonight. It's important that it be stated for the record that this is not being done for or because of the council member that sits to his right, but in the process of seeing what a young person brings to the table brought to mind that it's one thing for someone like himself who has had a longer career and established career and can afford to do this and there are other people where that may not be the case. One of the arguments that has been long standing against this council is that the council is made up of a good old boy network. Basically underline the word "old." Although Mrs. Bannon isn't old, she is a "young old" and she is at a stage in life where it is easier to sustain the cost that it takes to be involved with the council. Those are costs that he writes off on his taxes, about \$250 a year when he does his taxes on expenses. Some are between \$185 and \$225 that he marks down on expenses he has associated with serving on the city

council. That is just the out-of-pocket expenses and doesn't include all the time that's involved. If we are serious about having a diverse city council that is one very good reason to do this. A few years ago he voted against the stipend for the mayor for the very reasons that it has been by tradition a voluntary situation. The mayor spends a lot of time, basically the argument was that it's fair to pay him a stipend because of the time that he puts in, because of the grand openings he goes to, the meetings he attends and the fact he has to come to the city on a regular basis and sign ordinances and other documents. He thinks it has been a fair thing. This is an issue of fairness. To talk about what Mr. Meidinger said about changing in the middle of the stream, he is open to delaying the date of when this would take effect. He is not opposed to delaying the start payment on this to January 2010. It is time to make that decision and if we take some heat for it he would be glad to take the heat. He has nine years of integrity on this and has shown his willingness to serve not because of the money; it is just a fairness issue. He will vote against Mr. Meidinger's motion and in favor of the ordinance. Not for himself but for future people who may consider running for city council. He likes Mr. Craig's idea, if he is more comfortable in letting that money go to the Community Foundation or other organization that is a great way to deal with that. Everyone can make that decision on an individual basis.

Council Member Arnold advised last time this came up he was in favor of it for one particular reason. If you look at the history over the last 10-12 years in the City of Derby whenever there is an election we have a number of wards that go totally uncontested. In many cases the positions have to be filled by the mayor. He thinks having some sort of compensation would be a great catalyst to increase interest on behalf of those 30 and 40 year old people who have children and would love to participate and maybe can't simply because maybe their wife works in the evenings and who's going to watch the babies. He thinks it's a great idea. We are not up here to make money and get rich, that's not the whole purpose. The purpose is that anytime we can create a vehicle that is going to drum up more interest for people to participate on the council that's our job. If you look at the history it's not working. As we get bigger this becomes even a bigger problem. You can't afford to have two or three wards open after an election; it's not a good position to be in politically for the city. It puts a tremendous strain on staff and the mayor to figure out what to do now and who is the best person and will we even have people who will accept if we try to appoint them. Anything we can do to help eradicate this little problem that is becoming bigger would be to our advantage. We are not talking about a lot of money here but if you look at the data that has been collected by city staff we are kind of the lone ranger out there. Many of these cities are so much smaller than we are, there must be something there, it must be working. His position is that we should do it, he agrees with Mr. Warren in possibly putting it on the budget for next year or even with Mr. Meidinger in putting it on the April ballot. He has no conflict with either but he thinks we need to sit down and really seriously think about the fact if this catalyst is going to work and make the mayor's job easier where he doesn't have to make so many appointments, so be it, let's do it.

Council Member Meidinger commented about having youth on the council, he reminded the council that the youth probably aren't really interested in these programs. When K.O. Lavergne was mayor we had a youth council, what happened with it? It died from lack of interest. When Mandy Wagner was here we had a youth council and he doesn't know where it is today. The real issue here is compensating people for this program. The real expense of a city council person or

mayor is running a campaign, that's the real expense. He has run a whole bunch of them and that's the expense. If we want to get youth to run on this would the next step be to pay for campaigns? Think about that for a bit, he is being facetious but that is the real issue, that is probably why people don't want to run. The wards are getting bigger and bigger and across the nation volunteerism is going downhill. It's nice to have the youth on this program but a lot of them don't have the personal time because they are raising families and he doesn't think it's a money issue.

Council Member Craig commended Mr. Horyna for joining this diverse group but if anyone thinks that everyone on this council is in the same economic strata they have another thought coming. A lot of times wisdom comes with age and Mr. Horyna is learning there is a lot more to it than just showing up to a council meeting. He thinks we are doing this for the wrong reasons. He understands the positions of the other council members but the fact remains that as Mr. Meidinger pointed out the big expense for a council person is running a campaign, if you are opposed. Mr. Warren is not opposed, Mr. Arnold is not running, he doesn't know why we are discussing this right now when the council that is seated during the first meeting in April may have a different slant on it. It's obvious that Mr. Meidinger's motion is probably not going to pass. If someone makes a motion to pass this he will vote against it but will make an amendment to it.

Council Member Meidinger advocated to put it on the April ballot and have the voters vote on it since we are doing it in the middle of a budget year. If they want to spend their money to pay it, so be it.

Mayor Avello stated that both sides have good arguments. He looks at it a little different and he and Mrs. Bannon had that conversation today. This city is growing; it's getting bigger and more complex. The problems are going to get bigger and as he sits here and takes applicants for seats that are empty for one reason or another. People are getting younger that are coming in with their applications. As we get bigger and the problems get more complex, you are going to spend more and more time at city hall. Today one gentleman spent eight hours here helping pick a judge, going through 39 applications and four hours on Friday. That is not in the job description. The gentleman to his right has spent numerous hours down here answering phone calls, helping out staff and coming in with ideas to make this a better city to live in. Those are the reasons he thinks some kind of stipend, if that's what you want to call it should be offered to people who come in. Mr. Craig has a good idea, if you don't want it, don't take it if that's an option. Those are the reasons he thinks we should go ahead and do this. We aren't all going to be here, there will be different people up here, we are getting older and there will be a new, younger breed of people. As Mr. Meidinger said, volunteerism is dying. The clubs in this town are dying and we have to find some way to revitalize these things and he thinks a \$100 stipend, if that's what we decide, is the proper way to go.

VOTE: Motion tied 4-4, Nun, nay, Horyna nay, Warren nay, Staats nay; Mayor broke tie with a nay vote. Motion failed 4-5.

Council Member Craig questioned if he has the capability if this passes to turn it down but give it to a charity or non-profit of his choice.

Ms. Sexton explained the council is passing an ordinance that allows the stipend to be budgeted and paid. Every year you pass a budget that then has to allocate the money for that. Each council member when you come on board or at any time would be able to say yes I want the stipend or no I don't want the stipend or option 3 is to direct it to be paid elsewhere. To address taxation, it wasn't available at press time but there are two different ways of doing this. Most cities do pay their stipends through the payroll system which means that if the stipend is \$100, you would get a check that would take out the appropriate social security taxes and income taxes. The check you get would be less than \$100 because you would be paying the regular payroll taxes and the city would pay the additional employer social security tax.

Council Member Craig stated that presents a complex issue. Now you are paying him as an employee of the city. That is more complex than we have on the table tonight. He thinks we should investigate this before we jump into this little quagmire that might be around us. He knows the mayor doesn't have a problem because it works for him a little bit different.

Ms. Sexton stated the two ways of doing this that Mr. Craig alluded to are the two ways we are researching. We can put more time and effort if we know the council wants to do it or not. One way is the payroll way, all the taxes would come out and you would get the net pay and we would report that to the IRS and it would all be taken care of. The other way is to pay you off the accounts payable transaction where you would get the exact amount of the stipend and at the end of the year the city would issue a 1099 indicating an income of \$1,200. Council members would then have to claim that on their taxes and would have to pay taxes at that time. If you normally get a refund, it would probably be a little less. If you normally pay in, it would probably be a little more.

Council Member Craig stated that it still doesn't remove the fact that he ends up in a self-employed status. One thing he would like to know is, if he says he doesn't want it, but wants the entire \$100 to go to the Derby Community Foundation can you make that happen?

Ms. Sexton advised that would be option two. This authorizes an amount; you do not have to accept it. If you say no, don't pay me, then that money stays with the city. If you say don't pay me, pay my amount over here to some non-profit group, we can do that.

Council Member Craig questioned if anyone would have to pay taxes on it.

Ms. Sexton advised no, it would not be his income, nor could you claim a deduction on your taxes for a charitable contribution. We pay you and then you pay it to the Foundation then it's your charitable contribution.

Council Member Craig indicated he was just looking at the mechanism that Jean has to use to move that money from whatever account it is to the Community Foundation or Youth Horizons or whatever it is. Do you have that mechanism available to you?

Mrs. Epperson explained what they will do is develop the paperwork that could be signed to direct that to be done and we can pay them.

Council Member Craig stated he did not want that money coming back to his social security number.

Mrs. Epperson advised that was correct.

Mayor Avello clarified that if you don't attend the meetings you don't qualify for the \$100, you qualify for whatever meetings you attend, correct?

Ms. Sexton advised it is however the council wants to set it up. Currently the ordinance is set up to be \$100 per month. You will recall that in the literature we provided each city chooses if they want to pay per month, per year, per meeting or some other way you decide. This is set up per month because that was her understanding of the direction she was given at the retreat.

Mayor Avello asked if the other way would be more complicated for the city.

Ms. Sexton stated someone would have to decide what constitutes showing up for a meeting. If you show up for five minutes should we authorize the payment, or do you have to stay to the end? To her that is complicated.

Council Member Craig advised the ordinance as it is written right now would have to have the conditions of acceptance for the council members, either yes, no or pass through to something else. He thinks that should be in there.

Ms. Sexton asked if Mr. Craig were proposing an amendment to the ordinance that would state that each council member could decide if they wanted to accept it or not.

Council Member Craig stated yes, accept, not accept or pass through to charity or whatever of your choice.

Ms. Sexton clarified he wanted accept, reject or redirect, is that a motion?

MOTION: Craig moved to amend the ordinance to provide the option to accept, reject or redirect the stipend. Bannon seconded.

Council Member Warren called a point of order, there is not a motion on the floor.

Council Member Craig clarified he was making a motion to amend the ordinance.

Ms. Sexton began to restate the intent of the motion for clarification...

Council Member Craig interjected and explained he was making a motion to change the ordinance and add what we just discussed.

Phil Alexander, City Attorney pointed out that there is nothing at this point to amend. Until someone makes a motion to adopt some ordinance, there is nothing to amend.

MOTION: Warren moved to adopt the ordinance with the following changes: effective date of January 1, 2010 and with wording to be added to allow for each council member to accept, reject or redirect the funds to a non-profit organization of their choice. Arnold seconded.

Council Member Bannon asked if the staff hasn't yet determined to pay this through payroll or the other way and you pay it and we are employees of the city, does that mean we can go to the DRC and get the reduced membership and all of the other things that come as benefits of being a city employee?

Ms. Sexton stated she does not have the employee manual in front of her but as pointed out there are some benefits for all city employees; there are other benefits for full time employees that part time employees don't get. She does not recall if part time employees get the DRC membership.

Council Member Bannon advised she was just using that as an example, she assumes there are other benefits.

Ms. Sexton stated most benefits part time employees do not get.

Mrs. Epperson advised she did not know if part time employees get a DRC membership but this position would not qualify as a true part-time position.

Ms. Sexton suggested it would be in a special class. We are still researching some of that, but essentially it would not be considered a regular part-time employee, it would be a special class.

Council Member Bannon clarified that either way staff decides to go with this the most our additional cost would be is the \$700 in social security tax. She asked if they were leaving it in staff's hands to decide which payment method to do.

Ms. Sexton advised if the ordinance were passed they would go back and amend our personnel policies to do it however you want. If you want other benefits we could list those out but we need to go through the whole book to figure out what those might be. If your intention is that that is not part of the deal then that is the way we will write up the personnel policy. She does not have a good recommendation today because she has not gone through and read every word, which is honestly what needs to happen. She needs to read every policy in the book to see what things need to be made a special category for elected officials.

Mayor Avello asked if the council would be employed by the city or is there a special category.

Ms. Sexton advised it would be a special category.

Council Member Craig advised the two categories is what got his attention when it comes to taxes. It could be a moot point, but we need to know that. If it's accounts payable it goes as something that is owed to someone and you don't take any taxes out of it.

Ms. Sexton indicated she interprets Mr. Craig's issue to be different from what the mayor was just asking. On that issue, if you get paid \$600 or more per year, it is considered a self-employment situation and we are sending a 1099. It is still employment; it's just not a Derby payroll check. These are technicalities we can figure out and we can go either way. She thinks we know enough now to know every city we've surveyed so far has said they run it through their payroll system. They feel that's better for the council members, because then you don't get caught in the tax situation of having to come up at the end of the year with funds. That would be the easiest way to do it and that is the way we are leaning toward. The one piece we have not researched yet is the benefits or other liabilities of being this special category of employee. It's certainly not an insurmountable issue. There are many organizations that have done this and we will figure out those details.

Council Member Warren advised most things that are coming up now get into the details which will need to be addressed at some point, but the question before us now is are we going to go forward with the stipend or not. He called for the question.

VOTE TO END DEBATE: All yea

RESTATED MOTION: Warren moved to adopt the ordinance with the following changes: effective date of January 1, 2010 and with wording to be added to allow for each council member to accept, reject or redirect the funds to a non-profit organization of their choice. Arnold seconded.

VOTE ON MOTION : Motion tied 4-4, Meidinger nay, Nun nay, Bannon nay, Craig nay. Mayor broke tie yea. Motion passed 5-4.

CONSENT AGENDA

Board Appointment

- Bill McCabe recently resigned from the Parks & Urban Forestry Board. The Mayor's recommended appointment to fill this vacancy is Steve White

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

VOTE: Motion carried 8-0.

ADJOURNMENT

MOTION: Arnold moved to adjourn at 8:20 p.m. Horyna seconded.
VOTE: Motion carried 8-0.

ATTEST:

Dion P. Avello, Mayor

Jean Epperson, City Clerk