

**APPROVED
REGULAR COUNCIL MEETING
February 26, 2008
7:00 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I
WARD II
WARD III
WARD IV

COUNCIL MEMBERS PRESENT:

Jim Craig, Jim Meidinger
Vaughn Nun, Chuck Warren
Charlie Schwarz, Cheryl Bannon
Mark Staats, George Arnold

COUNCIL MEMBERS ABSENT:

Flag salute was led by Council President Charlie Schwarz.

The invocation was led by Council Member George Arnold.

**CONSIDERATION OF
MINUTES**

Minutes of the February 12, 2008, Regular Council Meeting.

MOTION: Schwarz moved to approve minutes of February 12, 2008 Regular Council Meeting. Nun seconded.

VOTE: Craig yea, Meidinger yea, Nun yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, 0 absent, motion carried.

PUBLIC FORUM

Council Member Meidinger commented on an article in the Derby Reporter about the Derby Recreation Commission receiving recognition from the American Red Cross. The staff at the DRC acted in a very responsible way and saved someone's life, which is outstanding. He wishes we had known about this earlier so maybe we could have made mention of it rather than reading it in the paper. It is kind of like the awards we get from Family Circle, we should tout all those things. After the last meeting he talked about our current industrial park and the new Lusk park. Apparently we are going to be looking at the Lusk park as probably the major player at this time for industrial parks. What he would like to see us do is to get the old leg up on our competitor and take a real serious look at extending Madison to the west going across the railroad track to our industrial park so we can have a good industrial park and get that thing filled up. If we don't act very hastily we aren't going to have any competitive advantage at all and he would hope we would pursue that and get that done as soon as possible. He would also include in that the expansion of Water Street. We need to keep abreast of this and he would like to have a report

from our economic development director on a timely basis to see how we are doing with the remaining pieces of property that we have in the industrial park.

Mayor Avello asked if we were going to do something pretty quickly with Cherry Street.

Kathy Sexton, City Manager advised it is in the approved CIP to abandon Cherry Street and extend Madison Street. It is a project partially funded by state funds so we are on a time schedule with that.

PROCLAMATION

Mayor declared the week of March 2 through 8, 2008 as National Lutheran Schools Week in the City of Derby.

Paul Mieger, Principal of Faith Lutheran School accepted the proclamation. He advised he is relatively new to the City of Derby, having moved to Derby eight months ago. Faith Lutheran School has been around for 20 years as a preschool and six years ago expanding to education up to 5th grade. They currently serve 150 families in the community.

PRELIMINARY PLAT – LATTIN ADDITION: APPLICANT APPEAL

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

Bud Newberry, City Planner presented background from the Planning Commission actions.

Background:

- This site is one acre in size and is located near the southwest corner of Oliver and 60th Street South. It is somewhat remote from the City's boundary and is located in Accident Potential Zone II (APZ II) per the McConnell Air Force Base (MAFB) Air Installation Compatible Use Zone (AICUZ) Study.
- Immediately to the east of the site is a suburban residence. Further to the east of the subject property, across Oliver is a portion of Stone Creek Commercial Addition (city of Derby zoning "B-3"). To the south is unplatted property, with Sedgwick County zoning. Light Commercial ("LC"). To the west is a frontage road and K-15 Highway. To the north, across 60th Street, is Scroggin Industrial Addition, which has County zoning "L1" – Light Industrial.
- All of the subject property is zoned Light Commercial – "LC" per County zoning.
- While the subject property is in close proximity to the Derby city boundary, sewer and water services are a great distance away. The proposed lot can operate on an individual sewage disposal system and Rural Water, so the applicant desires to remain in the County for the time being.
- The Planning Commission approved this Preliminary Plat subject to staff recommendations for setbacks; the requirement to file petitions for future city water and sewer services and also for an agreement not to contest future annexation.
 - Setbacks. The Preliminary Plat as presented to the Planning Commission indicated 20' setbacks along the west line and north line. Staff recommended that a 35' setback be dedicated along the west and north, in anticipation of future Derby "B-5" zoning.
 - Public Improvements. Although the applicant desires individual sewage disposal systems and connection to rural water, the Derby Subdivision regulations require

the guarantee of extension of required public improvements. In this particular case, staff recommended the applicant submit petitions for water and sanitary sewer improvements across the north line of the plat between K-15 and Oliver. These petitions will be held until a larger, overall project is initiated.

- Annexation. Staff recommended that the applicant submit an affidavit stating that annexation will not be contested if and when the City Council initiates such annexation.
- The applicant has appealed the Planning Commission decision based on her disagreement with having to follow City requirement for setbacks, which is 35 feet, instead of the County requirement, which is 20 feet. She is also opposed to filing petitions for City sewer and water services and for annexation, which are required to obtain City platting.

Financial Considerations:

- Although no immediate financial effect is expected, an exception to the currently consistent enforcement of subdivision regulations would require exceptional circumstances or else it would be reasonable to believe that other applicants would request exceptions too. If property owners are allowed to connect to City infrastructure without paying City taxes, the effect on the City financially would be negative.

Legal Considerations:

- The Planning Commission is authorized to review proposed plats of property located within the City or its immediate environs. The Commission may approve a proposed plat, approve it with conditions, or disapprove it.
- The Commission acted pursuant to section 406(C) of the Subdivision Regulations to require the applicant to consent to annexation, submit appropriate petitions for public improvements, and require specific setbacks.
- In making its decision to approve the preliminary plat with stated conditions, the Commission was furthering several established development policies as set forth in the Comprehensive Plan for the City of Derby:
 - Development in the City's long term growth areas should be compatible and integrated into existing surroundings, and conform to established standards.
 - "Quality of development" should be supported rather than lowering standards.
 - Provide for necessary long term services.
 - Avoid annexation "doughnut holes."
 - Implement a common-sense approach to implementation of development standards.
- Pursuant to section 406(C)2, a dissatisfied applicant may appeal to the Governing Body. Pursuant to section 1100 of the Subdivision Regulations, the Governing Body may sustain the Commission's decision or overrule it.
- If the Governing Body overrules the Commission's decision, it must state the reasons for doing so in writing and return the plat to the Commission for consideration consistent with the Governing Body's decision.

Policy Considerations:

- The subject property is located within Derby's Subdivision Regulations' jurisdiction area. The property is located in Derby's growth area as defined by the Comprehensive Plan.
- The requirements established by the Planning Commission are in accordance with our Subdivision Regulations and Zoning Regulations.

DISCUSSION:

Council Member Warren asked if we are going to treat each area of appeal individually or do they have to be upheld or rejected as a whole.

Mr. Newberry advised he believes the council can make recommendations individually on each question.

Council Member Warren asked if it were possible to neither reject nor affirm, but to send back to the planning commission to reconsider, or do we have to give them a specific recommendation of what we are looking for.

Mr. Newberry indicated the council can do whatever they choose to do, but if it is sent back he thinks the recommendations made to the planning commission should be pretty specific.

Council Member Bannon clarified the frontage road would be on the north.

Mr. Newberry advised that was correct.

Council Member Bannon asked why B-5 is 35-foot versus 20-foot on anything else.

Mr. Newberry stated that the standard we now have for B-5 city wide is 35-feet. What we are saying is that we anticipate some day in the future that the rest of this area will probably be annexed into the city. If we went ahead and put the setback at 35-feet it would be compatible with other areas that have already been set at 35-feet.

Council Member Bannon asked if it was anticipated that anything that is annexed in the future would come in with B-5 zoning.

Mr. Newberry stated he believed so.

Council Member Bannon asked if K-15 had any additional easements adjacent to the highway.

Mr. Newberry indicated the state undoubtedly has some right-of-way in that area.

Council Member Bannon advised that was her point, if they have a right-of-way that comes in farther than the 35-feet or the 20-feet it is mute anyway.

Mr. Brown pointed out the state right-of-way line, and from their west line to the west there is a frontage road and the actual highway. There are no setbacks required by the state from the highway; the setbacks are a local zoning issue.

Mr. Newberry mentioned that one of the reasons we don't anticipate the property being annexed in the next few years is because the availability of water and sewer. With the addition of the new industrial park on the north side, these services will be extended up into that area but they still will be several hundred feet from this piece of property. We don't really know for sure how long it will be until those lines are extended down into that area.

Michelle Webster, Terra Tech, stated the issue with the setbacks sounds like its a little issue, but this isn't zoned light commercial right now. If you take a look at the configuration of the lot, it narrows in the middle of the lot to about 100-foot width. If you take a 35-foot front yard setback and you already have a 10-foot rear yard setback, that is 45-feet out of 100-feet of building space which makes a lot less options of what you can do with that property. The current zoning is county L-C; it is in the county and will remain in the county. We are not being annexed as part of plat approval. If the setbacks were completely left off of the plat, which happens most of the time and someone goes to build on that and pull a permit then the zoning would control the setbacks. The current zoning is L-C and she only put the setbacks on the plat to indicate to someone who would build on the site what setbacks are required. Now Derby is saying it might go into Derby and when it goes into Derby it will go in as B-5 and B-5 zoning has a 35-foot setback. It may

never be annexed before the building is built. This is a make or break proposition. If we could compromise and give a 35-foot on the north and keep a 20-foot on the frontage road for K-15 that would benefit the applicant because it would give her a lot more options of where to put her building and parking. Regarding the public improvements as far as sewer and water, they have already been approved on-site sewer and well. She is going to put in an alternative sewer system which is fairly expensive. The reason she doesn't want to sign petitions for extension of sewer and water is because if development does go in and in 2-3 years we have service available she thinks she would be forced to connect on. What we are saying is if she wants to connect on when it's available, let her petition then. What difference does it make, we are not holding up the progress for anybody beyond her property. Why should you give the petitions for the city to hold and hope they don't activate them without your consent? That is basically the reason we don't want to give petitions to be held for whatever length of time, when she wants sewer and water she can petition. If they are available she would be served and the benefit district would be her lot, which is exactly what the petitions call for. Regarding item #8 on the annexation, the reason they put that in there is because the staff report did not ask for a petition for annexation, what they wanted was a note on the final plat itself that says, in the event the city touches the property that the owner would waive the right to protest annexation, that language comes from the Derby Sub Regulations. All they are asking for is to leave that block off the plat because they have not been asked to provide a petition for annexation for this plat.

Council Member Arnold stated that Derby has grown very rapidly in the last 25 years. It has been our intention that we try and get control of what is going on in the city for the benefit of all of the citizens. Patch working is something we are trying to avoid and we have cleaned up some areas within the city limits that were not annexed recently and it is his understanding we will continue to do the same thing in the future. He thinks annexation of that piece of property will happen sooner rather than later. At this particular point he would like to see that we adhere to the recommendations of the Planning Commission but he is not opposed to tabling this item and sending it back to them to let them review it along with any recommendations the council might make and make a decision thereafter.

Council Member Bannon asked if someone builds something that was light commercial along Rock Road would their setback be 20 or 35 feet off of the main road. The applicant does have a frontage road on the west side of her property so her actual frontage road could be the north road which is 60th or it could be the frontage road if she wanted to build a long skinny building.

Mr. Brown stated that typically a corner lot is considered to have two front yards, that is why we recommended that we have 35-feet on both the west and the north. The 35-feet is based on future B-5 zoning which is compatible with McConnell and was tailored to meet McConnell's needs. We anticipate that this will be annexed someday and that it would be appropriate to have B-5 zoning and because of that we selected the 35-feet that is compatible with the B-5 district. Someone mentioned today that B-5 was developed primarily for the area north of Wal-Mart. If you remember those properties from Nelson Drive east are fairly deep and a 35-foot setback would probably not be that big of a deal. When staff presented this to the Planning Commission we advised them that the 35-feet was strictly based on the true B-5 zoning district that we anticipate, but because of the frontage road, the highway and the railroad we suggested that something less than 35-feet might be appropriate and the Planning Commission would have the right to designate the setback they felt would be appropriate. They said they wanted to stick with the 35-feet.

Council Member Bannon commented that we have to sometimes look at these things on a case by case basis, looking at the depth and frontage road there may be some room for compromise. She thinks we should stick with the 35-feet on the north and the west may alter somewhat. As far as the other two conditions, some may or may not have been here before when there have been people at the meetings who have been annexed and say they didn't want that. We are getting

ahead of the game by saying in advance that this is where we are going and you should expect this. She does not see any reason to not go with what the Planning Commission decided on items 7 & 8.

MOTION: Bannon moved to sustain the decision of the Planning Commission regarding required petitions and annexation items 7&8 and moved to send item #4 back to the Planning Commission. Warren seconded.

Council Member Warren indicated there are two aspects of this that some council members are in agreement on. The aspect of annexation is a given, as we are growing into this area we need to understand that this is going to happen and we don't need that battle down the line so that requirement is something that needs to happen along with this. As far as public improvements, we don't know at this point that there will ever be a need for improvements, but should it be needed we don't need to be spending city dollars fighting a battle when we can at least put into place the mechanism to allow that to happen. He believes there will be consensus across the board on those two items. He would have preferred a little more discussion on the 3rd item but will go ahead and proceed. He suggested to go ahead with items 7&8, but discuss further the 3rd item rather than bundling all three of them together.

Council Member Bannon withdrew her motion.

Council Member Warren withdrew his second.

AMENDED MOTION: Bannon moved to sustain the decision of the Planning Commission regarding petitions and annexation. Warren seconded.

Council Member Meidinger asked where the north boundary of Derby is in reference to this piece of property.

Mr. Brown stated the city boundary is the yellow line depicted on the map.

Council Member Meidinger indicated that logic would tell him that that will be annexed into the city based on what we have done in the past and he agrees with Mr. Arnold. He asked Mr. Warren what he wants to do, are we assuming that is going to be annexed in?

Mr. Warren stated that was correct. He thinks there is a separate issue in terms of how much setback in that area that is a separate discussion from annexation. He thinks we need to get the two items we are in agreement on out of the way and then have some discussion on what the proper amount of setback would be.

Council Member Craig asked if both of those have to be honored with a corner lot with two setbacks. He thought it was established a long time ago that you honored one of the 35-foot setbacks.

Mr. Brown stated that whatever setback is established, it will be honored. That doesn't mean that we have to have 35-feet on both sides. Setbacks can be established by the Planning Commission that are different than our zoning regulations; they have a right to do that.

Council Member Craig clarified that right now, if you have a corner lot you are required to have 35-feet on both sides.

Mr. Brown stated that is correct by our standard for the B-5 district, but that can be modified.

VOTE: Craig yea, Meidinger yea, Nun yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, 0 absent, motion carried.

Council Member Warren advised that we have a unique situation. If you look at the map we have, just to the south of this location is Robert's Overdoors and to the north to 55th street is an area that sometime in the near future a lot of that area could be annexed. Because this is not a blank canvas, it is an area that has a number of property owners and a variety of sizes and layouts; we should maintain at least the option of flexibility depending on the type of business that is going in to allow us some flexibility. If we run into an unusual shaped lot or situation that we could still have the say to make sure we have enough setback for parking, lines of sight and to keep the area looking nice without such a rigid set of rules that says we can't adjust. This would be a situation where you have a corner lot and having a 35-foot setback on both of those he considers a hindrance and unfair burden on that particular property owner. He is in line with Mrs. Bannon's motion to maintain the 35-foot setback along the north property line, and to reduce the setback along the west property line to 20-feet. He thinks that would be a reasonable compromise.

Council Member Meidinger advised it looks to him that if we are going to try to control the land that we are going to eventually annex in, why don't we annex it in and then set the parameters of what we are going to do and not do.

Council Member Warren stated there are probably some legal ramifications in there but it would be an island annexation. We would have to go through the process of annexing someone that has not asked to be annexed into the city. There comes a point when we annex the land next to it that we have the right. From a procedural standpoint it would be easier to annex down the line.

Council Member Meidinger clarified what he was trying to say; why don't we annex from the north boundary up to the north end of the given piece of property. Then we can control that piece of property and everybody is playing with the same rules. If they want to build in Derby the applicant can go along with the rules that we have. He thinks we should annex that piece of ground in and get it done with.

Ms. Sexton commented that Mr. Meidinger's idea is certainly logical and it sounds appropriate on the surface. It is purely timing at this point and is a county case; since we are the closest city to the property they are allowing us to have that say in their case. The applicant is needing a decision from Derby on this case now. If in the future we want to annex it and we can start that process, but for us to do an annexation we have to write up the legal paperwork, give public notice and take action on the council and several months later go to the county commission for approval. We could start the process but we pretty much owe the applicant a decision on this case today.

Council Member Craig asked if it would be appropriate to give the flexibility to honor one 35-foot setback. That way if they decide to do it on the west side they can, or they can do it on the north. As a property owner, if it were him he would rather have the option; let him decide which

one he would like to honor with the 35-foot setback, speaking from experience and how his house sits on his corner.

Mr. Brown pointed out that the applicant has already stated this evening in their presentation that they would go with 35-feet on the north side and 20-feet on the west side. He does not disagree, if you look at this piece of property and the distance from their west line to the corner is only about 90-feet. If you take 35-feet off the front, along with some possible future easements that really squeeze their ability to build right at this point. Their request was to have 35-feet on the north and 20-feet on the west side, giving them a little more room to build at the skinniest location.

MOTION: Bannon moved to return the issue of setbacks to the Planning Commission with the recommendation of 35-foot setback on the north and 20-foot on the west. Warren seconded.

Mayor Avello asked if the county had the right to overrule whatever we do here since it is going back to them.

Mr. Alexander advised they do not. This is a platting issue which he understands to be decided under our subreg's by the City of Derby. It is not a zoning issue which will be a county issue.

Ms. Sexton stated that if the council wants to send it back to the Planning Commission so they can determine if 20-foot is the right number, you can.

Council Member Bannon indicated that she thought she heard when Mr. Newberry was speaking that his recommendation was that we give it back to the Planning Commission with specific recommendations.

Mr. Brown explained that this is a preliminary plat and the Planning Commission has to review the final plat anyway so it is going back to the Planning Commission anyway by default because they still have to act on the final plat. What you are doing tonight is giving them your final decision on the west side and he thinks the appeal basically is that the council is overriding the commission on this one item and they will be forced to stick with the 20-feet on the west side.

Mayor Avello asked if this goes back to the county for final approval.

Mr. Brown advised it will go eventually to the Board of County Commissioners. The platting issues are ours, it is our platting jurisdiction so we get to decide the plat and he does not believe the county will overrule us. The land use and zoning is the county.

Council Member Arnold advised he would go along with the suggested motion with the understanding that this is a one time circumstance and should be dealt with in that manner. He does not want people coming before the council every time they have an odd shaped piece of property expecting the same type of treatment. We have a Planning Commission that does an awful lot of hard work and we should take their guidance and use it as an example and take each

piece of property that comes before the council individually. He wants people to understand that this is a one time, unusual circumstance.

VOTE: Craig yea, Meidinger yea, Nun yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, 0 absent, motion carried.

FINAL PLAT – HAMILTON ESTATES

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

Background:

- Hamilton Estates is located at the old Hamilton Airfield, on the south side of Meadowlark approximately ½ mile east of Rock Road.
- The proposed plat is comprised of 46 single family residential lots (south of Glen Hills Drive and north of James); and 19 lots between Glen Hills Drive and Meadowlark to accommodate a proposed senior housing complex comprised of 15 4-plexes, an apartment site, and associated clubhouse facilities and commercial area.
- The appropriate zoning for the senior housing complex was accomplished through a PUD approved by the Planning Commission on November 1, 2007 and by the City Council on November 27, 2007.
- The Planning Commission approved the Preliminary Plat on October 18, 2007 and the Final Plat on December 6, 2007.

Financial Considerations:

- As required by the Subdivision Regulations, the developer has submitted petitions for extension of public infrastructure including sanitary sewers, water lines, streets, drainage and sidewalks. These projects total \$2,384,300 with the benefit district paying 100% of the costs associated with all projects, EXCEPT the sidewalks along Meadowlark and along James.
- The sidewalks along both Meadowlark and James are anticipated to be a future part of the City's bike path system. It is proposed that these sidewalks be paid 50% by the benefit district and 50% by the City-at-large. The City-at-large portion would be approximately \$29,500.

Legal Considerations:

- Pursuant to state law and the City's subdivision regulations, the Planning Commission has approved this plat.
- After the plat is recorded, Gilmore & Bell will prepare the appropriate resolutions for the infrastructure improvements for Council consideration.

Policy Considerations:

- The proposed Hamilton Estates is located in the City's near-term growth area as identified in the Comprehensive Plan.

DISCUSSION:

Council Member Meidinger asked if this was a new policy on the sidewalks, we have put hike and bike trails in before and he doesn't recall that we charged anything to the benefit district, or vice versa.

Mr. Brown advised that our policy on sidewalks along arterials, which would be Meadowlark is 50/50. We are asking because we think the one along James will be part of our bike path system out to High Park so even though this is not an arterial we are requesting a 50/50 split on that be approved also. The one on James is really not in our public improvement finance policy, it is the only one that is out of character with our normal policy, but because it's heading out to High Park we are asking that the council approve a 50/50 split on that petition.

Council Member Meidinger asked if that would be an 8-foot wide sidewalk.

Mr. Brown advised it would be 10-feet.

Council Member Bannon asked Mr. Brown to point out lots 10 & 11, Block C.

Mr. Brown pointed them out.

Council Member Bannon asked if the houses on the back were going to be senior only or open.

Jason Wiley, Applicant stated they are considering the possibility of expanding the development to the south end for seniors as well.

Council Member Craig asked Mr. Brown to point out the reserve areas and asked how much open green space that accounts for.

Mr. Brown pointed out the several reserves and storm water detention areas in the development.

Council Member Craig indicated he is getting questions from people now about the green spaces available inside development areas because we haven't' been doing a very good job of it in the past, we've had some but not to the extent it should be.

Chris Young, Young and & Associates advised there is probably over 6 acres of total green space. In this particular project there is significantly more green space than would be required by subdivision regulations. Another thing to point out is that pipeline; we seem to fight it every time we do something in this area. There is 120-foot pipeline in there that will be a green space also, so when you take that pipeline with the reserves there is quite a bit of green space.

Council Member Craig asked what the access is to the green spaces behind all of the lots, how do you get to it?

Mr. Young stated that the access to the reserve on the south would be from James Street and the other large reserve is surrounded by access.

MOTION: Arnold moved to (1) approve the plat of Hamilton Estates, (2) authorize the Mayor to sign the Developer's Agreement and Plat, (3) approve the petitions as submitted as guarantee that certain required improvements will be installed, (4) approve the request for annexation, (5) authorize staff to publish the zoning ordinance, and (6) instruct staff to record the Developer's Agreement, Certificate of Petitions, and the Plat. Bannon seconded.

VOTE: Craig yea, Meidinger yea, Nun yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, 0 absent, motion carried.

**STONE CREEK PARK
RECREATIONAL TRAIL-
LOCAL PROJECT
AGREEMENT**

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

Background:

- Stone Creek Park is located on the north sides of Patriot Avenue at Woodlawn.
- The lake within the park is stocked with fish by the Kansas Department of Wildlife and Parks (KDWP) through its Community Lakes Program.
- In 2005, the City received a grant from KDWP to construct a parking lot and portion of a trail to provide access to the park for fishing and other park users.
- In July 2007, per City Council authorization, the City applied for a Recreational Trails Program grant to construct a concrete trail around the perimeter of the lake.
- Due to KDWP budget constraints, only the portion of the trail around the east side of the lake was approved. KDWP has now asked the City to execute the local Project Agreement so the funds can be disbursed.

Financial Considerations:

- This project is funded 80% by KDWP and 20% by the City. The estimated cost of the project is \$125,000, with KDWP contributing \$100,000 and the City \$25,000.
- The 2008 budget includes \$41,200 for the local share.

Legal Considerations:

- The City is authorized to contract with state agencies for cooperative projects and to appropriate and expend funds pursuant to such contracts.

Policy Considerations:

- The City's trail system and especially within the city parks has been well-received and well-used by the public.
- The provision of trails complies with the goals of the Comprehensive Plan related to Parks, Open Space and Recreation.
- The 1999 Parks and Open Space Plan recommended that "...emphasis should be placed on developing walking and biking trails that link parks with each other..."
- The proposed trail will be ADA compliant.

DISCUSSION:

Council Member Craig indicated there is a lot of work going on down there and is coming along well.

MOTION: Craig moved to approve the Kansas Department of Wildlife and Parks NRE-001 Local Project Agreement for recreational trail in Stone Creek Park and authorize the City Manager to execute said agreement. Staats seconded.

VOTE: Craig yea, Meidinger yea, Nun yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, 0 absent, motion carried.

PURCHASE OF 4 POLICE PATROL VEHICLES

Doug Chambers, Captain, Derby Police Department

Background:

- The 2007 budget authorized \$47,000 for the purchase of 2 Police Patrol Vehicles. Lubber's Ford was the lowest responsive bidder at \$23,158 per unit in November 2007.
- Funds for the purchase were encumbered, however Lubber's Ford withdrew its offer citing an error in calculating the bid, and the transaction was cancelled.
- The 2008 budget authorized \$48,000 for the purchase of two (2) replacement patrol vehicles, replacing cars with 89,000 and 92,000 miles each.
- A bid opening for four (4) Police Patrol Vehicles was conducted, with the low bid submitted by Rusty Eck Ford at \$24,048 per unit.

Bid Process:

- Invitations for bids were sent to four vendors, all of which responded:
 - Rusty Eck Ford \$24,048 per unit
 - Lubber's Ford \$24,261 per unit
 - Steven Motor Group \$24,436 per unit
 - Riverside Autoplex (Oklahoma City) \$24,597 per unit

Financial Considerations:

- The purchase price for all four cars is \$96,192 from the low bidder, Rusty Eck Ford.
- The purchase is under budget by \$1,192.

Legal Considerations:

- None

Policy Considerations:

- The City of Derby Purchasing Policy was followed and requirements met.
- Bids have been reviewed and approved by the Bid Board.

MOTION: Schwarz moved to approve the purchase of four (4) 2008 Ford Crown Victoria Police Interceptor vehicles in the amount of \$96,192 from Rusty Eck Ford. Arnold seconded.

Council Member Warren pointed out that the written report indicates we were under budget by \$1,192 and what he is hearing is that we are over budget by \$1,192.

Captain Chambers advised we are \$1,192 over budget.

VOTE: Craig yea, Meidinger yea, Nun yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, 0 absent, motion carried.

G.O. BOND SERIES 2008-A – FIRST ACTION

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

Background:

- Temporary Notes Series 2006-2 issued December 1, 2006 will mature on June 1, 2008 so the issuance of general obligation bonds is planned to pay off the notes.

- In addition, projects financed in the Temporary Notes Series 2007-1 and 2007-2 that are complete will be included in this bond issue to take advantage of the current interest rate environment.
- The projects consist of infrastructure improvements in the Stone Creek Commercial Addition, The Oaks & Oaks 2nd Additions, Spring Creek Plaza and Spring Creek 6th Additions, and Anderson Farms Commercial Addition.
- The total project costs to be assessed within the 2008-A Bond issue are approximately \$2,600,000.
- The debt service on this bond issue will be paid via 15-year special assessment payments of the benefited property owners.
- The first step in the formal process of assigning specific special assessment costs to each parcel benefited by the projects listed above is for the Council to take action to approve the “Statement of Final Costs” and Assessment Roll. The Council would then set a date for the Public Hearing on the assessments and approve a Notice of Public Hearing. The assessment roll is being generated at the time of preparation of the staff report and will be presented to council during this meeting.
- In order to meet various timeframes prescribed by state law, staff recommends that the Public Hearing be held during the March 25th regular meeting of the Council.
- Notice of the Public Hearing will be published one time in *The Derby Informer* and mailed to each affected property owner (including proposed assessment amount) at least 10 days prior to the public hearing.

Financial Considerations:

- The Statement of Final Costs contains a detail listing of the construction and related financing costs of each of the 15 projects for assessment.

Legal Considerations:

- The legal work for this process is being performed by the City’s bond counsel, Joe L. Norton of Gilmore & Bell. Mr. Norton and his staff worked with City staff to determine the timeframes and are preparing all of the necessary legal paperwork, in strict adherence to state law, which, ultimately, governs the special assessment process.
- The job of calculating the final costs, notifying and mailing notices to property owners and the “spreading” of specials is a combined effort of City Engineering staff and the City’s Financial Advisor, Greg Vahrenberg of Piper Jaffrey Company and Charley Young of Ranson Financial.

Policy Considerations:

- The various steps taken to complete the process of permanent financing of these projects are in compliance with existing city policy and state statutes.

DISCUSSION:

Council Member Bannon pointed out that tonight we are attaching assessments and this is something that she has been here when this room has filled up and we have talked about looking for methods of notification and implementation and so far we haven’t got there. We are in a position where we’ve issued these temp notes and we don’t have a choice, we have to turn them over to GO’s. She is not as concerned about the commercial because when people buy commercial lots typically large companies do a good due diligence and find these things. For normal residential homeowners, and it doesn’t matter if it’s the golf course where people assume they have money or if it’s Spring Creek 6th where perhaps housing prices are not so high, she still stands by the fact we have to find some other methods to make homeowners aware these specials are going to exist. This is just the tip of this iceberg as we get farther and farther into these developments. We have talked about it and talked about yet we haven’t gotten any farther and

she doesn't know whether this is an item that needs to be higher on the priority list. She knows staff time is pretty well spoken for but it is something we need to deal with.

Council Member Meidinger stated he is sure we don't have to worry about this one because he is sure Mr. Lusk has already told these people these assessments could happen so he thinks we can probably skip over this one. Secondly, didn't we used to have signs at every development that told people there could be assessments, and if so, what happened to those?

Ms. Sexton indicated that as she understands it that was under a previous code that is no longer in effect. In response to Mrs. Bannon's comments, yes, the council put that on the priority list and that is something staff is working on. We do not come to you today with a solution and as you appropriately said a solution to that has nothing to do with today's action, this started years ago. We do have some options and it is something we are working on but she is not going to promise magic. There is nothing a city can do to make people read the fine print of their real estate contracts when they buy homes as you well know. These homeowners were told when they bought their properties an estimate of what their specials would be.

Mrs. Epperson advised that there is a marketing agent in The Oaks and they work with our Community Development department and they have estimates of the specials that they give people. The other thing is that we are working on an informational letter to go out with a legal notice. The legal notice is pretty boring to read so what we have done is develop a letter that we hope is a little bit more user friendly and explains a little bit more of the process because we also understand that some of these homeowners were not the homeowners when the initial specials were levied on their properties. They are paying the monthly bill and have never even given this a second thought so we are trying to make it a little bit more user friendly if possible.

Council Member Craig asked if project #1 is the one that is most related to specials on individual lots or are there others in this package.

Mrs. Epperson advised it is the primary one. In looking at the assessment role occasionally you will see where some properties have changed hands, meaning the lot has changed hands. Whether there is a home built there or it is just somebody that has bought a lot, whoever is the property owner at the time of the preparation of the assessment role will get the letter. The reason she pointed it out is that it's the unusual one, on most of these we use the phrase "there's nobody home", it is still the builder, developer or the occasional homeowner.

Council Member Craig asked when people will receive notification if the hearing is the 25th.

Mrs. Epperson stated that the letters are scheduled to go out on the 5th of March so they will probably have them on the 7th.

Council Member Craig clarified that the letter will inform them they have the option to pay that off at that time.

Mrs. Epperson explained it is the letter that informs them of the public hearing. In the user friendly letter it explains the process in more detail. At the March 25th public hearing after the council levies the assessment they will receive another letter advising them it has been levied and explains the amount they have the opportunity to pay prior to April 17th.

Council Member Craig advised the time frame from when they are notified of the amount and the due date is about 2 weeks, he is concerned that is not enough time because \$850 is a sizable amount for some folks. He asked if that is the only time they can pay that off.

Mrs. Epperson explained that date was established so they could size the bond issue. We work backwards from a June 1 bond issue and we size the amount of the bond issue based upon the amount of money needed which is subtracting out whatever is paid in.

Council Member Craig clarified that after that magic date they are locked in to paying the specials with interest.

Mrs. Epperson advised that was correct.

Council Member Craig asked if there were any way to pay that off in advance.

Mrs. Epperson stated that currently we don't have a method for that.

Council Member Meidinger mentioned again that there used to be signs that have evidentially been taken down at some point. We are going to run into this problem real quick because of the Hamilton Addition. Why don't we do something on a temporary basis, rather than as Mrs. Bannon alluded to, keep putting this thing off. Can't we just put up temporary signs at these areas? That doesn't take a lot of rocket scientists in his mind because we did it before and at least the people that drove by and looked at the lots would see these signs. Other than that he doesn't know what else you can do.

Mayor Avello indicated he does not think that is our responsibility here, he thinks it's the builders responsibility isn't it?

Ms. Sexton stated that if the city council passes an ordinance or code to that effect then it is our responsibility. If the council doesn't pass that type of a thing then it's not our responsibility. If she remembers right when this was brought up some months ago we looked in to that and we don't have that code on the books anymore. If the council wants to do that or explore other options and she thinks what the council told us last year was to explore some other options and look at what some other cities are doing and maybe talk to some realtors or title companies to get some innovative ideas. We have talked to some cities and she doesn't think there is a lot of precedent out there on how to handle this kind of thing.

Mayor Avello suggested a cover letter by the sales company, or whoever. When you go in to close there should be a letter at that point, he knows there are a lot of things you do when you close on a house but that should be a number one item he would think.

Council Member Bannon pointed out that not all of the lots are in project 1 so not all of them are as small as the \$8.00 a month, some of them are down in Spring Creek 6th and she doesn't remember how much those were per month. Basically, information needs to be available, and she is not saying it is all the city's responsibility; the homeowners have to do some due diligence as well when they are buying a home. The signs may help but what they are going to do is indicate there are specials in the area but we need to get some of these dollar figures out there. She suggested putting the information on our website, maybe just a small plat of the area and a basic listing of the specials spread to date and specials that will be assessed at a later date. Dissemination of information is the best way we can go with this.

Mrs. Epperson clarified that when she said earlier that our Community Development staff was putting numbers together, it is really up to the developer to keep the cost within a target. Our staff is working with their staff but it is ultimately the developer that is responsible for marketing and turning the lots.

Council Member Bannon agreed but pointed out that we do provide to them a dollar figure so we know how much is going on each lot.

Mrs. Epperson advised that was correct, but a lot of times they are ahead of us in that when the resolutions are being set and projects are being bid, working with their consulting engineer, they are already out there calculating how much specials are per lot.

Council Member Bannon pointed out you also have the second time homeowners and there is no overall agent for an area that they are dealing with.

Council Member Warren advised that was the point he was trying to get to. Mr. Meidinger was correct when he said Mr. Lusk and his agents are doing a good job notifying the first buyer into the subdivision that there are special assessments. The problem lies with the second buyer, when the second buyer comes along there is not an agent overseeing that area and that is the one that gets blindsided. He doesn't realize there is a future project out there that is going to be spread down the line. In most of the subdivisions he is aware that the developer does a pretty good job of letting people know about the specials, he may forget three years down the line but he was told. It is the guy that lives in the house for 18 months, the second buyer comes in and he's still in front of the special coming out and no one told him. That is the challenge and the looks forward to a great idea from staff on how to address that.

Ms. Sexton stated she does not mean to be obtuse about this tonight, but we have brainstormed several different ideas and people on staff were checking legal ramifications because we don't want the council to pass something that takes addition of a staff person to manage. If we want a title company or realtor to do something we need to make sure that what we want them to do is something we can mandate them to do. A suggestion isn't going to be any better than what you have now so to speak, you are going to have one realtor doing it and not another one. We have come up with some options that she won't go into tonight but we will come back with a staff report and some options and talk about those. If anyone has a history as to why the sign program was eliminated we would love to hear it because she does not think anyone on staff remembered why.

Council Member Craig advised there are signs in different development areas outside of Derby that do list that, so he would start with that and then find some other options. He thinks we could be innovative enough to at least help out a little bit. The last time this happened there were a lot of people in here because it wasn't \$7.00 a month the last time, there were significant dollars in Timberleaf that really shook them up. It shakes him up when the second time buyer comes in and the next thing they know their specials go up a significant amount per month and that is sometimes a big surprise to them. He doesn't think that is fair and thinks we can do a better job than that. We can't solve it 100% but we can abate some of the heartache and discontent that goes with this type of action we are taking tonight.

MOTION: Craig moved to:

- Approve the Statement of Final Costs as presented,
- Approve the Assessment Roll as presented,
- Establish the date of the Public Hearing to be March 25, 2008, and
- Approve and authorize the publication and distribution of the Notice of Public Hearing. Schwarz seconded.
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VOTE: Craig yea, Meidinger yea, Nun yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, 0 absent, motion carried.

GENERAL DISCUSSION:

Mayor Avello indicated that Mr. Meidinger hit it on the head earlier on the first item we had tonight. Occasionally we would look around the city for annexation areas we might want to do. He does not know if we are at that point now with our growth.

ADJOURNMENT

MOTION: Nun moved to adjourn at 8:35 p.m. Warren seconded.

VOTE: Craig yea, Meidinger yea, Nun yea, Warren yea, Schwarz yea, Bannon yea, Staats yea, Arnold yea, 8 yea, 0 nay, 0 absent, motion carried.

Dion P. Avello, Mayor

ATTEST:

Jean Epperson, City Clerk