

**APPROVED
REGULAR COUNCIL MEETING
January 12, 2010
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, Tom Haynes

Flag salute was led by Council President Mark Staats. The invocation was led by Pastor Larry Scarth, Derby Church of Christ.

CONSIDERATION OF MINUTES

Minutes of the December 22, 2009, Regular Council Meeting.

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

PUBLIC FORUM

Kathy Sexton, City Manager, introduced Cynthia Wentworth. Cynthia was recently hired by the school district and jointly funded by the city as our new Community Marketing Director. You might remember last year we conducted jointly a study of what needs to be done and what could be done in the way of community marketing with the intent of growing our community, tax base and people who choose Derby schools. We had a report come out with a lot of great ideas and one of those great ideas was that we really need to devote a staff person to do marketing. In these tough economic times we decided the best way to do that is pool our resources and share a person. We are very pleased that Cynthia joined our team this past week. She is housed at the school administration building and reports directly to Heather Bohaty, the assistant superintendent, and to me. Her previous position was Divisional Director of Communications and Governmental Relations for American Medical Response, AMR. It's the country's largest provider of ambulance services to cities and counties. Some cities and counties don't hire their own staff and run their own departments, they contract out ambulance services, and Cynthia has been with that company since 1995. We are very pleased, as a native Derbyite she grew up here and went to Derby schools and came back here in 2002 to raise her kids and be with her extended family. We welcome Cynthia and wish her the best. She will dig right in with her first meeting with the Community Marketing Committee tomorrow. They meet every month and that's a group of folks from all of our partners, the Derby Recreation Center, the Derby Community Foundation, the Derby Public Schools, Derby Chamber of Commerce and the City. We all cooperate on doing marketing.

Cynthia Wentworth thanked the council for this opportunity. She has tried for 10 years to get back to Derby and finally did. She is convinced the years of experience she received prepared her for this position. She is thrilled to be a part of the process with marketing not just for the city and the school district but as a community truly pulling together many different entities. Her email and phone is always open if you have ideas or thoughts, she welcomes them.

Mayor Avello stated that he and Mrs. Knebel recently attended the meeting of the Sedgwick County Association of Cities. They had some legislators there and their comments were that “you aren’t going to get any money, so don’t even ask.” The other thing that will come as no surprise, they really said a lot of things about water and how crucial it is going to become. We have had a couple of wet years but don’t let that fool you, we are going to have problems down the line with water. As we go into the spring please think about conservation of water because eventually we are going to have some problems.

Ms. Sexton pointed out that we scheduled the first item to be at 6:45 p.m. If we could skip to item B, since it’s not 6:45 p.m. we legally can’t hold that public hearing. In case there are a few more people who want to come we don’t want to start early on that.

BIO-SOLIDS HANDLING IMPROVEMENTS

Dan Squires, City Engineer, presented the staff report.

Background:

- The City’s Wastewater Treatment Plant has undergone several improvements in recent years, including upgrades to aeration, clarification, and disinfection systems.
 - Periodic updates to the facility are required to increase capacity as the City grows and to meet more stringent effluent discharge requirements mandated by the Environmental Protection Agency (EPA) and the Kansas Department of Health and Environment (KDHE).
- In accordance with the improvement master plan, upgrades are required to the Bio-solids (Sludge) Handling System. Currently, bio-solids disposal is frequently limited by wet or cold weather and the inability to deliver and apply the bio-solids to fields.
 - When this occurs, storage facilities become overloaded and the bio-solids have to be stored in additional treatment facilities such as the aeration basin and clarifiers, or hauled to Wichita for processing at considerable expense. Failure to remove bio-solids from the treatment stream can decrease the quality of effluent being discharged to the Arkansas River and increase the chance of odors developing.
 - As the City grows, the additional wastewater flow will result in additional loading on bio-solids treatment, handling and disposal systems.
- The City hired the engineering firm of Camp Dresser & McKee (CDM) to design the Bio-solids Handling Improvements.
 - CDM also performed the City’s Sewer Rate Analysis and most recently a Nutrient Removal Study required by KDHE.
 - CDM completed a comprehensive analysis of Bio-solids Equipment and Procedures and completed the design based on that analysis.

- The project includes addition of a centrifuge dewatering system, which significantly reduces the water content in the sludge and thus the volume of bio-solids generated and the number of trips required to fields; new storage facilities for the bio-solids “cake;” replacement of inefficient sludge aeration equipment; and unforeseen replacement of air blower equipment.
 - As an add-alternate, removal of the old oxidation ditch is also included. The City previously used this facility for emergency sludge storage, but with construction of the new storage facilities it will no longer be needed.
- During planning of this project, the City Finance Director recommended the use of KDHE’s State Revolving Loan (SRL) program in lieu of revenue bonds since the interest rate was somewhat lower than the typical bond rate.
- The Federal government’s “stimulus package” (American Recovery and Reinvestment Act [ARRA]) was being developed while the design work was underway.
 - Many variations of the ARRA were discussed by the EPA, and the City and CDM spent many hours investigating and applying for the federal funds. The EPA eventually determined that ARRA funds would be administered by KDHE through the SRL program.
 - Derby’s application for funding of the bio-solids project through KDHE initially ranked 14th state-wide, with the top 12 projects approved for funding. KDHE subsequently notified the City that the project had been approved for funding due to redistribution of funds.
- The Derby Bio-solids Handling Improvement Project is considered a “green” project because of the reduction in fossil fuel consumption resulting from fewer deliveries of the bio-solids to the agricultural fields.
 - Accordingly, the project is eligible for forgiveness of 50% of the participating project costs.
 - The remaining participating project costs and all non-participating costs are eligible for the low-interest loan through the SRL.
- The ARRA required some design changes and will require significant manpower to administer the project during construction, including many federal requirements not normally applicable to locally funded projects, resulting in increased construction administration costs for the City and CDM.
 - These include Davis-Bacon wage requirements, Disadvantaged Business Enterprise requirements, the Buy American program, invoice reporting requirements, and others.
 - Our consultant has incurred substantial costs during the design process, partially due to the Buy American requirements which have resulted in designing for specific pieces of equipment rather than a more “generic” design.
 - Additional inspection costs are possible during construction due to potential project delivery delays.

Financial/Sustainability Considerations:

Construction Bid

- Invitations to bid were sent to regional contractors with wastewater construction experience. On Dec. 16, 2009, the following bids were received by the City Engineer’s office and witnessed by the City Clerk:

Add-

<u>Contractor</u>	<u>Base Bid</u>	<u>Alternate Bid</u>	<u>Total</u>
Dondlinger & Sons	\$2,417,915	\$72,000	\$2,489,915
Wildcat Construction	2,543,228	70,000	2,613,228
CAS Construction	2,597,800	75,000	2,672,800
Walters-Morgan Constr.	2,846,000	80,000	2,926,000
Utility Contractors	2,928,615	64,000	2,992,615
Engineers Estimate*	\$3,200,000	\$200,000	\$3,400,000

*Engineers Estimate prepared by CDM

- Based on the low bid of Dondlinger & Sons, the ARRA Funding (principal debt forgiveness) for construction will be \$1,208,957.50, resulting in the City's share of construction costs to be \$1,280,957.50 (50% of Base Bid + 100% of the Add- Alternate Bid), which will be financed by the SRL.
- CDM estimated that annual operational expenses at the wastewater treatment plant will experience a net increase of approximately \$42,500, primarily due to increased polymer and electrical power costs offset by decreased hauling costs. These increased operational costs were incorporated in the Sewer Rate Study. No additional wastewater personnel will be required to operate the proposed improvements.
- The base bid includes a \$75,000 Contingency Fund to be used during construction for minor change order work. This will allow the City Manager to approve change order work which might otherwise result in construction delays. The ability to quickly process minor change orders on this complicated construction project is important to guarantee minimal effect on the treatment process and quality of effluent discharged to the river.

Engineering Services

- The scope of work performed by CDM during the design phase of the project increased significantly due to unforeseen required modifications to the aerated holding blower system (\$61,300); piping modifications requested by our wastewater staff to aid in operation of the plant (\$15,400); demolition, at the request of City staff, of the old existing oxidation ditch structure (\$11,700); and the impact of new ARRA requirements such as Buy American requirements, Disadvantaged Business Enterprise (DBE) documentation, Davis-Bacon Wage Determinations, along with several other federal requirements, certifications, etc. (\$35,200), for a total of \$123,600.
- In addition to these design fee increases, staff is anticipating that CDM's inspection and administration time may also increase due to additional air blower improvements, demolition of the old oxidation ditch and associated piping, administration of the ARRA requirements, and possible delays in procuring Buy American equipment (\$36,400).
- Overall, CDM's Amendment No. 4 totals an additional \$160,000.
- As an added bonus to the ARRA program, the City has been advised by KDHE that in addition to construction costs, all design costs and construction engineering (inspection) costs are also eligible for 50% ARRA funding, reducing the City's cost significantly.

Cost Summary

Participating Items (Eligible for ARRA funding)

➤ CDM Design (per existing contract)	\$349,000
➤ Additional CDM Design (per proposed Amendment No. 4)	123,600
➤ CDM Const. Engineering (per existing contract)	135,000
➤ Add'l CDM Const. Engineering (per proposed Amend. No. 4)	36,400

➤ Construction (Dondlinger Base Bid)	2,417,915
Sub-Total – Participating Items	\$3,061,915
ARRA Funding (50%) – Debt Forgiveness	\$1,530,958
City Share of Participating Costs (50%)	\$1,530,958
Non-Participating Items (Dondlinger Add-Alt. Bid)	<u>+72,000</u>
Total City Share (SRL)	\$1,602,958

Note: Estimated debt principal used in final Sewer Rate Study totals \$2,200,000.

Note: Approved CIP includes \$3,193,000 for construction (100% City SRL) and \$501,000 for engineering (100% City WW Dep. Fund) for a total of \$3,694,000.

Note: The SRL interest rate is 2.6%, with the first payment due to KDHE by September 1, 2011.

Legal Considerations:

- The ARRA Loan Agreement has been reviewed and approved by the City Attorney.
- The contractor has submitted all bonds and ARRA certifications for the project.
- KDHE requires adoption of an Ordinance authorizing execution of the Loan Agreement.

Policy Considerations:

- KDHE’s bid procedure requires the City to approve the bids subject to KDHE concurrence.
- Dondlinger & Sons Construction Company has done several projects in Derby and has done satisfactory work.

ORDINANCE NO. 2007

AN ORDINANCE AUTHORIZING EXECUTION OF A LOAN AGREEMENT BETWEEN THE CITY OF DERBY, KANSAS AND THE STATE OF KANSAS, ACTING BY AND THROUGH THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT, FOR THE PURPOSE OF OBTAINING A LOAN FROM THE KANSAS WATER POLLUTION CONTROL REVOLVING FUND TO FINANCE A WASTEWATER TREATMENT PROJECT; ESTABLISHING A DEDICATED SOURCE OF REVENUE FOR REPAYMENT OF SUCH LOAN; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS IN CONNECTION THEREWITH; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE LOAN AGREEMENT.

DISCUSSION:

Council Member Bannon asked about the oxidation ditch, we are not totally getting away with having to dump sludge, correct? We are reducing the amount of trips we need to make to the field, not eliminating them totally correct?

Mr. Squires advised we are not eliminating them totally. What we go from is a liquid product that we inject below the ground to a solid product that takes up much less space.

Council Member Bannon asked if there is any foreseeable reason we might need this ditch?

Mr. Squires advised there really is not. Because of the nature of the ditch it would be even more difficult to get solids out of it than the liquid that we have now. When the solids have settled in the past we have had to figure out a way to get it into a form that we can pump back out.

Council Member Bannon thanked staff for going to the effort to get this grant, resulting in substantial savings of City funds.

Mr. Squires said CDM is the one that tracks that stuff; there are a lot of people involved in that process. We actually applied for it, were not granted the money and then came back and subsequently were granted, which created some more headaches for CDM. This money is very much tied to deadlines. CDM really jumped through some hoops to get this final design completed.

Council Member Craig stated that originally we were going to borrow in a revolving loan, did we forecast that at the full estimate?

Jean Epperson, Director of Finance/City Clerk, explained that we reviewed this last year and there was a reduction built into the rate study. Once we looked at the grant that we were going to receive, there is a little bit of a reduction but it's not significant enough that it would alter the rates at this time.

Council Member Craig wondered if it impacted our amount of indebtedness, did it reduce it a miniscule amount?

Mrs. Epperson indicated that the revolving loan will not count as debt, so the answer would be no.

MOTION: Bannon moved to approve the total bid of Dondlinger & Sons Construction Company in the amount of \$2,489,915 subject to KDHE concurrence; approve Amendment No. 4 to the CDM contract in the amount of \$160,000; approve an Ordinance authorizing the City to enter into the Loan Agreement for Project No. C20 1789 01A; and authorize the City Manager to execute the required documents. Nun seconded.

Council Member Horyna explained he is abstaining because he is currently employed through KDHE. He did take the time to go through the plans, and it's a very solid, well designed project.

VOTE: Motion carried 7-1, Horyna abstain.

PUBLIC HEARING: ANNEXATION OF LAND SURROUNDED BY CITY

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

Background:

- On November 10, 2009, the City Council approved a resolution to initiate proceedings to consider annexation of several properties generally located north of Patriot, between Woodlawn and Rock Road.

- The area is made up of 30 tracts, 19 of which are platted in Town and Country Estates or Country Lane Addition, and 11 of which are unplatted. A diagram depicting the tracts proposed for annexation is attached.
- Because of their proximity to the City boundary, City infrastructure is either available or can be readily made available.
- Staff has prepared plans for extension of municipal services to the tracts; those plans are available for inspection in the office of the City Clerk and have been mailed to each property owner.
- The City mailed notices of the public hearing to all affected property owners and utilities and published notice as required by law.
- Per the official notice, the Public Hearing is scheduled for 6:45 p.m. at the January 12, 2010 City Council meeting.

Financial/Sustainability Considerations:

- Annexation will not result in an immediate demand for municipal services that are not readily available.
- There will be a modest increase in City valuation.
- Property taxes on the annexed property will increase by the equivalent of about 24 mills as imposition of City taxes is offset by elimination of some special district taxes.

Legal Considerations:

- Because these tracts as a whole are currently surrounded by incorporated areas of the City, they are eligible for annexation under state law (K.S.A. 12-519 *et. seq.*).
- The public hearing is held per state statutes to receive input from the landowner or other interested parties.
- Following the public hearing, the Council will determine whether to annex any or all of these tracts by adoption of an appropriate ordinance.

Policy Considerations:

- The Council has historically been reluctant to annex land unless requested to do so by property owners but has also wrestled with the consequences of not annexing property.
- Unilateral annexation, while not universally popular, is a valuable tool to assist the City in management of growth and orderly development of resources.
- Formal consideration of annexation will give the Council an opportunity to assess the benefits and drawbacks of annexation and to receive input from property owners.
- Annexation will not adversely affect any existing uses upon the affected properties. All of the properties would be zoned R-1 (single-family residential) upon annexation and the existing uses, if currently legal, would become legal nonconforming uses within that zone.

ORDINANCE NO. 2006

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

DISCUSSION:

Council Member Warren asked about the Stone Creek 4th Addition. Is it already in the city or will be it in the city upon completion of that platting process?

Mr. Brown advised it is already in the city. He pointed out the present city limit line. The area being platted as Stone Creek 4th is already in the city. The area being considered tonight is totally surrounded, it is a donut hole in the city at this point.

Council Member Meidinger asked if there is a lake or pond in this development.

Mr. Brown advised there is a small lake off of 63rd Street; it is part of the Country Lane Addition just north of Patriot.

Council Member Meidinger asked if there were any safety concerns now that it's in the city?

Mr. Brown indicated we have lots of other ponds in the city so he doesn't think it would be any different.

Mayor Avello opened the public hearing at 7:08 p.m.

Mark Funk, 6146 Jackson Boulevard, indicated that the lake that was referred to is actually Dry Creek and runs through his back yard. One of the concerns we have is if there has been any study or impact statement that putting in houses will have on drainage. We are not in a flood plain as it exists now but what impact will that have on their property? He also indicated that Mr. Kelsey, the developer is deeding property to his neighbors to the south. What requirements if any would you make on the developer in terms of a wall or maintaining the privacy we have enjoyed over the years. He and his wife do real estate investment and buy mortgage foreclosures. His company has owned three houses in Mr. Kelsey's development. He is a great guy with a great reputation but that is not something he would like to see affect his property value. Another issue is, there are many hoofed animals and other livestock, how is the city going to reconcile county code as it exists with city code? Are you going to grandfather a provision? He would like to see an attempt to incorporate some lifestyle issues they have enjoyed over the years into the city. His biggest concern is the drainage, but is also concerned about the reserve and wildlife in the area and would appreciate some further study on those issues.

Mr. Brown advised that as part of the platting process of the Stone Creek 4th Addition, the developer and his engineer as part of our subdivision regulations have to provide to us a drainage study for the area. The requirement is that the runoff flow rate from the area is at or below what it is today. You do that by using detention ponds. Basically, new development will increase runoff, the increase runoff is stored on a temporary basis in a pond and discharged at a rate at or below the existing pre-developed rate. We have done a drainage study, and it has been proven by the developer's engineer that it meets the requirements. As far as the wall is concerned, there is no city requirement for walls other than on arterial streets. That's in our subdivision regulations, some type of screening where housing backs up to an arterial street. You see many of the walls along Patriot, Rock Road, etc., those are the types of walls that are required. There are other options besides walls in those particular instances; landscaping or some type of ornamental fencing. There is no requirement in our regulations at this time for any kind of wall other than on an arterial street. As far as the farm uses, what he didn't mention is that when this comes into the city as R-1 Residential, any uses that are legal in the county will become what we

call legal non-conforming uses. Our residential district does not allow farm animals, but it will be considered a non-conforming use. It's legal and can stay in that fashion as long as that use is continued.

Lee Hobrecht asked if Nancy Lane will be continued through the Stone Creek Addition.

Mr. Brown indicated that is really not part of this annexation issue but he will answer the question. As the Stone Creek issue was heard by the Planning Commission there was a lot of discussion about Nancy Lane and how it connects into the new area. There is a platted connection, the street does continue on. It was the Planning Commission's recommendation that when this street does get built there will be a physical pavement connection there with a gated type situation that the fire department would have a key to get through, an emergency access point.

Council Member Haynes who was on the Planning Commission at that time indicated that is what he remembered.

Mr. Brown advised there would be no through traffic, just the gated connection.

Mr. Hobrecht asked how soon this annexation will take place.

Phil Alexander, City Attorney, indicated that assuming the council adopts an ordinance tonight it will be published a week from tomorrow and effective at that time. Some aspects of annexation don't become effective until the end of the year, taxes for example, but the annexation itself is effective upon publication.

Mr. Hobrecht asked if there were any way to opt out of this annexation.

Mayor Avello indicated there was not.

Mr. Hobrecht indicated he and his wife as well as his neighbors like the privacy of the area, one way in, one way out and not a lot of traffic. When you say something about a gate, will that be closed and only opened for emergencies so there won't be any traffic?

Mr. Brown advised that is correct.

Mr. Hobrecht asked about walls, our front yard will be looking across the street to somebody's back yard. Another plat shows all the houses in that area. He was wondering if the back yards would have a privacy wall behind it on the north side of Maureen.

Mr. Brown again indicated there is no requirement for the developer to install walls along the north side of Maureen. As this is platted this will be backyards of streets that are internal to Stone Creek 4th. He would imagine that some people will put in fences but there is no requirement for the developer to install a wall at that location. He may do so voluntarily but he's not required to do so.

Joann Finn asked about the retaining wall. Would it be required since she lives on Patriot?

Mr. Brown indicated it would not. The requirement that the City of Derby has is where residential properties back up to the arterial streets. On a side yard or front yard those walls would not be required.

Ms. Finn indicated she was at the Planning Commission meeting last summer when they were talking about the gate on Nancy and they originally wanted to make it all the way through. They said the gate for emergency would be temporary and at some point it would be taken down and the road would go all the way through and that they would put curbs in on Nancy because that would be necessary due to the traffic. Now they are saying that isn't right but she seems to remember that at the meeting that they said since you are not annexed but we had to have it for an emergency. They talked about going out on to Rock Road and they said it's temporary. You are talking about costs added to us for curbs, the streets and everything else there. When that gate comes down it's added cost to all of us. She doesn't understand why now you're saying that's not true or did I misunderstand?

Mr. Brown indicated either she did or he did.

Ms. Sexton indicated that the city planner went on record recently at a public meeting explaining this. As she recalls Mr. Brown mentioned that the gate would be up. He also mentioned that if the property owners wanted better streets at some point, curb and guttering, better drainage, maybe eliminate the ditches, they could petition the city to get the streets improved. Right now it's paved but it's not a real great solid base so the street itself with more traffic would probably show some signs of wear. Essentially what happens is we leave the streets the way they are unless the property owners want improved streets; curb and guttering as was noted. She believes the decision of the Planning Commission was that at such time as that petition is made, in other words the property owners ask for the better streets, then as part of that project that street would go through and the gate would be removed.

Ms. Finn clarified that it would have to be at the request of the homeowners.

Ms. Sexton advised that was correct. You are paying for the street and that's why you are requesting it. That should be clear to everybody that when we annex areas where there is a farm field and a developer makes a whole new development the city taxpayers don't pay for those streets, the property owners do through their special assessments. You would be treated the same way. If you want a better street you would petition for it, you pay for it. We will finance it for you so you can pay for it over 15 years.

Mayor Avello added that you have to have 51% of the property owners that agree with it.

Ms. Finn clarified that there won't be any additional restrictions added with the annexation.

Mayor Avello stated that they will be grandfathered in.

Angela Turner lives right on the creek. She asked if the creek would become the responsibility of the city.

Mr. Brown advised the city has a stream maintenance division, he won't speak for the public works director but it is his understanding they will provide stream maintenance where blockages and that sort of thing become a hazard or threat to other properties, if they have legal access to the creek for maintenance purposes.

Mrs. Turner advised there would be no access to the creek because it is owned by the property owners that surround the creek. For your information, when it rains she has a 30-foot creek running through her backyard. Last year she almost went to Wal-Mart and got sandbags. There is no control over that water at all. She doesn't know what kinds of plans there are to get control over the water without having access to the creek through the private property owners that own it.

Ms. Sexton advised we have no plans. As long as the creek is on private property and the property owners do not request the city to do anything with it we won't. If you want us to help clear a blockage, meaning a tree falls in it and it's blocking up, if they can, weather permitting, Public Works will go down with chainsaws and cut it up. They won't haul it out, they won't clear out trash but they will clear the blockage so the water will carry the small pieces down stream. That's only if the property owner allows them access back there. If you don't want us back there we don't do anything.

Mrs. Turner stated she is not in favor of being annexed in to the City of Derby.

Gary Tibbets stated that Lot 27 appears to be over 20 acres and it is his understanding that you can't do a unilateral annexation of unplatted property over 20 acres. From a legal point of view you might want to check that out. He also understands you can't do a unilateral annexation unless you are providing services at least as good as the services we currently have. His concern is the fire department. We had an opportunity to call the fire department not long ago and for whatever reason both the city and the county showed up. The county is right at the corner and got there about two minutes before the city, which may not be too significant except that fires double in size about every minute, which means that it would have been four times bigger by the time Derby got there had there been a fire. He does not see that as equal service. Currently the county responds first. There is a mutual aid agreement but his understanding is the city would respond unless someone specifically requests the county. The county would not be the first responder which would indeed add to our service time if the city is available. He has seen them respond to the Stone Creek Addition when he had a burn permit and it was Derby that responded even though the county was closer. He is fairly confident that if we are annexed the first responders will be the city which he sees as a decrease in services. He opposes annexation for that reason. As long as the county fire department is at the corner, unless the city can ensure that any time one of us calls in, the county will respond first and immediately. He stated that his property goes out to the section line. The first 50-feet of his property is not in this annexation. He suspects the reason is because it was previously annexed but he didn't get any notification that his property was being annexed at that time. He would like to see if you can change things and include that so it becomes a legal annexation. He thinks the reason it is not included because

our current tax description when we sold off what is part of Stone Creek 4th Addition, when the county redesignated our property they for some reason dropped the south 50-feet off, probably because it's a street right-of-way. All we did was grant a right-of-way we didn't sell property. For legal purposes if you could make that change. We are opposed to annexation based on a decrease in services. We aren't getting any water or other services so obviously there is no increase to counterbalance the decrease. The only place there might be would be in police patrol, again it's mutual aid, so we would not get any better service than what we are getting now. We might get less because the county would not respond where the sheriff's department does respond if they happen to be closest.

Mayor Avello indicated that the county responded because right now you are in the county. The way the system works is they will get the call and respond, if they are not in we will be right behind them. Coming in the city we will get the call, correct?

Ms. Sexton asked if Mayor Avello was referring to police or fire.

Mayor Avello advised he was talking about fire.

Ms. Sexton advised we will get the call if it's in the city. What was being referenced with mutual aid, we actually have an automatic aid agreement with Sedgwick County for structure fires. If my house is on fire the county will respond immediately as will the city, they will both respond so they might get there quicker. With all other calls, as you know most calls to the fire department are medical or other calls besides structure fires and the city would respond to those. The reference to police having a mutual aid.

Mr. Tibbets advised right now the city will respond to the area immediately outside if the county doesn't respond immediately. We have had car accidents and stuff like that out there before the annexation and Derby city limits was ½ mile away and they were right there because they were right across the street.

Ms. Sexton advised there is no mutual aid agreement between the sheriff's department and the police but they help each other out when they have staff available.

Mr. Tibbets indicated right now whoever is closest responds and afterwards it would just be Derby. He is saying it wouldn't be any better but he's not saying it would be any worse.

Ms. Sexton indicated it goes both ways, the sheriff helps us inside the city when we ask them or when they can help. It depends on any given time, if you call right now and the sheriff deputy is over in Haysville they can't help, but if somebody is right there close they will help. There is nothing that would change in that regard whether there is anything right across the line either way. Those agencies help each other out when they can on an informal basis. They do not have a mutual aid agreement.

Mr. Tibbets advised he wanted to make sure the county would be notified immediately to respond, even if the Derby Fire Department says they can handle it they will be there at least two minutes after because they are located 1.5 miles away.

Mayor Avello indicated it would depend whether they are in their station or not.

Mr. Alexander commented about the parcel labeled #27 on the map, that tract is just slightly over 20 acres. State law regarding annexation provides that agricultural property over 21 acres may not be annexed unilaterally, so that does not apply to this tract. As to Mr. Tibbets concern about annexation of Patriot Avenue right-of-way, leaving aside the merit of his comment, that annexation whether it be valid or not does not affect the eligibility of this property for annexation.

Mr. Hobrecht indicated that on page 20 they show fire station #3 across from Lowe's. He has never seen a fire truck there, is there a fire truck there?

Ms. Sexton advised there is a truck parked inside the water metering station, the volunteers respond from that station. We set that up about a year ago because of all the growth and development north of Patriot. You don't see the truck there often; it is either inside or on a call. That is officially fire station #3 and our volunteers respond there.

Mr. Hobrecht asked if there is someone there 24/7.

Ms. Sexton explained it is not staffed. It's our volunteer station, much like station #1 was for decades, volunteer only. Now we staff station #1 on K-15 and station #2 both 24/7. Station #3 is only a volunteer station at this time.

Mr. Hobrecht clarified that the truck doesn't move until a volunteer gets there.

Ms. Sexton advised that is correct. She explained that station #2 will respond in that area and depending on the call station #1 will often respond as well and volunteers get there when they get there.

Mayor Avello closed the public hearing at 7:36 p.m.

MOTION: Craig moved to adopt the annexation ordinance as presented. Warren seconded.

Council Member Warren indicated that a number of people brought up a question or concern. In looking at the plat he doesn't know that we have the authority to require but he empathizes with the aspect of someone whose front yard faces a new residential property going into a backyard. The aspect of fencing is something he would like to see the planning commission negotiate with that developer to have a requirement for fencing on any of the lots whose backyards would be in a position where they would be facing someone's front yard. That is a reasonable situation to require that. He doesn't know that we have the legal authority to require that but if we can he would like to require it. If we can't he would like to negotiate with that developer to get some screening on that fencing. That is something he would really like to see happen. The owners on lots 13, 14, 28 & 29 would be situations where if there was a way for us to require screening he would like to see that happen.

Mr. Brown advised the Stone Creek 4th Addition plat has been prepared and gone through the planning commission already. You will be seeing that plat for approval at the next meeting. If the city attorney would investigate the possibility of some screening as a public improvement we could include some of that in one of the petitions required for Stone Creek 4th Addition. He is not sure that qualifies as a public improvement as state law dictates, but it is something we can investigate and provide that information to the council when we bring the plat to you at the next meeting. Certainly most of those petitions, if it's legal that it could be included in a street petition, which means the houses are getting ready to go in that some type of screening could be included in that street project and be built at that time.

Council Member Bannon thanked everyone for coming tonight. Annexations are never easy situations, either for the homeowners or the council. The city has encroached on you all and really grown around you. The two issues she heard tonight, one really had more to do with the platting that has already gone a lot farther than you might have assumed it had. She does not think the fencing is unreasonable if we can work something out at this point and it sounds like there might be an opportunity if we act quickly on that one. It's a difficult decision and she appreciates hearing the concerns and hopefully we have answered some questions about the through street of Nancy Lane and the information sent out hopefully answered some questions as far as when services would begin taking effect.

Council Member Horyna indicated that Rural Water District #3 is currently providing water to this area, will they be required to follow any of our water ordinances? For example, the rain sensor ordinance or is that still governed solely under Rural Water #3?

Mr. Alexander stated that in respect to the rain sensor ordinance it applies to private property and will apply in this area as well as it does throughout the city. The water district will continue to provide water service in that area until such time that the residents request service from the city. We are currently in discussions with representatives of Rural Water District #3 to address a number of areas where portions of the Rural Water District's territory has been annexed into the city. There are several of those around town and we are looking at developing a policy that is mutually acceptable to make that transition smooth.

VOTE: Motion carried 8-0.

REPORT ON 2009 CAPITAL IMPROVEMENT PROJECTS

Kathy Sexton, City Manager presented a PowerPoint of an overview of the 2009 CIP.

Background:

- The City of Derby has an aggressive Capital Improvement Plan (CIP) including many improvements to streets, new bike paths, solutions to drainage/storm water runoff problems, park enhancements, wastewater treatment, and facility projects.
- Each year, the City Council reviews projects and plans early in the year at the budget/CIP workshop. Throughout the year, individual projects routinely come before the Council for

design and construction contracts, and occasionally project changes or updates are presented to the Council as well.

- This second annual year-end review is an opportunity for the Council to have an update on approved projects and an opportunity to ask questions.
- The expectation is that such a review will also result in a shorter Council Budget/CIP workshop in the Spring. (That workshop usually lasts four hours.) The workshop would be able to focus more on future plans than on status reports on approved projects.

Financial/Sustainability Considerations:

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

Legal Considerations:

- None.

DISCUSSION:

Council Member Craig asked about the sidewalks allowing children to walk to the library instead of walking in the street, is that included?

Ms. Sexton advised that is exactly what the Library Links project is. What we have done is only built sidewalks on the library property itself, which is all that we own. This project would go in and say to the school district for example, we need an easement for an additional sidewalk on your property. Some of it would be in people's front yards all along the street. It's going to take some time to do that project. We have to talk to each one of those owners and get easements.

Council Member Craig stated he doesn't think there will be much trouble with that because it does reflect on the safety of the kids walking. He would hope not to delay it too long.

Mayor Avello asked about the sign on K-15 and our civic clubs. Now that we have a community marketing director and we are going to have an electronic sign, can we divert that to that signage?

Ms. Sexton indicated perhaps, there might be other solutions as well. We need, in the community signage plan to figure that one out. The one on Madison is better; it's not too hard to read. The one on K-15 is harder to read. We will look at that, she doesn't know if we can incorporate it into the electronic signage but that is certainly one idea. Another idea would simply be to move it to a location where it's easier to see. She agrees we need to look at something for the future.

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

VOTE: Motion carried 8-0.

The council recessed for 10 minutes at 8:25 p.m.

ADDENDUM TO CONTRACT FOR PURCHASE OF ACCOUNTING/FINANCE SOFTWARE

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

Background:

- In October 2008, the City Council authorized the purchase of INCODE accounting/finance software from Tyler Technologies. In 2009, the general ledger, payroll and accounts payable modules were installed, and the next module—fixed assets—will be installed in February 2010.
- The utility billing module was an integral part of the analysis and subsequent recommendation to purchase the INCODE software, but was not included in the initial purchase due to funding.
- During the 2010 budget process, the El Paso Water Company Board of Directors reviewed the supplemental request for the purchase of utility billing software. Funding for the INCODE software was then included in the adopted 2010 City of Derby budget, which includes the Company's budget.
- Authorization of the Addendum to the contract will allow the City to be placed on the implementation schedule. Conversion of the software is scheduled for fall of this year, which is a good fit with both Tyler Technologies (INCODE) and the City's calendars.

Financial/Sustainability Considerations:

- Funding for purchase of the software is included in the 2010 Budget, and the cost will be split between the water and sewer utility funds.
- The purchase price of the utility billing module of \$71,308 and annual maintenance of \$7,205 is slightly below the original estimate.
- In addition to the purchase of software, hardware costs of approximately \$12,000 will be needed to support the software. The initial software purchase, annual maintenance and hardware costs are within the amount budgeted for 2010.
- The software includes an on-line component which will allow our customers to view and pay their bills via credit card on-line. The annual fee is estimated at \$5,520 plus credit card related charges, which are dependent upon the dollar amount and volume of transactions. These fees would be incorporated into future rate structures as this option is not planned to be operational until 2011.

Legal Considerations:

- The proposed addendum was reviewed by the City Attorney and found to be legally sufficient.

Policy Considerations:

- This software contains features that will improve the level of service to our customers while improving efficiency.
- The on-line component which allows customers the option of viewing and paying their accounts via credit card will be hosted by Tyler Technologies to buffer the city's network from a security point of view. Additional efficiencies are attained through the automatic posting of on-line payments to customer accounts via the importation of data without re-entry by our clerks.

- As we look to the future, once the billing conversion is finished we will begin the process of transferring the Water Company's accounting process to the INCODE system, most likely sometime in 2011.

DISCUSSION:

Council Member Craig stated that we can now pay water bills at city hall with a credit card, what is our percentage rate on that right now?

Mrs. Epperson advised it is 2.86%. That is the fee that goes to the bank.

Council Member Craig clarified he is not charged for that as a payee, the city pays it correct?

Mrs. Epperson advised that was correct.

Council Member Craig asked if the software will adjust the bill for the amount of the credit card?

Mrs. Epperson indicated right now the thought process is to adjust the rates to cover those costs. Some government agencies as you know, if you pay by credit card on line you pay a convenience fee. That is something we can address later on if need be but the \$5,250 cost is a cost to provide that service.

Council Member Craig clarified that the cost is absorbed by the payment rather than me paying an extra 2.86%. After reviewing a couple of charges online for convenience fees, they are really high. I hope that we don't go in that direction. To mention two utilities would be wrong but they have pretty high convenience fees for charging by credit card online and I hope we can find a better way to do that.

MOTION: Craig moved to authorize the City Manager to execute an Addendum to the contract dated October 15, 2008 for the purchase of software from Tyler Technologies. Bannon seconded.

VOTE: Motion carried 8-0.

UPDATE TO CITY MANAGER EMPLOYMENT AGREEMENT

Council President Staats presented the staff report.

Background:

- On Jan. 20, 2006, the Governing Body entered into an Employment Agreement with Kathy Sexton to serve as city manager until Dec. 31, 2007. The agreement has been amended three times since then, as we now end the fourth year of her tenure in Derby.
- The Governing Body recently completed the annual performance evaluation process, which included a review of accomplishments during 2009. We are very pleased with the successes achieved under Ms. Sexton's leadership and believe in the direction she is providing to the City organization. The City Manager has been instrumental in:

- Implementing a citywide trash and curbside recycling program that saves most residents money, provides better service than they were used to, and reduces wear and tear on city streets.
- Hiring a new police chief and reaching an employment agreement with the police union.
- Streamlining Council meetings & enhancing communications with the public and the Council.
- Reducing the city budget from 2009 to 2010.
- Accomplishing the Council's stated priorities, including development of a community marketing plan.

Financial/Sustainability Considerations:

- Annual cost of this amendment is \$4,100 in 2010. Funding is available in the approved budget.
- The 2010 salary increases from \$120,000 to \$122,400, which includes a merit raise of 2.0%. The City's match of up to \$7,200 in contributions to a deferred compensation program increases by \$500 for 2010. New this year is a performance-based bonus of \$1,200, which is equal to 1% of the 2009 salary and does not add to the base salary.

Legal Considerations:

- Amendments were reviewed and approved by the City Attorney and outside counsel.

Policy Considerations:

- Proposed amendments to the Employment Agreement include the following:
 - Section 2.a.9-10: Incorporation of revised duties as per Charter Ordinance 48 adopted on Dec. 22, 2009 to match the agreement with the practice of (1) periodic review of insurance policies (rather than annual review) and (2) manager's authority to expend up to \$10,000 according to the purchasing policy (rather than \$1,000 as noted in the old Charter Ordinance 38).
 - Section 4.a: In the event of termination, severance pay would include benefits at the level specified in the agreement (rather than at the level paid to other management employees). Also, termination would not occur within 4 months of an election or appointment of a member of the Governing Body (rather than 3 months).
 - Section 4.c: Termination includes a reduction in compensation or suspension of any number of days, except if a result of certain investigations.

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

VOTE: Motion carried 8-0.

ROCK RIVER RAPIDS 2010 MANAGEMENT AGREEMENT

Kathy Sexton, City Manager presented the staff report.

Background:

- The City of Derby has contracted with the DRC to provide management services for Rock River Rapids since it opened in the summer of 2004.

- The most recent RRR Management Agreement ended on December 31, 2009.
- Based on these several years of experience, the City staff and DRC staff discussed and agreed upon several contract changes. These include:
 - Establishing a contract manager for the City for improved communications on routine operational issues.
 - Swim season is Memorial Day to the day before school opens; hours are 12:30 – 7:00 p.m. daily (was 8:00 p.m. on Monday-Friday). Having the additional evening hour on weekdays for fitness classes and private rentals is expected to be a more productive use of the facility. Data collected between 6:00 and 8:00 p.m. show that very few people enter the park after 6:00 p.m.
 - DRC will provide documentation of workers compensation insurance coverage prior to opening the facility for the swim season.
 - City Manager can waive facility rental fees for certain DRC-sponsored events.
 - DRC staff park at Derby High School to provide more convenient parking for park patrons.
 - DRC shall provide annual audit and management letters to City.
 - Any disputes about interpretation or application of the agreement shall be resolved by the DRC Superintendent and City Contract Manager (was Superintendent and City Manager); if resolution cannot be reached, the City Manager shall make the final decision (was City governing body).
 - Adjusting or establishing certain deadlines as follows:
 - DRC requests for facility maintenance, upgrades, and modifications due 3 weeks after the swim season closes (no deadline in previous agreement).
 - City notification of security plan by Jan. 1 (rather than March 1).
 - DRC budget submission by March 1 (rather than May 1).
 - Weekly attendance report (was monthly).
 - Financial reports due on the 10th during June, July, August, and September; a complete accounting due December 15 (was 2nd Tuesday in November).
 - DRC and City will hold a season review meeting in early October.
 - Annual report due Nov. 1 (no deadline in previous agreement).
 - DRC transfers fund balance to City by Dec. 15 (was Dec. 30).
 - Requested changes in next year's contract due Sept. 30 (was Oct. 15).
 - Termination notice due Oct. 15 (was Sept. 30).
 - Proposed changes presented to DRC Board at November meeting and City Council prior to Dec. 31 (was prior to Dec. 1 for both boards).
- The DRC Board is scheduled to review/approve the agreement at its Jan. 12 meeting also.

Financial/Sustainability Considerations:

- The 2009 management fee was \$85,064. Under the proposed agreement, a 4% increase for 2010 would be \$92,889, which is an increase of \$7,825.
- In October when contract negotiations began, the DRC requested a 7% increase while the City offered a 3% increase.
- The planned source of funding for this contract is the net revenue from the operation of the aquatic park. If net revenue is not sufficient to cover the cost of this contract, funding

is available in the “Operations-Sales Tax Sub-Account.” Annual net revenue for the five-year history of the park is as follows:

2005	2006	2007	2008	2009
\$154,433	(\$8,001)	\$2,781	\$4,883	(\$50,691)

Legal Considerations:

- Both the City and the DRC have legal capacity to enter into the proposed contract.
- The proposed contract includes a number of technical changes from the prior year; those changes are operationally significant but do not have appreciable legal consequences.

Policy Considerations:

- Exhibit 1 presents the fee schedule for the 2010 season. Fees were last reviewed and some increased by the Council in October 2008 for the 2009 season in an attempt to better cover expenses.
 - The preference is to operate under a fee schedule for 2-3 years before adjusting it.
 - No changes in fees are recommended at this time.
- Only a couple of other changes are recommended to Exhibit 1, as follows:
 - DRC staff will determine the annual start date for season pass promotional sales.
 - Otter Parties will now last 1.5 hours (previously 1 hour).
 - The cancellation policy for after-hour rentals is listed on this schedule.
- Exhibit 2 incorporates an updated version of the daily pass giveaway guidelines, which was first approved by the Council in 2005.
 - For 2010, fewer passes overall would be donated (including elimination of the business category), and more would be allocated for Derby Public Schools.
 - Historical data on donated tickets is as follows:

	<u>Guideline</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Business	70	42	20	58	61	61	0
Education	150	138	141	153	150	172	200
							100 to USD
	40 to USD 260						260
Charity	230	144	169	196	201	204	200
MAFB							
Cadets	50	0	0	75	75	75	75
Total	500	324	330	482	487	512	475
% of guideline		65%	66%	96%	97%	102%	95%

- Survey data from park patrons indicate the approximately 34% of customers visited Rock River Rapids on Saturday or Sunday.
 - Of those weekend customers, only 18% were Derby (67037) residents.
 - In contrast, 29% of weekday customers were Derby residents.
- Most customers (75%) live outside of Derby. Of these, 47% live elsewhere in Sedgwick County (mostly Wichita), 23% live elsewhere in Kansas (many from neighboring communities of Mulvane, Rose Hill, El Dorado, Newton, Augusta, Andover, Winfield, and Arkansas City), and 5% live out of state.

DISCUSSION:

Council Member Haynes stated that three out of five years we have come out on the plus side. The net loss this year is \$50,000. How is that tied into the management fee? We have a contract for a management fee of 4%. From a business standpoint, if I have a net loss I'm not managing my business correctly. It seems to him if we are coming in here looking at a \$50,000 net loss then somehow that needs to affect the management fee because I'm not managing my business correctly.

Ms. Sexton advised that is one way of structuring a contract certainly. If we did that, that number would not be the one we would reference. She didn't attach it to this but it's in the DRC's annual report, the profit and loss statement that the DRC gives us for Rock River Rapids shows us all of their expenses and their revenues. That shows a net of \$242,000 this year. If we were going to tie the fee paid for services rendered to a number it would be to their net. It may not even be that exact number, there might be a couple of things we would adjust that for to be sure it would be a fair way of compensating. The net, there are things on the city side that we have to pay for that the DRC has no control over so we certainly would not want to hold any operator accountable for that. The fee was developed before her time, there was a lot of estimating the first couple of years. How much time is this going to take? No one really knew. When you are talking about time you aren't talking about wages of the people who work there all summer, lifeguards and such. You are talking about the management staff, those that are there everyday; assistant aquatics director, facility coordinator, these are management level people and they are there everyday during the season. The idea was to help compensate for their time but the first few years nobody really knew how much time it would take. There were some estimates and adjustments, you can track the fee across the years on the spreadsheet. A few years ago it started to be a percentage increase that could be applied each year that would help cover the increased cost of those management personnel. Essentially that is where we are at now, covering a pretty good portion of the salaries and benefits of those two management personnel. Certainly there are different ways to calculate what a contracted fee would be. During negotiation time this year we discussed a few of those different ways with the DRC folks. What they have committed to is taking some time this next year to look at some different ways of developing that management fee and be open to changing that for the next year.

Council Member Haynes asked if the management fee is tied to some kind of performance matrix?

Ms. Sexton stated it certainly could be, but it's not. It is developed, as she mentioned, as a historical number that first was figured out by guessing how much time the management staff will spend and over time has been adjusted according to how much time they spend on things year round and during the summer. It's tied in their minds to how much their personnel costs are increasing.

Council Member Haynes stated that we are looking at a fairly new program. We are starting to get some historical data, therefore we can set some baselines on how we really need to operate in the future?

Ms. Sexton agreed.

Council Member Bannon asked about the marketing fee. On the top sheet for the 2009 year it came out a little over \$22,000 but for our 2010 budget we've only got budgeted almost \$15,000. She questioned if we really spend \$22,000 why do we think we are going to be that much less.

Ms. Sexton advised there are two lines that encompass the marketing.

Mrs. Epperson pointed out on the left side of the spreadsheet, line 7013, in 2009 its \$13,000 and on line 7016, other special events and promotions is \$10,000. That money is sent over to the DRC for marketing.

Council Member Bannon asked if the special promotions covers the free tickets we give away.

Ms. Sexton advised it is over and above. Each year in the January time frame, the marketing director at the DRC presents to the city its plan, and it's \$20,000. She is not sure why it's split out into two different lines in the budget but it is.

Mrs. Epperson explained that it's something that started years ago before the funds were transferred over and we just pulled from those two lines. It could be condensed.

Ms. Sexton indicated it probably hasn't been done just for consistency sake but we might just combine them. She will ask Allison if there's any reason she knows of.

Council Member Bannon stated that with the economy the way it is it has caused all of us to look at contracts and costs and the way they are escalating. When she looks at a contract and there's a built in fee of a 4% or 5% and you factor that out for the next 5-10 years, it's going to get up there pretty hefty. She asked Mr. Sexton if the board discussed getting together with city staff to discuss other alternatives instead of a flat percentage increase.

Chris Sexton, DRC Board Chairman, advised they have had that discussion about a tier system continuing from where we started 5 years ago and what percentage of increase that the DRC has incurred over the last couple of years. We are in the process of taking a long hard look at what it would take to manage it if we took it to market. We wanted to take into consideration what some of those numbers may be. Keep in mind we are aware of the economy and what is going on but at the same time we've also taken a long hard look at rising costs at our facility involving everything from wages to employee benefits and right down the line. We are looking at it, that is the commitment and the main reason that the proposal or agreement that was approved tonight was a one year agreement at 4%, which is down from the last two year agreement of 5%. We want to really look at that this year to make sure we are in line, it's competitive and that we are going to spiral this cost.

Council Member Bannon asked what "take it to market" means.

Mr. Sexton explained they want to do a comparison analysis of what it might take, what some of these other communities do that have third parties managing city owned facilities. We are trying to get as much data and we do have historical data now that gives us some idea of visitation and traffic going through the facility. It does look like it has been down, if you've ever been out

there on Sunday at 3:00 on July the 10th it speaks for itself. The volume and revenue is also there. He and Ms. Sexton had a lengthy discussion about the possibility of incentives down the line and we still feel like there is something there as far as the safety incentive is concerned. We've done extremely well and we are very proud of the DRC of how well we have managed it and managed incidents and water studies over the last five years.

Council Member Craig clarified there is \$1.5 million in the reserve.

Mrs. Epperson advised that is correct.

Council Member Craig asked if we had an overflow account for excess to roll into.

Mrs. Epperson stated the interest earnings on that reserve go into a sub-account, an interest income sub-account. We began the year with \$242,000. That money is not as restricted as the reserve. That money can be used for new features for the park.

Council Member Craig pointed out that account was developed so we would have the flexibility. When you see a bracket that says \$50,000 loss, remember this is a community amenity, it costs money and we planned for that and made some wise decisions on the past to be able to flow interest into another account to be able to cover some of that. He asked what would happen if by chance they decide to start school late and extend the Rock River Rapids season by two weeks, what's the plan?

Mr. Sexton stated that years ago we had to craft our schedule at Rock River Rapids because of their absolute reliance on school kids to work at the facility because of its size. It's been a topic of discussion every year since the aquatic park opened. He thinks adjustments could be made to extend the season if the lifeguards are there for us. We are prepared at the DRC for an extended season. We will not really incur any other expenses outside of those that are already posted on our profit and loss statement that we offer to the city on a soon-to-be monthly process.

Council Member Craig is concerned the school district is getting ready to work on their budget for 2010-2011 so that could be something that reflects on us in August.

Mr. Sexton advised that as soon as they pass that at the school district, they will have to have that done before the start of the season and we can make that adjustment at the DRC if necessary.

Council Member Warren appreciates Mr. Haynes's questions. It would not be fair to characterize a situation of mismanagement by the DRC for a loss situation. We have tried to keep our fees as low as possible to make the facility as open to our citizens as possible. We play this balancing act with how low can we go and get this as close to break even as we can. In the process of doing that there are so many unknowns in terms of weather and other situations that one year we may hit a \$50,000 surplus and the next year a \$50,000 shortfall that really was completely out of the control of the entity managing the property. The flip side of that, if you have an automatic escalator and this thing just goes up and up, we can see expenses get out of hand. The purpose of that \$1.5 million was so that we would not have to go back to the citizens of Derby to subsidize this facility for as long as possible. If our fee continues to grow we are

going to eat that up sooner than we have to. He thinks we need to take a serious look at management expense and any other expense we have out there that's going to dip into that \$1.5 million so we can go as long as possible not having to do that. It's good that we are looking at a 1 year contract. It gives us an opportunity to get a fresh start and look at the whole scenario of how we do things and see if we can come up with some ideas of how to keep the cost of the facility as affordable for our citizens as possible, and keep us from digging into that money any sooner than we have to. He doesn't want to blame the DRC for the loss because we set the fee. We have kept it very low compared to other facilities of a like nature and we've done that on purpose. We are not trying to make a profit, just trying to not get a loss. When you run it that tight it only takes a couple of days of bad weather or an expense we aren't planning on to throw the whole thing out of kilter. He thinks the contract is a good contract but he also thinks this is a good year to review things and see if we can come up with some improvements to do a little bit better in the future.

Council Member Horyna asked about line item 7014, the management fees showing an increase of \$7,825, should that be \$3,572?

Ms. Sexton indicated she made a mistake on the numbers, the spreadsheet is correct and the staff report is wrong. From \$89,317 to \$92,889 is a 4% increase.

Council Member Horyna clarified that the \$3,572 would be the actual dollar value increase.

Ms. Sexton indicated she had not done the subtraction but it sounds right.

Council Member Bannon asked about the interest income account, so far on the reports the most she is seeing we made on that is \$5,000, figuring 2% on \$1.5 million it would be \$30,000 a year.

Mrs. Epperson pointed out on the bottom of page 117, the interest sub-account started the year with \$242,183.

Council Member Bannon asked if it would be line 4502 on the second page.

Mrs. Epperson advised that was correct.

Council Member Bannon stated that in 2009 it only earned \$25,000 which doesn't even meet the 2%, and there's only \$2,000 budgeted for 2010?

Mrs. Epperson indicated that probably should have been higher.

Council Member Bannon asked what we have it invested in, we should be able to get 2-3%

Mrs. Epperson advised the funds have to be collateralized so the rates that we are earning are not as high as what you might think. You might see ads in the newspaper that you can get 2% going out for multiple years, we invest for a year at a time.

Council Member Bannon asked if we are limited to the banks that we invest it in or the types of accounts we invest it in.

Mrs. Epperson explained that we are limited to the types of accounts we invest in. It has to be government type securities or if you invest in a CD the bank has to have collateral to cover that account. We received about 50 basis points. The \$2,000 is probably a typo. These numbers are actually on cash basis so it depended on when cash flow came in. the money right now is invested through July of 2010 and there will be a receipt at that time. That \$2,000 is too low.

Council Member Haynes indicated he did not mean to insinuate that the DRC had mismanaged anything. This has been a learning experience for him.

MOTION: Warren moved to authorize the Mayor to execute the agreement in substantially the form presented. Staats seconded.

Mayor Avello asked if we are gaining on the swim club events, staying even with them or losing any of them.

Ms. Sexton advised she thinks it is the same number each season, about six. There are two clubs that have several events each season. They enjoy the use of the pool and people from other teams around Wichita enjoy coming to the pool.

Mayor Avello indicated the council is happy with the rate of entry fee for all areas of the park. He is a little concerned there, hopefully we will have an extended season this year and can make some money.

Ms. Sexton stated that certainly we always want to watch expenses, we do and the DRC does as well. Another thing we have not fully maximized this first five years of operations is our revenues. Every other year or so we bring ideas for changing, adjusting, increasing the fees and we did that last year. We have had one year under this fee structure. She thinks it's best to not raise fees every year but to look at it every 2-3 years. We will be back in the future to do that. There is other revenue involved, sponsorships, advertisements, etc. Last year a company approached the DRC and said they would give them \$250 a week if they could park their jet ski at Rock River Rapids and have people sign up for a chance to win it. In return the company compiled a call list to sell their product. We made sure it was not intrusive, there was no one standing there trying to get people to do it, it was just passive. We signed that and added some revenue for us. It opened our eyes a little bit as we learned more about the demographic of the 30-40 year old moms with kids. People are really trying to reach that demographic. What we are going to do this year is approach some other companies for sponsorship in the way of advertisement or logo on an umbrella above a lifeguard stand or on a tube you ride down the river. It might be some advertisement in the bathroom. A lot of clubs and restaurants in the metro area have signage in the bathrooms. We are going to pursue some of those avenues in an attempt to keep rates down but there is also a good number of our retailers and restaurateurs who want the opportunity to serve these folks and would look favorably upon such advertising. When people come to town, they are not familiar, if they come in on Rock Road those are the only restaurants they pass and they don't know there might be something on K-15. If they came

in on K-15 they might not know something is north or south of Rock River Rapids. If their GPS told them how to get there they are only going to pass so many things. We do not see that as intrusive but more advertising than we have been used to seeing in the past. We will be selective with that sort of thing but with the intent of supplementing our revenues.

VOTE: Motion carried 8-0.

CONSENT AGENDA

Kathy Sexton, City Manager, presented the consent agenda.

Hazard Mitigation Plan Resolution

Background:

- The federal Disaster Mitigation Act of 2000 requires local government to have a Hazard Mitigation Plan approved by FEMA to be eligible for certain federal disaster assistance and hazard mitigation funding programs.
- In 2004, the City of Derby participated with Sedgwick County's efforts to develop a Hazard Mitigation Plan, and that plan was adopted by the City Council in 2004.
- We are required to review, update and adopt the revised plan every 5 years. In 2009, City staff participated in this process. To be eligible for certain federal disaster funding programs, the City of Derby should again adopt the 2009 Hazard Mitigation Plan.
- The 653-page plan is at: www.sedgwickcounty.org/emermgmt/mitigation_plan.pdf. The City of Derby profile is found at pages 274 – 283.

Financial/Sustainability Considerations:

- Adoption of the resolution will have no immediate financial impact, but in the event of a disaster the city will remain eligible for federal aid.

Legal Considerations:

- The federal government may condition benefits on compliance with any reasonable requirements.
- The City is authorized to act cooperatively with other governmental units to develop a hazard mitigation plan.

Recommendation a Motion to:

- Approve a resolution adopting the Sedgwick County Hazard Mitigation Plan by reference.

RESOLUTION NO. 01-2010

A RESOLUTION ADOPTING BY REFERENCE THE SEDGWICK COUNTY, KANSAS MITIGATION PLAN.

Ordinance for Assessment of Sanitary Sewer Charges

Background:

- The owner of property at 920 E. Madapalla (Farborough Estates) within the City of Derby has failed to pay monthly charges billed for usage of the sanitary sewer system for quite some time.
- The current owner has been the property owner the entire period that delinquent sewer charges have occurred.

- Unsuccessful attempts to collect these charges include collection letters sent by city staff and the processing of past due balances through the State Set-Off program. In order to collect funds through the State Set-Off program one must be due a refund from the State of Kansas, but this has not occurred after several years.
- Staff now recommends assessment of the charges against the property.

Financial/Sustainability Considerations:

- Delinquent sewer charges total \$1,110.89.

Legal Considerations:

- State law authorizes levy of delinquent sewer use charges as a special assessment against the property served.

Policy Considerations:

- Staff uses all available informal options to collect delinquent utility charges before recommending levy of a special assessment.

Recommend a Motion to:

- Adopt an ordinance levying delinquent and unpaid sanitary sewer use charges as a special assessment upon certain property within the City of Derby.

ORDINANCE NO. 2008

AN ORDINANCE LEVYING DELINQUENT AND UNPAID SANITARY SEWER USE CHARGES AS A SPECIAL ASSESSMENT UPON CERTAIN REAL PROPERTY LOCATED WITHIN THE CITY OF DERBY, KANSAS.

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

VOTE: Motion carried 8-0.

Mayor Avello asked about geese, are we getting more?

Ms. Sexton indicated that any community as beautiful as ours with as many ponds and lakes throughout the city is going to have a lot of geese during certain times of the year. When you put bike paths and walking paths around the ponds certainly you need to watch where you walk. Other than that, she doesn't think they are causing any problems.

ADJOURNMENT:

MOTION: Warren moved to adjourn at 9:33 p.m. Haynes seconded.

VOTE: Motion carried 8-0.

ATTEST:

Dion P. Avello, Mayor

Jean Epperson, City Clerk