

**APPROVED
REGULAR COUNCIL MEETING
January 13, 2009
6:30 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I
WARD II
WARD III
WARD IV

COUNCIL MEMBERS PRESENT:

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

Flag salute was led by Council President George Arnold.

The invocation was led by Jordan McFall, Woodlawn United Methodist Church.

**CONSIDERATION OF
MINUTES**

Minutes of the December 9, 2008, Regular Council Meeting.

MOTION: Arnold moved to approve minutes of December 9, 2008 Regular Council Meeting. Meidinger seconded.

VOTE: Motion carried 8-0.

PUBLIC FORUM

Kathy Sexton, City Manager, made a presentation about sales tax receipts and building permits from 2008.

PRESENTATION

Theresa Hearn, Derby Community Foundation, introduced the new 2009 Chairman, Jeff Boone. She presented the city a check for \$2,836. The funds are to be designated for improving the north entryway of High Park. The funds represent the balance of the Greenscapers account. Greenscapers is a community wide volunteer program that helps beautify public green spaces in the city. In the mid 1990s, this program was initiated by the Derby Community Foundation under the leadership of Elizabeth Kinch and Becky Loosen. This program has now come under the coordination of the City of Derby. The Foundation has over the years received contributions from citizens who wanted to keep our green spaces looking nice so those dollars were put into this account. As is the responsibility of any community foundation board, once a program no longer exists or doesn't need funding, it is their responsibility to direct those funds to a similar type project. Since Greenscapers no longer needs the funds they consulted Becky and Elizabeth and they thought it was a wonderful designation.

Mayor Avello accepted the check.

Ms. Sexton showed a picture of what the entryway will look like at the north end of High Park.

Council Member Bannon clarified that the Greenscapers program will still be in existence but people interested should contact the city to participate.

BUCKNER AND MEADOWLARK INTERSECTION AGREEMENTS

Dan Squires, City Engineer presented the staff report.

Background:

- In January 2004, the City applied to the Kansas Department of Transportation (KDOT) for STP Safety Funding to improve the intersection of Meadowlark Boulevard and Buckner Street, and was subsequently awarded \$400,000 to improve the intersection.
- Design of the project is complete and KDOT received bids for the project on December 17, 2008. The low bidder on the project is Cornejo & Sons, Inc. with a total bid of \$799,662.05.
 - Construction of the project is anticipated to begin between February 16 and April 6, 2009.
 - Construction will be administered by KDOT with the City partnering with Sedgwick County to provide construction engineering (CE) services, for testing and inspection.
- Several agreements must be approved to proceed with construction and to capitalize on the availability of additional federal funding.

Construction Engineering (CE) Agreements

- KDOT requires that the City enter into an agreement and commit funds to provide for CE Services. KDOT has transmitted a Force Account Construction Engineering Inspection Services Agreement to the City for execution.
- KDOT requires that projects of this scope be inspected by inspectors certified by KDOT. Sedgwick County Public Works has KDOT-certified staff available to perform these services, and we have had good experience with them on similar projects in the past.
 - A proposal to perform these services has been received by the City and approved by KDOT. The proposed agreement with Sedgwick County provides for reimbursement to the County for CE services, based on the actual staff hours and expenses used on the project, in an amount not to exceed \$73,841.

Supplemental Agreement for Additional Funding

- In December 2006, the City entered into an agreement with KDOT outlining the duties and responsibilities of each party for the reconstruction of the intersection. The original agreement provided that a maximum of \$400,000 in federal funding would be available for the project.

- The State recently agreed to increase the federal participation on the project to a maximum of \$600,000. The additional \$200,000 in funding will offset the cost of relocating the existing overhead power lines underground.
- To use the additional funding offered by the State, the original contract must be modified to adjust the maximum federal participation in the project from \$400,000 to \$600,000.

Authority to Award and Commitment of Funds

- KDOT requires the City to adopt a resolution accepting Cornejo’s bid and committing the City’s matching funds to the project.
- The City’s funding commitment required by KDOT totals \$305,489.53.

Construction	\$799,662.05
Const. Contingencies	31,986.48 (4% of Construction)
CE Services	<u>73,841.00</u>
Total	\$905,489.53
Less Federal Participation	<u>\$600,000.00</u>
City Funding (to KDOT)	\$305,489.53

Financial/Sustainability Considerations:

- The difference in the City’s cost for this project as budgeted compared to the actual amount totals \$85,894.93 (calculations below), which will be funded by savings realized on other CIP projects.
- The improvements as designed should be capable of safely handling traffic for the foreseeable future.

	<u>Budget*</u>	<u>Actual</u>
Construction (with 4% contingency)	\$785,000.00	\$831,648.53
Land Acquisition	50,000.00	40,525.00
CE Services	50,000.00	73,841.00
Utility Relocations	<u>0.00</u>	<u>224,880.40</u>
	\$885,000.00	\$1,170,894.93
Less Federal Participation	<u>400,000.00</u>	<u>600,000.00</u>
City Cost	\$485,000.00	\$570,894.93

* Budget from the approved 2008 CIP.

Legal Considerations:

- The KDOT Agreement for CE Services includes standard KDOT language addressing the City’s responsibilities for construction engineering.
- The Sedgwick County Grant Agreement contains language addressing the respective responsibilities of the City and Sedgwick County for construction engineering.

- Amendment of the original contract between the City and the State is required to revise the available federal funding limits; a supplemental agreement is the appropriate vehicle to address this situation.
- The City, the State, and Sedgwick County are authorized to enter into agreements required to obtain federal financial aid for construction of public improvements.

Policy Considerations:

- By partnering with other governmental agencies, the City is able to more cost effectively reconstruct the intersection and improve safety.
- Approve the proposed Force Account Construction Engineering Inspection Services Agreement with KDOT and authorize the Mayor to execute an agreement with Sedgwick County for Construction Engineering Services.
- Approve the proposed supplemental agreement to the contract with KDOT for construction of improvements to the intersection of Meadowlark Boulevard and Buckner Street, increasing the maximum federal funding from \$400,000 to \$600,000.
- Approve a resolution allowing KDOT to award the contract for construction of improvements to the intersection of Meadowlark Boulevard and Buckner Street to Cornejo and Son’s, Inc., committing City funds to the project, and authorize the Mayor to execute necessary documents.

MOTION: Bannon moved to approve the proposed Force Account Construction Engineering Inspection Services Agreement with KDOT and authorize the Mayor to execute an agreement with Sedgwick County for Construction Engineering Services; approve the proposed supplemental agreement to the contract with KDOT for construction of improvements to the intersection of Meadowlark Boulevard and Buckner Street, increasing the maximum federal funding from \$400,000 to \$600,000; and approve a resolution allowing KDOT to award the contract for construction of improvements to the intersection of Meadowlark Boulevard and Buckner Street to Cornejo and Son’s, Inc., committing City funds to the project, and authorize the Mayor to execute necessary documents. Craig seconded.

Ms. Sexton explained there was a fourth action item she passed to Council Member Bannon and asked her to include in her motion because we just got in a new Westar agreement today. It is not printed on anyone else’s agenda.

VOTE: Motion carried 8-0.

**PUBLIC WORKS
FACILITY DESIGN
CONTRACT**

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

Background:

- On September 23, 2008, the City Council received the public works master planning document from Bucher Willis & Ratliff consultants. The Public Works Facility Master Plan included basic site plan requirements and physical plant needs, as well as facility space needs based upon use. The information provided was based upon industry standard benchmarks and best practices as identified through BWR's extensive experience.
- An RFP for design and construction services was sent out to 39 architectural and engineering firms on October 22, 2008. A pre-proposal meeting was held and facility tours provided for 19 firms in attendance. The City received 7 proposals on December 5, 2008.
- The selection committee, which includes City Council members Chuck Warren and George Arnold, City Manager Kathy Sexton, Asst. City Manager Stephanie Knebel, Operations Director Ted Austin, Community Development Director Charlie Brown and Public Works Director Robert Mendoza, reviewed all of the proposals and selected 3 firms to interview.
 - The committee interviewed MVP Architects (\$230,000), Howard & Helmer Architects (\$220,000) and WDM Architects (\$144,000). Great care was taken to ensure equality of proposals and services provided.
 - Upon completion of interviews, the committee recommends WDM Architects because of their experience, identified process and schedule, and their very competitive fee.
- Due to a delay in closing on the identified Public Works land in the Derby Corporate Park, a contingency has been included in the contract that defers the beginning of the project until the official closing on the property.

Financial/Sustainability Considerations:

- The 2008 Capital Improvement Plan provided \$350,000 for design and construction oversight services related to this project from the Capital Improvement Reserve Fund, until financing of the project construction is secured. The recommended contract with WDM Architects is for \$144,000.
- Construction of a new public works facility will aid the city in meeting the future needs of our growing community's maintenance of infrastructure and parks.

Legal Considerations:

- This solicitation and selection of an architect was accomplished in accordance with applicable City policies and procedures.

DISCUSSION:

Council Member Bannon stated they had previously discussed that before they move further they were interested to find out whether we were looking at more of a pre-engineered building or a concrete tilt-up. Where do we stand with that?

Mr. Mendoza advised that decision has not been made yet. When we put the RFP out we asked for recommendations on three different types of construction. WDM did not provide a

recommendation but provided an opinion of each option. At that point in time it was a combination building, but that is one of the first things that will be accomplished, looking at what type of construction will we be using to build this building.

Council Member Bannon advised she is very happy with the price that WDM came in at. Bucher Willis had estimated about 10% and WDM came in at a little less than 5%. Should we estimate that the rest of the estimates were high as well?

Mr. Mendoza advised we reviewed the pricing. Originally it was not thought we could do it for the \$4 million but now it appears we can. That is based on some of the economic issues we are going through and some of the markets we have. He thinks we are going to see savings across the board.

Council Member Bannon asked how much savings? We have some designated revenue streams that always finance certain items but we are looking at doing a G.O. Bond on this and we have a little over \$1 million in land costs already. Over time you are talking about \$4 million to build a building and whenever you talk about that kind of money in this type of economy it makes you question if you should jump in all at once, prolong it or do it in stages. We could build part of it and use the existing facility for storage or something else. She questioned if we should pull back.

Ms. Sexton stated that all those are things the design committee has talked about. With the architects we are at the stage of the project where if you don't have it designed you're not in the position of making any decisions. At this point we need to get some designs going, get some construction documents, get it bid and determine if there are phasings that need to occur. Part of the deal when you're not paying cash for a building but you are issuing bonds is that sometimes it's better if you do it all at once. It depends on the bond issue at the time and how many other things need to be debt-financed at that same time. We like to keep our financing issues less than \$10 million total. We are meeting with our financial advisor and bond counsel next week on the 2009 debt-financed projects so we will have a better sense of that. In this project the direction has been that this is an important project for the city and we are trying real hard to take advantage for Derby of the economic situation in the sense it's a good time to build things. We will be vigilant in watching out for all the opportunities on this one but certainly making sure we can afford it before we sign a contract with a builder.

Council Member Meidinger advised he is a little disappointed that he has not heard any discussion of sharing this facility with the school district. He doesn't know what parameters were discussed on this issue. When Mr. Squires was up here he was talking about sharing the responsibility of Buckner Street with the state and county to save money. He thinks this would have been a good joint project. What are we going to do with the current fuel pumps that we are currently using?

Mr. Mendoza advised the current fuel pumps will stay active. There would be a second set on the north side of town.

Council Member Meidinger clarified there will be two fuel stations.

Mr. Mendoza advised that was correct. Regarding working with the school district, approximately 2 years ago they had discussions with the Tri-Governmental facilities committee, including the school district, and at that point in time the school board declined to participate in this project. It is not that we did not make the effort; it was just denied at that level.

Council Member Meidinger questioned why we are continuing with two fuel stations.

Mr. Mendoza explained that the fueling contract is a separate deal with the DRC, school district and the city. The school district still pays for those services.

Council Member Meidinger advised it would seem to him it would be cheaper to have one fuel facility, one monitoring system. Probably you would get away from all the congestion in that area.

Council Member Craig pointed out the estimate at the beginning was for \$350,000 and now the bid is for \$144,000. He questioned why the bid is so low compared to what they thought it would be and compared to the other bids.

Mr. Mendoza explained the bid selection was quite broad. It went from this low bid almost to the entire \$350,000. Between those seven it was quite extensive. Because there was such a disparity they went back through and compared apples to apples to make sure we were getting what we were expecting to get from each one. Once we interviewed them we pried into what the services meant, what quality were we getting, how much contact were we getting to make sure we felt comfortable with this low proposal because there was such disparity in the pricing. When we got done it was a consensus that we felt we were getting the service we needed for this project.

Council Member Craig asked if we have done business with them before.

Mr. Mendoza advised WDM did some work on Rock River Rapids. They did landscaping.

Ms. Sexton added that they did the buildings at Rock River Rapids as well. WDM is a reputable Wichita firm and she and Stephanie have a lot of experience in terms of other projects. Sometime you hit the market with an RFP and you get a big variety of proposals, and it's all about which firm has a lot of business in those particular few months and which maybe has slowed down a little bit. We had a huge variety in this set of seven.

Council Member Craig pointed out he did not have the contract to look at and is approving something he has not even looked at yet.

Ms. Sexton pointed out the council approves engineering contracts almost every meeting for the Community Development Department. She is operating under the assumption that the council does not need to see legal documents on all of these. If there are times when you ever want them please feel free to say so and she can get them out to everybody.

Council Member Craig advised he did not read this until early this afternoon. He noticed Council Member Bannon has a copy and is sure she has gone over it pretty well.

Council Member Warren advised his gut feeling is we will end up with some kind of combination construction. There was a difference in price and a difference in cost of construction. For us, the determination is, is a cheaper portion of the building really best for us long term and there are going to be some portions of this building that because of the nature of how the building is going to be used that probably a pre-engineered steel building is not going to be in our best interest in that particular portion because of the type of use. In other areas it very likely would be the most cost effective. He was encouraged that the architects recognized that and will design into this cost effectiveness in terms of materials that will serve us in both the long and short term. Cheaper on the front end is not always better and he thinks the answers he got when they asked that question put him at ease that we will be using the right types of construction in the areas we need it. He is very comfortable with the preliminary ideas.

Mr. Mendoza advised that initial cost estimates came from the Bucher Willis document and not from WDM Architects which we are referring to today.

Council Member Bannon asked if there are some hidden costs we are not seeing for additional consultants such as landscaping?

Mr. Mendoza advised there are no other functions designated at this time. We have to agree to any additional costs before they happen. This fee is for the total project.

Ms. Sexton advised this will include a team of engineers, landscape architects, everything they need.

Council Member Bannon advised on the south K-15 project there is a list of other consultants and on this PEC is the only other one listed.

Mr. Mendoza advised of the three firms they interviewed they had all contracted with PEC. The selection committee decided to pull PEC out and they were interviewed separately so we would feel comfortable with the services they provided.

Council Member Warren asked if he needed to add to the motion that it would be subject to closing of the land.

Phil Alexander, City Attorney advised that was in the contract.

MOTION: Warren moved to authorize the City Manager to execute a contract with WDM Architects for \$144,000 for design and construction oversight services of a Public Works facility. Staats seconded.

Council Member Arnold advised one of the reasons there was such a big diversity in pricing is that the commodities market has totally collapsed. The price of steel and concrete today is substantially lower. He is sure that had a big reflection on the overall bidding process.

Mayor Avello asked about Council Members Bannon's comment of costing \$4 million to build the building, he questioned if the infrastructure pricing was included in that amount.

Mr. Mendoza advised it is three separate structures, including the main principle building, a storage structure, salt and sand facility as well as motor pool and fueling. It is not just a building but a total complex.

VOTE: Motion carried 8-0.

K15 GATEWAY DESIGN CONTRACT

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

Background:

- On February 12, 2008, the City Council authorized the City Manager to negotiate and execute a contract with Cathcart Architects for preliminary design services related to the K15 Gateway and High Park Gate projects. Since then, a contract for the High Park Gate project was completed, and design is currently underway.
- We are now presenting the K15 Gateway design contract for approval.
 - The K15 Gateway contract includes the Design Development and Construction Documents Phases of the project. These services are identified in the AIA Document B101 Standard Agreement.
- Cathcart Architects will incorporate the public comments and ideas expressed through several community presentations and the Derby Days booth votes into the Design Development Phase to create a final design concept.
 - The project will address landscaping needs including replacing trees that are dying from pine rot disease, sound-dampening options to address the noise from increasingly frequent trains, and drainage issues related to the area.
 - Cathcart Architects will work with City staff and KDOT to ensure compliance with all state regulations.
- The contract allows for review and approval of each phase prior to beginning the next. Acceptance of this contract does not guarantee completion of the project and allows the city the right of refusal and the ability to terminate the project, if necessary.

Financial/Sustainability Considerations:

- The total contract for \$74,000 includes the design development phase for \$37,000 and the construction documents phase for \$37,000.
- The 2008 Capital Improvement Plan provided \$200,000 to design and build the High Park Gate and to design the K15 Gateway. The projects are within this budget.

Legal Considerations:

- The Contractor, one of five that submitted proposals in early 2008, was previously selected in accordance with City procedures for solicitation and evaluation of proposals for professional services.
- The proposed contract is structurally similar to that authorized by the Council on February 12, 2008, to authorize creation of a schematic design for the project.

DISCUSSION:

Council Member Craig asked if there were a performance period in the contract.

Mr. Mendoza advised it is divided into twelve-week increments with time in between for the city to review and determine whether to move forward.

Council Member Meidinger asked what type of parameters will be asked for in the 2nd part of the contract after the first twelve weeks. Would one be sound to keep the noise away from the neighborhoods, would it be drainage or beautification or are you going to try and wrap it all up into one project. Should we give directions?

Mr. Mendoza clarified it is one contract, two pieces. You are moving through a single process with two parts to it. Phase one is coming up with a design that would incorporate landscaping, beautification, drainage and sound all at one time, trying to find one project that has an impact. This project won't solve any of those problems, it's going to make them better and have a positive effect on the south side of our community on K-15. It is not the end-all solution to any of our problems out there but will be part of that first discussion. Once those issues are done we will bring it to you and show you and there will be time to comment and make changes if necessary. Then decide whether to move forward with construction documents.

Council Member Meidinger asked if the plan could be altered if the council decided they wanted just the sound and not drainage or beautification. Could the plan be altered without any extra charge?

Ms. Sexton stated that if council members have parts of this project you think are more important than other parts now is a great time to tell us what those are. Once this contract is entered into this week he is going to start designing and his priorities are the drainage and noise reduction to the neighborhood and the sign and landscaping around the sign. They are all in the project now so if you feel there is part of the project that is more or less important, tonight is a great time to communicate that.

Council Member Meidinger advised if you are trying to do all of these things in one contract it might be a monumental project. For example, sound is the most important thing; you might be looking at a 20-foot fence along there because as he has gone along in many areas they build huge fences along interstates. Or, we might think beauty is the most important thing. He is just trying

to determine which way we are going to go because he doesn't think one is going to clarify all of them.

Ms. Sexton agreed, what we would do as the design team, when the architect brings us ideas and different options we will look at those and put something together that we think balances all those goals and bring that to the council as a final design.

Council Member Meidinger asked if that can be changed before the 2nd contract kicks in.

Ms. Sexton stated that when we come back to the council we can get agreements or concerns at that time before they start on phase two which is the detailed, technical specifications.

Council Member Bannon asked what the design fee was for the High Park project.

Mr. Mendoza advised it was \$10,000.

Council Member Bannon clarified that this will come back to the council prior to construction.

Mr. Mendoza advised that was correct.

Council Member Bannon asked if what they have are conceptual or preliminary designs.

Mr. Mendoza advised they were conceptual.

Council Member Bannon stated that so far tonight we have agreed to a \$4 million public works facility and a little over \$1 million in land acquisitions, and the pretty picture of the High Park Gateway for about \$100,000. To design this is \$74,000, and we are up in hundreds of thousands for this entire project. As far as she is concerned this is a project that needs to be done but she doesn't know if now is the time. One part of this project that may need to be done now is the noise and you would need to talk to her about the drainage because she is not familiar with it. She knows some of the areas behind have had some washouts in the creeks but as far as the drainage along K-15 and the access road, she is not as familiar with the drainage issue. As far as putting up a pretty sign to say you're in Derby, that's cool but it doesn't pay the bills. It's nice, we will get there but she doesn't know that it's necessary now. We have an awful lot on our plate, the economics are okay but they are not great. She has a hard time justifying to people that we are going to spend \$300,000 to \$400,000 dollars to get a sign and help people on the south side of town with their noise. There are an awful lot of other programs that are going to need attention and we don't know what the state is going to do. They have already started giving their dire predictions and we don't know how much of that is going to funnel down to us. There are a lot of things involved with all of this and her gut feeling is to educate us on the drainage and how badly that needs to be done. The noise issues also needs to be addressed and whether we could get some crossings which would help alleviate part of our noise issues in another fashion if we get rid of the Cherry crossing.

Ms. Sexton advised it would have to be more crossings than just Cherry. The Cherry one will be closed but will be replaced by the new Madison crossing in 2010.

Council Member Bannon stated she has a hard time saying spend, when common sense tells you that is not what we should be doing just for a nice entryway.

Council Member Craig asked if a decision has been made about what the number one priority is for this area. He advised drainage has always been a problem in Derby and that could be priority one. He believes we need to be very cautious about how we are going to spend money in this area. Our job is to get the most bang for the buck.

Ms. Sexton advised that drainage is important and that is part of the landscaping issue. The reason we can't get stuff to grow out there is because of the drainage problem. It is a very basic thing that no one is going to see until we fix it. The large trees that have to come down now are currently providing a sound barrier. We are losing the noise buffer to the neighborhood because the big trees are coming down and we want to see what we can do to get trees to grow there again. It's okay to have a project with multiple goals. When you ask about what the engineers think, that is exactly why we need this contract today. This is not just an architect's project, it does include the engineering. We have a lot of engineering needs on this project and our in-house engineers are not going to be working on this to that extent. They will provide some advice but it is beyond their time and expertise. This is something we are contracting out like we contract other engineering work.

Council Member Craig advised there are some things that need to be prioritized for the business of the city and at this point he doesn't think this is one of those things. He thinks this can be put in abeyance for a period of time until we see a better forecast of what we really need versus wants and needs. It's not that he's against it, he knows how much noise there is down there he just thinks there are bigger things to do.

Council Member Warren advised some of the concerns he has heard tonight resonate with him. Tough times in the economy, lost jobs bring to mind that we need to be cautious and make decisions based on facts, not on fear. Having been around for a long time and having been on the council you remember how we got to this point. We began talking about gateways 3-4 years ago. Would it be nicer if these projects had been spread out over 2-3 months instead of having them all come up on the same night? Maybe that would have been better, but these are all projects that have been in the works for months and years. We knew public works was coming down the pike and that was something as a growing city we were going to have to deal with at some point. The aspect of noise remediation in that area and gateways is something that has been talked about for a long time. The question he has to ask is whether now is the time and it would be very easy in fear to say with everything up in the air let's just put this on the back burner. He does not see any evidence at this point that our revenue stream is dropping or is going to drop. What he likes about the proposals is that we can change at any point, we have that flexibility. In terms of priority, he thinks the priorities are the landscaping and drainage, but while we are doing it if we can make it beautiful we all would agree we would be better off to spend a little bit more right now to beautify. He encouraged the council to proceed with this with the idea and knowledge

that we have instructed staff that if we see economic changes in our budgeting then we can make those adjustments. At this point he does not see that big of a change. City and State government is a big ship and it doesn't change course quickly. Our revenue is coming from sales and property tax. We might see a slight reduction in that but he doesn't see massive reduction. If we do see a reduction we can change at that point. He encouraged the council to go forward, give the city and our staff the knowledge that they need to plan and they can take it from there.

Council Member Bannon commented that Ms. Sexton mentioned the drainage as an issue but as she understood it the pine wilt is the reason we are taking those trees out. They are not dying because of too much water; they are basically dying because of pine wilt, correct?

Mr. Mendoza advised that is correct. The reason this whole conversation started was because we had to make a change. In making a change, even the comprehensive plan talked about this issue, while you are making changes you might as well plan for the future. We could have put a row of trees, he can do that tomorrow, that doesn't mean it's the right choice or the long term choice. A few of the trees are still there; we did not remove all of them because all of them were not sick. Drainage is an issue as far as erosion goes and providing any other type of landscaping there because of the ditch itself. This gateway talks about putting drainage underground so we have a surface to deal with on top and plant above it and deal with some other issues for more landscaping than what we currently are able to do. This is a project that grows based upon the needs. It started off as a tree replacement and what can we do, now is the time to talk about it.

MOTION: Bannon moved to table for two weeks or a month, staff's choice, for education of the council and drainage and noise abatement on this project. Craig seconded.

Mayor Avello asked if they have to vote before anyone else speaks.

Mr. Alexander advised the motion to table is not debatable.

Council Member Meidinger asked how long it would be tabled for.

Council Member Bannon asked staff how long they would like.

Ms. Sexton advised two weeks would be fine.

VOTE: Motion failed 3-5, Nun nay, Arnold nay, Horyna nay, Warren nay, Staats nay.

Council Member Staats stated a couple of years ago when he was running for this seat he campaigned in that area on south K-15. He heard repeatedly people talking about the noise from cars on K-15 and the noise from the trains. That seemed to be a very high priority to some of those people. That would be the way he would like to see this project head is towards sound and let beautification and everything follow, which he thinks it will. That needs to be our priority along with the drainage and everything else. Back in June he had the honor of helping at the City's Derby Days booth at the Chamber business fair. We put all the concepts out for K-15 and High Park and out of the 100-200 people he talked to he had one person talk about the money

being spent on something like that. Everyone else he talked to seemed very positive about it. They were very upbeat about it and glad to see the city doing things to beautify their city. He thinks it's a good project and we need to move forward.

MOTION: Staats moved to authorize the City Manager to execute a contract with Cathcart Architects for \$74,000 for design of the K15 Gateway project. Warren seconded.

Council Member Meidinger asked about the sound. If he understands this properly it is a 4-5 foot wall, is that correct?

Mr. Mendoza advised that was the original concept. There are no plans yet, this is the process that will determine those types of things.

Council Member Meidinger stated that if sound is the real motivation for this thing it sounds like a benefit district project to him, if they are going to benefit from it but that probably wouldn't fly. Secondly, he was in Mulvane and saw their "Welcome to Mulvane" sign and he made some inquiries about that sign, how much it cost, etc., and it was even less than this contract. If we are going to do the sound project as Mr. Staats has been talking about, he thinks that is going to be an astronomical amount of money. If we are going to do drainage and beauty and try to semi-do the sound then we are going to be wasting money but it's going to look nice. He is trying to find a balance in this issue. If sound is the issue then it's going to be a 10-12 foot wall along there on the west side of that area probably on down to the south side. If you remember, there is a crossing down at the wastewater treatment plant and that is where the engines start sounding their horns. Prevailing south winds are going to carry that sound 12 feet up into the air because that's approximately where the whistles are going to blow. His point is, if sound is going to be the issue then we need to instruct the architects now that sound is the issue, not drainage and not trees, is that correct?

Council Member Staats stated that as Mr. Mendoza said, this project is going to evolve as we go. His priority is the sound and he doesn't think it's a 15-foot fence. He is familiar with the type Mr. Meidinger mentioned in California and he doesn't think those are very attractive. Anything you put up, whether its bushes, trees or a 6-foot wood privacy fence blocks a little bit of sound and all of it combined tends to help. That's why we have engineers and architects that have those models and those formulas of what's going to block that and that's why we need to move forward to find out what he's going to bring us. He is not voting on this being the project and we are going to do it next week. We are just moving forward with the design part of it.

Council Member Meidinger stated we are going without any specific objective, just three of these things.

Council Member Staats indicated he was under the impression they wanted some direction and since that is in his ward he has talked to a lot of the people and the sound seems to be the biggest issue. It all blends together.

Council Member Meidinger asked if sound was the direction the council was going.

Council Member Horyna advised of all the agenda items he has seen in his short time on the council this is one that has set right on the split of hairs with him. He loves the idea because when he first started coming to Derby the only way he knew he was in town is when he passed the wastewater treatment plant. That was the direction he gave his family when they came to see him. Something like this would be greatly appreciated to many of our pass-through travelers. The part that he sticks on the most is the \$74,000. That is an awful lot of money. He falls back on the

2008 Capital Improvement Plan which provided \$200,000 to design and build the High Park gate and design the K-15 gateway. Since those projects are within budget and it is something that has been approved he is going to stick to his guns. It is a lot of money but is something that has been planned and that we planned on proceeding with and he sees no reason to stop if it has already been budgeted.

Mayor Avello asked the architect if he had any concept of what could be done that we could take all three concerns and design it in one area.

Michael Cathcart, Cathcart Architects, stated absolutely. He thinks all three items are going to be very easy to mesh together. What was presented to them when they did their original designs was that sound was a very big issue for that neighborhood and all along from the city limits on the south all the way up to the bowling alley. Their intention is to buffer the sound by providing some curvilinear walls as well as some berming and extra landscape that will accomplish drainage, beautification and sound. That will happen all along that way and as the trains come in and slow down and you get further into town we anticipate spreading that out just a little bit so the intensification of those elements gets further to the south where the noises are louder. We don't need to replicate that all the way down in an intense manner but we can do it and step it down to save on money as well.

Mayor Avello asked about the height of the fence or the wall. Is there any concept right now how high that would be?

Mr. Cathcart advised that 4-feet has been mentioned and when you look at the landscape out there 4-foot is not going to cut the sound down from the train horns and things like that. There will probably be a mixture of heights in terms of landscaping, berms and the walls.

Council Member Craig asked which one Mr. Cathcart would concentrate on solving first to follow on to deal with the other two. Which one is the biggest problem to solve first before the others can be successful?

Mr. Cathcart advised he does not know that he would say one over the other, they all three mesh together very well and if you are going to do one you need to do all three simultaneously.

Council Member Craig stated it is going to take a lot of innovation to buffer the sound, right?

Mr. Cathcart agreed.

Council Member Craig stated that the buffering walls in Wichita have turned into echo chambers.

Mr. Cathcart stated Wichita has a lot more traffic.

Mr. Mendoza pointed out this is not going to take all the noise away; it is a start to deal with these issues.

VOTE: Motion carried 5-3, Meidinger nay, Bannon nay, Craig nay.

RESOLUTIONS FOR

COUNCIL MINUTES

-15-

1/13/09

**PUBLIC
IMPROVEMENTS TO
SERVE WOLFES ROCK
ROAD ADDITION**

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

Background:

- Wolfes Rock Road Addition is located on the east side of Rock Road, north of Tall Tree Road.
- The Final Plat of this addition was approved by the Council on December 9, 2008.
- Along with the Final Plat, the Council also approved the petitions submitted by the developer for sanitary sewers, water lines, streets, decel lane, drainage and sidewalks.
- The plat has now been recorded, and Gilmore & Bell, the City's bond counsel, has prepared the corresponding resolutions for Council consideration.

Financial/Sustainability Considerations:

- The benefit district defined in the resolutions includes only those lots within Wolfes Rock Road Addition.
- The infrastructure resolutions total \$339,000. Of that amount, \$302,880 will be paid by the Benefit District and \$36,120 by the City-At-Large in accordance with the City's policy for payment of oversizing collector streets and arterial sidewalks.
- Special assessments will be spread against the benefit district properties over a 15-year period.

Legal Considerations:

- The resolutions have been prepared in accordance with Section 12 6a of the Kansas Statutes.

Policy Considerations:

- The Council has made a practice of financing such proposed improvements through the use of special assessments.

RESOLUTION NO. 01-2009
SANITARY SEWER IMPROVEMENTS/WOLFES ROCK ROAD ADDITION.

RESOLUTION NO. 02-2009
WATER MAIN IMPROVEMENTS/WOLFES ROCK ROAD ADDITION.

RESOLUTION NO. 03-2009
STREET AND STORM DRAINAGE IMPROVEMENTS/WOLFES ROCK ROAD
ADDITION.

RESOLUTION NO. 04-2009
AMBER RIDGE SIDEWALK IMPROVEMENTS/WOLFES ROCK ROAD
ADDITION.

RESOLUTION NO. 05-2009
ROCK ROAD SIDEWALK IMPROVEMENTS/WOLFES ROCK ROAD ADDITION.

RESOLUTION NO. 06-2009
ROCK ROAD DECEL LANE IMPROVEMENTS/WOLFES ROCK ROAD
ADDITION.

MOTION: Warren moved to approve resolutions for public improvements to serve
Wolfes Rock Road Addition. Arnold seconded.

VOTE: Motion carried 8-0.

**RESOLUTIONS FOR
PUBLIC
IMPROVEMENTS TO
SERVE DOVE HOLLOW
ADDITION**

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

Background:

- Dove Hollow Addition is located on the north side of Chet Smith (87th Street South), east of Rock Road.
- The Final Plat of this addition was approved by the Council on November 25, 2008.
- Along with the Final Plat, the Council also approved the petitions submitted by the developer for sanitary sewers, water lines, streets, drainage and sidewalks.
- The plat has now been recorded, and Gilmore & Bell, the City's bond counsel, has now prepared the corresponding resolutions for Council consideration.

Financial/Sustainability Considerations:

- The benefit district defined in the resolutions includes only those lots within Dove Hollow Addition.
- The resolutions for infrastructure improvements (sanitary sewer, water, streets, decel lane, drainage, and sidewalks) total \$3,199,000. Of that amount, \$3,023,646 will be paid by the Benefit District and \$175,354 by the City-At-Large, based on the City's policy for payment of oversizing water lines, collector streets and arterial sidewalks.
- Special assessments will be spread against the benefit district properties over a 15-year period.

Legal Considerations:

- The resolutions have been prepared in accordance with Section 12 6a of the Kansas Statutes.

Policy Considerations:

- The Council has made a practice of financing such proposed improvements through the use of special assessments.

RESOLUTION NO. 07-2009
SANITARY SEWER MAIN IMPROVEMENTS/DOVE HOLLOW ADDITION.

RESOLUTION NO. 08-2009
SANITARY SEWER IMPROVEMENTS/DOVE HOLLOW ADDITION.

RESOLUTION NO. 09-2009
WATER MAIN IMPROVEMENTS/DOVE HOLLOW ADDITION.

RESOLUTION NO. 10-2009
WATER LINE IMPROVEMENTS/DOVE HOLLOW ADDITION.

RESOLUTION NO. 11-2009
STREET IMPROVEMENTS/DOVE HOLLOW ADDITION.

RESOLUTION NO. 12-2009
STREET IMPROVEMENTS (CHET SMITH AVENUE)/DOVE HOLLOW
ADDITION.

RESOLUTION NO. 13-2009
STORM WATER SEWER IMPROVEMENTS/DOVE HOLLOW ADDITION.

RESOLUTION NO. 14-2009
SIDEWALK IMPROVEMENTS/DOVE HOLLOW ADDITION.

RESOLUTION NO. 15-2009
SIDEWALK IMPROVEMENTS (CHET SMITH AVENUE)/DOVE HOLLOW
ADDITION.

DISCUSSION:

Council Member Horyna asked if the water line improvements will loop back. Will there be a loop system instead of dead end water mains in that area?

Mr. Brown advised that eventually all of our water system will loop. The resolutions that are before you tonight are a dead-end system from Rock Road to the site. Internal to the site are loop systems, but the whole system itself is a dead end off of Rock Road.

MOTION: Craig moved to approve resolutions for public improvements to serve Dove Hollow Addition. Horyna seconded.

VOTE: Motion carried 8-0.

2009 LEGISLATIVE AGENDA

Stephanie Knebel, Assistant City Manager, presented the staff report.

Background:

- Maintaining communications with legislators and tracking legislative issues are important administrative functions to ensure that the City stays aware of and involved in state and federal legislation affecting the organization and the community.
- In Derby, legislative relations are achieved through relationships and partnerships such as Visioneering Wichita, the Regional Economic Area Partnership (REAP) and the League of Kansas Municipalities. The priorities of these partners are included in this legislative agenda.
- The proposed 2009 Legislative Agenda presents Derby's core legislative principals and its legislative priorities. Priorities for this legislative session are to: 1) reinstate the Local Ad Valorem Tax Reduction (LAVTR) program, and 2) retain the use of casino revenue for their intended original purposes.
- Notable changes in our partner's 2008 legislative agenda include:
 - Support for a Kansas Center for Innovation for Biomaterials in Orthopedic Research (Visioneering Wichita), and
 - Restoration of Local Ad Valorem Tax Reduction (LAVTR) funds (League of Kansas Municipalities).

Financial/Sustainability Considerations:

- Restoration of the LAVTR program would have a positive effect on city revenues.

Legal Considerations:

- None

Policy Considerations:

- Adopting a legislative agenda sets the priorities that the City of Derby would like our legislators to focus on during the 2009 session.
- Adopting a legislative agenda further strengthens communication between the City of Derby and our legislative delegation.

DISCUSSION:

Council Member Warren asked about eminent domain. Is the wording we have in this, is it similar or taken from the Kansas League of Municipalities or is this our wording?

Ms. Knebel advised this is our City of Derby document. There is a little bit more information towards the back when you get to the League wording.

Council Member Warren advised in general he is in favor of what we are trying to do here in terms of protecting the eminent domain rights but he also is cautious when he gives government authority to take property even when they compensate for it. The last sentence says “the city supports statutory safeguards to protect private property interests and encourages a delegation to enhance municipal authority to stop blight”. His concern is across the country we have seen abuses of this for economic gain, to affect tax revenue, a city or county will go in and take property by eminent domain and turn it over to a private developer because the city will receive additional income from that. He thinks that is an area that can be abused by government. He is not sure that wording there is strong enough; he almost wants to put “vigorously supports statutory safeguards”. He wants to make sure that what we do is in fact to allow cities to deal with blight and areas that are really going downhill versus government making a decision based on economic issues for the city versus true blight issues.

Ms. Knebel stated the state legislature has found itself in the same dilemma. Wanting and understanding the need for some economic development to occur while at the same time keeping blight cleaned up and what are the legal processes to do that. She can take another look at the language and see if we can make it stronger if that’s a concurrence of everyone else on council. Or, we can leave it alone and pay special attention to any proposed legislation and take a look at that a little closer.

Council Member Warren stated that private property rights are a constitutionally protected issue and he gets nervous when we start whittling away at that. There is a need to give cities that right, but he gets nervous when we start giving government that.

Council Member Bannon agreed that private property is something we all need to be concerned about. She is not as concerned because it comes down to whose butts are in these chairs. Just because the government gives us the possibility that we as a city can do that, it depends on what this body does. She thinks it’s worded fine, gives us the right to where we can take care of the blight but don’t get it to where we can abuse it. It will come down to whoever is sitting up here to do that.

MOTION: Bannon moved to adopt the 2009 Derby Legislative Agenda. Meidinger seconded.

VOTE: Motion carried 8-0.

CONSENT AGENDA

Purchase Replacement Fuel Pumps

Background:

- The current pumps were purchased in 1990. Recently both of our fuel pumps have needed extra maintenance. Circuit boards for these pumps are no longer available new, so the existing boards must be sent in and rebuilt.
 - This results in days of down time and the rebuilt boards have not been 100% reliable.
- There are two local companies that install and maintain this type of equipment. Both submitted bids, and the bid board approved the recommended purchase.
 - Double Check Co., Inc. \$12,836.00
 - Hoidale Co., Inc. \$13,183.68

Financial Considerations/Sustainability Considerations:

- Funding to maintain our system comes from revenues generated by the sale of fuel to the school district.

Legal Considerations:

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

Recommendation:

- Approve the purchase of two replacement fuel pumps, including installation, from the Double Check Co., Inc. for \$12,836.

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

VOTE: Motion carried 8-0.

Mayor Avello advised that Imogene Fleming passed away Saturday. She did many wonderful things for this city and probably will be best known for her musical attributes and giving the city the use of the barn at the community dinner. She was a great lady.

Council Member Craig stated there has been a lot of spirited discussion this evening. All of us have a concern for what is in the future. This council is very vigilant when it comes to spending tax dollars. Some of us agree, some of us disagree. Most of us are in a position to voice our opinion, sometimes more than others. We will remain diligent to get the most bang for the buck and we will not retreat from those infrastructure projects that will provide development and growth for this city. However, we will be conservative and approach the spending of taxpayer dollars in a definitely conservative way. If anybody up here disagrees with that they need to put their light on right now to tell him about it.

EXECUTIVE SESSION

MOTION: Arnold moved to recess to executive session for 30 minutes to discuss acquisition of real estate. 8:04 p.m. Warren seconded.

VOTE: Motion carried 8-0.

MOTION: Arnold moved to extend executive session for an additional 15 minutes at 8:34 p.m. Staats seconded.

VOTE: Motion carried 5-0.

The council returned at 8:50 p.m. and Council Member Arnold advised there was no binding action taken.

ADJOURNMENT

MOTION: Craig moved to adjourn at 8:50 p.m. Meidinger seconded.

VOTE: Motion carried 8-0.

Dion P. Avello, Mayor

ATTEST:

Jean Epperson, City Clerk