

**APPROVED  
REGULAR COUNCIL MEETING  
January 22, 2008  
7:00 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I  
WARD II  
WARD III  
WARD IV

COUNCIL MEMBERS PRESENT:

Jim Craig, Jim Meidinger  
Vaughn Nun  
Charlie Schwarz, Cheryl Bannon  
George Arnold

COUNCIL MEMBERS ABSENT:

WARD II  
WARD IV

Chuck Warren  
Mark Staats

Flag salute was led by Council President Charlie Schwarz.

The invocation was led by Council President Charlie Schwarz.

**CONSIDERATION OF  
MINUTES**

Minutes of the January 8, 2008, Regular Council Meeting.

MOTION: Schwarz moved to approve minutes of January 8, 2008 Regular Council Meeting. Arnold seconded.

VOTE: Craig yea, Meidinger yea, Nun yea, Warren absent, Schwarz yea, Bannon yea, Staats absent, Arnold yea, 6 yea, 0 nay, 2 absent, motion carried.

**PRESENTATION**

Eagle Scout Recognition.

**Mayor Avello** read a proclamation declaring Wednesday, January 23, 2008 as Eagle Scout Day and presented a certificate to Ricardo David Claudio. Richard Landzettel was also recognized but was unable to attend.

**Kathy Sexton**, City Manager presented an original painting given to the city by Dr. William Durnil and Norma Durnil of the Derby water tower. Many people have seen some of the prints of this 1994 painting, it has become an icon for Derby. After Dr. Durnil passed in December Norma

came in and said she wanted the city to have the original piece and she knew that Dr. Durnil would want that as well. It will hang prominently in our lobby at City Hall and we thank the Durnil's for that.

**Mayor Avello** added that there are not enough words to say thank you for this. This one hangs in the city of Madison, Mississippi as well; we are going to get some national recognition out of this. Mrs. Bannon also informed him there is one in Slidell, Louisiana as well.

## **PUBLIC FORUM**

**Council Member Bannon** commented to the women, if you have not had your yearly mammogram, it is time to do that. She lost a friend who raised her children and had a family here in Derby just this last year to breast cancer after battling it for four years. It is very important and it's not just the ladies' responsibility; if there is a man out there that cares about any woman be it his wife, fiancé, mother, girlfriend, daughter, sister, any family member, ask them if they have had their mammogram yet. If they haven't keep digging at them until they make that appointment and do it, it is very important.

**Ms. Sexton** pointed out the new city and community marketing brochure. It is all about the community and is titled "A good place to grow" and is a very professional work of our community marketing team which consists of the DRC, the city, the school district, the Community Foundation and the Chamber of Commerce. They also put together the website Derbyks.com last year and with the same help from JaJo out of Wichita they put this together. They have been printed and will be distributed at the Home Show as well as various locations throughout Derby. The Home Show is January 31-Feb 3<sup>rd</sup> at Century II. This will be the first year that she knows of that the community of Derby is going to have a booth. It will be staffed by people from the public schools, Community Foundation, the Chamber, the DRC and the city. We are still looking for volunteers; you get the privilege of representing the city at the Home Show, answering people's questions, telling them how great Derby is and passing out brochures. If you were going to go to the Home Show anyway this is a great way to do it. She also discussed the audit report from the Derby Recreation Commission. As you all know one of the requirements is for them to present their audit both to the school board and to the city council. She suggested the council take some time to read through it and let her know if they have questions or would like to talk to the auditor. There are no audit exceptions or concerns noted in the report but certainly the auditor is available to either talk to you one on one or to come before the body. She went on to say we are taking applications for the ACE Grant. As you recall the city grants up to \$2,500 per application for a community event that promotes the arts or some type of entertainment in Derby. The whole idea is to give people a place to congregate, recreate and appreciate art here in Derby rather than having to go out of town. We will be taking applications through February 29<sup>th</sup>. She also mentioned that she and the mayor got a letter from Deb Miller who is the secretary for KDOT. As you can imagine, after the bridge collapse we all know so much about now every state is looking more at their bridge inspections and KDOT has picked up on that because, as the state admits, inspections of city and county owned bridges were not their priority. What they have done is now sent a letter to all the city and counties in the state advising what they have on file in terms of inspections and whether or not you are on schedule for inspections. We were surprised that they don't have our recent bridge inspections on file and they sent us a letter saying we were past due. We mailed to them today a copy of the inspections. Our bridges require inspection every two years, we have one on file for 2005 and they were just completed for 2007. Our bridges are in good shape and the records will soon be on file with the state.

**Mayor Avello** advised he attended the SCAC meeting and we had about eight state legislators there and the topic from the cities to the legislators was the demand/deposit transfers, sadly we

are not going to see them this year and they might not even take them up. They are looking at a budget that he was told by Senator Journey was about \$900,000 in the red already. They will take them up in 2010 and we may get 25% back or something like that. He mentioned he may not be in tomorrow, please call ahead of time to see if he is at city hall.

**Nick Pannone**, Youth Minister, First Christian Church, advised his church runs a fireworks stand every summer as a fundraiser for their student ministry. They appreciate the chance they have had to lease the property on 63<sup>rd</sup> Street and because of the funds they raised in the past they have been able to see literally hundreds of students develop in the community of Derby, Kansas. Working the fireworks stand is beneficial to the community because it is the primary fundraiser for their student ministry that allows around 100 high school students each year to participate in our summer travels and because of this trip we are able to see students improve their lives and renew a care not only for themselves, but their schools and community as a whole. Also, with the funds that are raised by the sale of these fireworks, First Christian Church is able to put on a picnic and fireworks show that is a community wide event. Without these funds we would struggle to be able to do so, and because this is a community wide event it is something that we believe is helpful to Derby, Kansas. Again, they are very thankful for being able to do this in past years and are looking forward to see how this has been good for our students and the rest of our community.

**DONATION REQUEST –  
DREAM HOME FOR THE  
CURE**

**Allison Moeding**, Director of Economic Development presented the staff report.

**Cherri Nies Cowgill**, Nies Construction. Her father is Clifford Nies who started Nies homes 35 years ago. She advised they were asked by KSN about a month ago to participate in this project. They listened to the presentation and were immediately excited about the opportunity to be able to participate in this. The goal is to build the home and get as much of the money donated as possible and when we sell the home give the proceeds to the Race for the Cure. When we first met with KSN they thought we would be doing terrific if we could get half of the money donated, she advised she thought they could get more. They have been having meetings with different companies and suppliers asking if they would be interested in participating. Her mother is a breast cancer survivor, so her dad was very much on board with this project. They also have a trim carpenter who has five children and recently lost his wife to breast cancer, it was the saddest funeral she has ever been to. To her, it is not only the opportunity to be involved with this and donate the funds but to raise consumer awareness. Anita Cochran with KSN will be doing weekly interviews with breast cancer stories, survivors and family members of those who didn't survive; it is community awareness that you don't have to be old for this to hit you. They are very excited about this project because of the community education and because of the opportunity to raise funds to help this cause. They have covered 90% of the items needed, all 100% donated. Star Lumber was first on board to do the framing package, siding, carpet, flooring and decking material. They have a company that wants to do the heating and air, plumbing and electrical, all completely donated. Today she had eight messages and four e-mails of people who wanted to be involved and donate goods or services. Originally their thoughts were how to get it all donated and now they are wondering how to handle all the donations that are coming in. If this goes well their hope is that they will get to do another one and they are very excited about the project. She

showed the council some plans of the house that will be built on a donated lot in the Waters Edge Addition of The Oaks.

**Mrs. Moeding** advised that the estimated value of the permits would be about \$4,100, which includes the building permit fee, the certificate of occupancy, water meter fee and the sewer connection fee. This is a good opportunity for Derby, obviously with eight months of construction there will be a lot of publicity from KSN and this is a good cause all around and a lot of positive things will come from this project.

**Background:**

- Nies Homes, Lusk Communities and KSN Channel 3 are partnering on a project they are calling “Dream Home for the Cure.” The project involves the construction of a new home in the Water’s Edge subdivision at The Oaks, which will be sold and the profits donated to the Susan G. Komen Foundation.
- Donors will provide much of the labor and materials needed to make the dream house possible. This includes building materials, labor and other related services.
- Construction would begin in the coming weeks and be complete prior to the first weekend of the Fall Parade of Homes in September.
- The City has been asked to contribute to the project by waiving the building permit fees, water meter fees and sewer connection fees. The City’s donation would be recognized along with others in the Parade of Homes magazine.

**Financial Considerations:**

- The estimated value of the City’s contribution would be about \$4,125. The estimate is based on a \$450,000 house with a 1-inch water meter.

**Legal Considerations:**

- Building permit fees are authorized by section 15.04.130 of the City Code. The fees are fixed by resolution, currently resolution No. 58-2007. This resolution does not make a provision for waiving fees or altering the fee schedule, so the Council’s approval is necessary.

**Policy Considerations:**

- Participating in the project would give Derby an opportunity for positive public relations, from weekly television reports on KSN to the exposure in the Parade of Homes publication. The estimated eight-month window for completing this project offers an extended window of exposure for the project and our participation.

**DISCUSSION:**

**Council Member Bannon** stated she feels this is a wonderful project and for those of you who have not seen the news so far you all just got a scoop because the house plans have not even been on yet. You don’t find that many on the job female contractors so for the men to take this on is an awesome deal. Every night KSN is talking about Derby and showing The Oaks and she is sure that is going to continue. She advised she heard this evening that this is the largest project that has ever been done for the Komen Foundation. They are expecting a \$450,000 to \$500,000 price tag on this house. This is a wonderful project and she would consider it an honor, being the woman on the bench to make the motion.

**MOTION:** Bannon moved to approve a waiver of the building permit fee, sewer connection fee and water meter fee to Nies Homes in connection with this project. Meidinger seconded.

**Council Member Meidinger** commented what a wonderful project this is and he can't think of a more worthy cause for this to go to and for Derby to get this type of experience and he is glad the city is able to participate in this. He asked if Ms. Cowgill would like to provide her phone number for people to contact her.

**Mrs. Moeding** provided the office number for Nies, 684-0161, call and ask for Cherri.

**Council Member Craig** advised that his wife is a breast cancer survivor and participates in the Susan G. Komen walk every year. He appreciates the effort that is already started and will continue and he is sure Derby will support it in every way possible, not just for the publicity but for the cure.

**Mayor Avello** stated that everyone has been touched by cancer, he himself is a survivor, and his secretary is a breast cancer survivor. He asked what triggered this particular fundraiser.

**Mrs. Cowgill** advised that KSN had been looking for something they could do as a project and they are very active in community services and community support. This has been done in other cities, where they build a \$ 1 million house and people pay to come tour it, kind of like the Symphony Show House. To her knowledge, no one has done what they are doing, where you build the entire home and donate the proceeds. As a company they were asked by Extreme Home Makeover to do another extreme home here and from the time they call you to the time you are supposed to be breaking ground it is 4 weeks and it's a huge stress factor. She wanted to do it really bad but her dad said he was the one who would have his name out there and to build a house in a week is more stress than he could handle. He told her to find a project where they could build a home in a normal time frame and he would be all for it so when this one came along it was the perfect fit for them. This will generate a lot of publicity, KSN is planning on doing at least one big news story a week on it and as many other things that they can come up with. They want to talk about the community, the development and every single product being put into the home. They want to interview the people who are donating it and get information about that. That is the exciting thing about this, it's not just a day, week or an hour project it will be ongoing. They hope to have it done the first of September and the Parade of Homes starts the first of October. They have been brainstorming to find out what they can do to increase the money that will be given to the Komen Foundation. One of the things they thought of was if they could get the home done early enough, they would love to do what is done in other parts of the country and let people tour the home on a pre-preview tour and give a donation. There are so many women out there that maybe don't do the Race for the Cure but would like to contribute something. If we charged the first two or three weeks it's open for a donation if you want to see the house early.

**Council Member Bannon** pointed out that Family Circle had bumper stickers for the cities named "Top 10" and wondered if we could do those in pink instead and do some type of tie in,

that way we can involve our community and a small donation buys a sticker that you live in one of the top 10 cities in the United States and maybe there are some things that we can do to add on.

**Kathy Sexton**, City Manager indicated that we have a cancer survivor on the city staff who was looking for a fundraiser and it was suggested maybe she try and hook up with this house project in some way. She was taking notes when Cherri commented about the tours in September and that would be a great thing for a local group and we will see what else we can do.

VOTE: Craig yea, Meidinger yea, Nun yea, Warren absent, Schwarz yea, Bannon yea, Staats absent, Arnold yea, 6 yea, 0 nay, 2 absent, motion carried.

## **YOUTH ADVISORY BOARD APPOINTMENTS**

**Kathy Sexton**, City Manager presented the staff report.

### **Background:**

- At its meeting on June 26, 2007, the City Council created the Youth Advisory Board.
- The mission of the YAB shall be to cultivate the link between the City Council and the youth of Derby by identifying and responding to issues pertaining to youth; accurately communicate the concerns of youth, and respectfully recommend actions to be taken; promote service to the community; and seek to engage teens in community activities so that youth move through their teen years connected to their community.
- The YAB shall be composed of twelve members. These include:
  - Presidents of the freshman, sophomore, junior, and senior classes
  - One Student Council representative
  - One DECA representative
  - One Youth Leadership Council representative
  - One student athlete
  - Two members representing other student organizations
  - Two members appointed at-large
- The City has solicited and received applications from youth leaders. It is now time for the Governing Body to consider and make appointments to the YAB.

### **Financial Considerations:**

- None.

### **Legal Considerations:**

- YAB appointments must be made by the mayor with the consent of the governing body.
- Appointments shall be effective through the beginning of the 2008/2009 school term at which time appointments can be reaffirmed by the Council and seats vacated by graduating seniors can be filled.

### **Policy Considerations:**

- The creating ordinance requires YAB members to be enrolled at Derby High School and residents of Unified School District No. 260.
- One of the first issues that may be addressed by the YAB is amendment of its charter to include participation by home school and private school Derby students.

**MOTION:** Craig moved to appoint the following individuals to the Youth Advisory Board: Schwarz seconded.

- § Benjamin Foster (Freshman Class)
- § Chris Kellenbarger (Sophomore Class)
- § Rory Milner (Junior Class)
- § Victor McMullen (Senior Class)
- § Jamie Domingues (Student Council)
- § Caty Compton (DECA Representative)
- § Kristen Grooms (YLC Representative)
- § Regan Williams (Student Athlete)
- § Courtney Frantz (Other Student Organization Rep)
- § Phillip Morris (Other Student Organization Rep)
- § Collen Goff (Open Seat)
- § Tyler Underwood (Open Seat)

**VOTE:** Craig yea, Meidinger yea, Nun yea, Warren absent, Schwarz yea, Bannon yea, Staats absent, Arnold yea, 6 yea, 0 nay, 2 absent, motion carried.

**RESOLUTIONS FOR  
INFRASTRUCTURE  
IMPROVEMENTS TO  
SERVE DERBY  
MARKETPLACE 2<sup>ND</sup>  
ADDITION**

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

**Background:**

- Derby Marketplace is located on the east side of Rock Road, between Tall Tree and Meadowlark.
- Derby Marketplace Addition was approved by the Council in September of 2006.
- During the platting process, the developer submitted the required petitions for the various infrastructure (sanitary sewer, water, streets, drainage, traffic signals, etc.) improvements.
- The City Council approved these original petitions in February, 2007.
- The developer has now replatted the original Derby Marketplace Addition into Derby Marketplace 2<sup>nd</sup> Addition to accommodate the lot configuration required by Target.
- The re-configuration of lots results in the requirements for revised resolutions to be prepared.
- The City's bond counsel, Gilmore and Bell, has now prepared the new resolutions for Council's approval.

**Financial Considerations:**

- The resolutions to be considered by the Council total \$2,116,000 in infrastructure projects.
- Of that total, \$148,600 is to be paid City-at-Large (extra width of Tall Tree Road) and \$89,000 for traffic signals at Rock Road and Tall Tree Road will also be paid City-at-Large, all in accordance with the City's policy for funding public improvements (Resolution 40-2007).
- This is not a commitment for new funds, but simply a re-distribution of previously approved projects to a revised Benefit District.

**Legal Considerations:**

- These are valid petitions 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 01-2008

A RESOLUTION AMENDING AND SUPPLEMENTING RESOLUTION 46-2007, WHICH AMENDED RESOLUTION 27-2007 (SANITARY SEWER IMPROVEMENTS/DERBY MARKETPLACE SECOND AND THIRD ADDITIONS).

RESOLUTION 02-2008

A RESOLUTION AMENDING AND SUPPLEMENTING RESOLUTION 32-2007 (WATER MAIN IMPROVEMENTS/DERBY MARKETPLACE SECOND ADDITION).

RESOLUTION 03-2008

A RESOLUTION AMENDING AND SUPPLEMENTING RESOLUTION 31-2007 (WATER LINE IMPROVEMENTS/DERBY MARKETPLACE SECOND ADDITION).

RESOLUTION 04-2008

A RESOLUTION AMENDING AND SUPPLEMENTING RESOLUTION 28-2007 (STREET IMPROVEMENTS/DERBY MARKETPLACE SECOND AND TALL TREE ADDITIONS).

RESOLUTION 05-2008

A RESOLUTION AMENDING AND SUPPLEMENTING RESOLUTION 26-2007 (LEFT TURN LANE/ROCK ROAD/DERBY MARKETPLACE SECOND ADDITION).

RESOLUTION 06-2008

A RESOLUTION AMENDING AND SUPPLEMENTING RESOLUTION 24-2007 (ACCEL/DECEL LANE (ROCK ROAD/DERBY MARKETPLACE SECOND ADDITION)).

RESOLUTION 07-2008

A RESOLUTION AMENDING AND SUPPLEMENTING RESOLUTION 30-2007 (TRAFFIC SIGNALIZATION-TALL TREE AND ROCK ROAD/DERBY MARKETPLACE SECOND AND THE OAKS ADDITIONS).

RESOLUTION 08-2008

A RESOLUTION AMENDING AND SUPPLEMENTING RESOLUTION 29-2007 (TRAFFIC SIGNALIZATION/DERBY MARKETPLACE SECOND ADDITION).

RESOLUTION 09-2008

A RESOLUTION AMENDING AND SUPPLEMENTING RESOLUTION 25-2007 (DRAINAGE IMPROVEMENTS/DERBY MARKETPLACE SECOND AND TALL TREE ADDITIONS).

RESOLUTION 10-2008

MAJOR ENTRANCE IMPROVEMENTS/DERBY MARKETPLACE SECOND ADDITION.

**MOTION:** Schwarz moved to approve resolutions for infrastructure improvements to serve Derby Marketplace 2<sup>nd</sup> Addition. Bannon seconded.

**DISCUSSION:**

**Council Member Meidinger** commented that this is a reminder to him that the amount of money that the city at large is asked to pay for this project shouldn't be borne by the taxpayers. He thinks this is a complex that is being put in by multi-billion dollar corporations that have retail sales that are mind-boggling. When they want to come in to Derby and do business in Derby it is their responsibility to take care of these charges. The signal lights that are put in, there is no reason to put those lights in except for the benefit of Target or whoever else is going in there. Obviously he is going to vote for this but he thinks we should take a look at these projects in the future and have the corporations and land owners pay for this.

**VOTE:** Craig yea, Meidinger yea, Nun yea, Warren absent, Schwarz yea, Bannon yea, Staats absent, Arnold yea, 6 yea, 0 nay, 2 absent, motion carried.

**Council Member Craig** asked Mr. Brown if it would be possible in the future for him to come before the council and show a traffic flow program for what will be the eventual Rock Road/Derby Marketplace interface. He knows where the traffic light is going to be, but the rendition in the newspaper showed a numerous number of entrances to the shopping area and he would like to see what the traffic flow is going to be. We had discussed this some time back and he is very concerned about those entrances and would be exits and how they are going to be able to control traffic coming out of that shopping center and maybe wanting to cross lanes to turn south.

**RESOLUTION FOR  
SANITARY SEWER  
IMPROVEMENTS FOR  
1124 NORTH MC INTOSH**

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

**Background:**

- Easton Sod Company is located on the east side of McIntosh, just south of Meadowlark.
- The property was annexed into the City in 2006 and is zoned B-5.
- The owner has now petitioned the City for sanitary sewer.

**Financial Considerations:**

- All costs will be paid by the Benefit District and none by the City-at-Large.
- The Benefit District costs will be paid over a 15-year period.
- Funds for this construction will be available through the City's next temporary note issue.

**Legal Considerations:**

- This is a valid petition in accordance with Section 12 6a of the Kansas Statutes. The resolution has been prepared by Gilmore-Bell in accordance with the same statutes.

**Policy Considerations:**

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

RESOLUTION 11-2008

SANITARY SEWER IMPROVEMENTS/UNPLATTED TRACT OF LAND (EASTON FAMILY L.P.).

MOTION: Craig moved to approve a resolution authorizing the construction of sanitary sewer improvements to serve an unplatted tract located at 1124 North McIntosh. Schwarz seconded.

VOTE: Craig yea, Meidinger yea, Nun yea, Warren absent, Schwarz yea, Bannon yea, Staats absent, Arnold yea, 6 yea, 0 nay, 2 absent, motion carried.

Mayor Avello asked if everything on that side of McIntosh was in the city.

Mr. Brown advised it was.

**MINIMUM HOUSING CODE**

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

**Background:**

- The City of Derby has always prided itself as a well-kept attractive city.
- Maintaining property in an attractive and functional manner is necessary to maintain property values.
- Adopted Building Codes address the requirements of new construction, but do not adequately address upkeep of property.
- The City’s Code Enforcement Division has identified some properties in the past that were “substandard” or perhaps “hazardous,” and the only recourse for enforcement is through the declaration of an “attractive nuisance” through the Police Department.
- The subject code was modeled after the Sedgwick County Rental Code, but has been modified to address both rental and owner-occupied structures.
- The main feature of this ordinance is that property owners can now be cited for substandard dwellings, covering such violations as inadequate sanitation, hazardous electrical and mechanical systems and structural hazards such as deteriorated foundations, walls, roofs, fireplaces, doors and windows.

**Financial Considerations:**

- No direct effect on the City’s budget.
- Maintenance of property will stabilize property values, and thus the City tax base.

**Legal Considerations:**

- Establishment and implementation of minimum housing standards is within the police power of the City and facilitates the public purpose of preserving the housing stock of the community.

**Policy Considerations:**

- During the preparation of the 2006 Comprehensive Plan, our consultant conducted several “visioning” meetings with our citizens to identify and verify issues and opportunities that are critical to Derby’s future. These main issues can be summarized as “Quality of Life”, Economic Development”, and “Future Land Use and Infrastructure”. Through this planning process, several goals and policies were established to address these issues. One of the goals identified in the Comprehensive Plan is to preserve and enhance aging neighborhoods in the community, with one of the policies to “target code enforcement efforts to address maintenance and upkeep issues and to ensure the viability of existing housing in the community”.
- The subject Housing Code will address these maintenance issues on all structures, regardless of location, age, or whether rental property or owner-occupied.
- The Ordinance Review Advisory Board unanimously approved the new Minimum Housing Code as presented.

ORDINANCE NO.

AN ORDINANCE ESTABLISHING MINIMUM PROPERTY STANDARDS FOR HOUSING WITHIN THE CITY OF DERBY, KANSAS; PROVIDING FOR ENFORCEMENT OF SUCH STANDARDS; AND ESTABLISHING PENALTIES FOR VIOLATIONS THEREOF.

DISCUSSION:

**Council Member Meidinger** asked if these codes come close to what Wichita city codes would be. If we are going to have builders building in Wichita and Derby it would appear to him that since Wichita is the dominant player in this area that they should be the same, are they?

**Mr. Brown** advised that as far as building codes, new construction, our codes will be very similar to Wichita and Sedgwick County. Our effort is to get our codes in line with them so that all the builders are familiar with new construction. This particular case is a maintenance code and he is not real familiar with the Wichita Maintenance Code but he suspects it is probably a little more detailed than this, this came from the county. It is not to be confused with new construction which is very detailed and has very thick manuals.

**Council Member Meidinger** advised that is what he was thinking about. We talked earlier when we talked about the clean air ordinance that we wanted to be on a level playing field with Wichita so he thought why not do everything that Wichita does. It would make things easier and Wichita codes would probably be a little more stringent than Sedgwick County codes he is guessing. Therefore if we are going to do it we should do it right the first time and not come back and piece meal what maybe we overlooked. The other thing he would ask, does this ordinance have anything to do with the outside yard appearance? For example if there was a fence that was about to fall down or there was a tree that needed to be removed, is that covered in here?

**Mr. Brown** advised this code does not address that but the next item on our agenda does address fences. Trees that are in disrepair, he believes we have a tree ordinance that gives us authority to do that as well. Trash and that sort of thing is covered by our nuisance codes.

**Council Member Bannon** stated that as far as matching Wichita's codes, we had actually tried to go through the lengthy one and kind of got stopped at what one's mans trash on the front porch is another mans treasure. She thinks this is good compared to what we had and is wonderful to get it on the books. She asked if we are going to notify the current people that handle rentals so that they know there is a stiff fine in here if they knowingly rent a substandard house. Do we have plans to make those notifications other than just the newspaper publication?

**Ms. Sexton** explained that at this point we are writing a big article on this for our next Horizon newsletter, which is the one we mail out to every home in Derby, or everyone in the 67037 zip code. That will be a cover story in our next newsletter that will get out to people in February. Whether we are able to find rental property owners, she doesn't know, she imagines we can come up with at least a partial list of people that we know of. If something goes out to every home in the city that is pretty good notification.

**Council Member Bannon** agrees, but she also knows there are a couple of property management firms that operate within the city and we all know certain people that have always handled the rentals along with the real estate firms that usually have good recommendations on rentals.

**Council Member Arnold** stated that he has been reading an awful lot in the last 15 months in reference to the housing industry and the connection between the national and international codes. From what he has been reading there seems to be a real strong indication that eventually the entire country would like to be under the International Code as well, is that not the case?

**Mr. Brown** responded that his building inspector is more familiar with this than he is, but he is telling me that the UBC actually is going out of business, everybody is converting to the IBC and that is pretty much nationwide. The code that you will be seeing in a couple of weeks for the new construction will be in general compliance with most cities in the country.

**Council Member Arnold** advised that would make it a lot easier for us to be in compliance then.

**Council Member Craig** stated he thinks this is a pretty good start. Even though it is titled "minimum housing code", this is a property standard type ordinance that we are getting ready to approve. In reference to trying to follow the boiler plate of another city, he knows Wichita over the past year and ½ has had some real serious problems about trying to attack the same problem we are doing. This is a good start but it's not obviously the end of what we are trying to accomplish. He asked to clarify if the motion should be to adopt a "minimum housing code" or "property standard code".

**Phil Alexander**, City Attorney stated he feels it is a good idea to adopt an ordinance and then specifically identify the ordinance by the title, that way everyone understands exactly what's under

consideration. We often do it on sort of a short hand basis. As long as the council understands what is being proposed he doesn't think that's a legal problem. He has his preferences, but we in Derby like to do things a little bit more informal sometimes.

**MOTION:** Craig moved to adopt an Ordinance establishing minimum property standards for housing within the City of Derby, Kansas. Schwarz seconded.

**Mayor Avello** stated that every time we approach something like this we get someone pushing us on time. He questioned if this contains a time limit for people to do things?

**Ms. Sexton** asked if he was referring to a time limit for compliance.

**Mayor Avello** indicated he was.

**Mr. Brown** stated he did not believe there was anything in the ordinance that gives anyone a set amount of time for compliance. If there is a violation the city has the authority to write that citation immediately, then that goes to municipal court.

**Ms. Sexton** explained it would not be handled like a weed ordinance that would go to just our code officers. It would go through the municipal court system, so that would be whatever time it can be scheduled for the judge.

**Council Member Craig** indicated the way he reads it is that one; it establishes the amount of the citation and also establishes the right to enter the property if necessary and a citation can be issued at that time. It is pretty comprehensive as far as its implementation at this point.

**VOTE:** Craig yea, Meidinger yea, Nun yea, Warren absent, Schwarz yea, Bannon yea, Staats absent, Arnold yea, 6 yea, 0 nay, 2 absent, motion carried.

**PROPOSED  
AMENDMENTS TO  
MUNICIPAL CODE  
REGULATING FENCES**

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

**Background:**

- City staff recently reviewed all of our nuisance codes with consultant Dave Paulsen, who researched issues with other cities and provided recommendations for modifying our ordinances to address concerns.
- The ORAB and City Council have previously approved amendments to the City Code regarding environmental health (tall grass and weeds, bulky waste, inoperable vehicles, and the like).
- Recommended amendments relative to fences are:
  - Require a permit for fence replacement as well as new construction.
  - Require support braces and posts to be on the interior of the fence (“finished” side of the fence will face public street).
  - Give Code Enforcement personnel the authority to cite property owners who have dilapidated fences.

**Financial Considerations:**

- There will be minimal impact on City revenues resulting from collection of the \$25 permit fees for replacement of fences. Of course, the fee is necessary to cover the staffing costs involved in inspections.

**Legal Considerations:**

- Regulating construction and placement of fences is a valid exercise of the City’s police power. The proposed amendments reflect ongoing issues, not addressed by the City’s current regulations, with maintenance of fences.

**Policy Considerations:**

- These proposed amendments will result in a more aesthetically pleasing appearance along public streets and allow City staff to effectively address violations that threaten public health or safety.
- All remaining sections of the Municipal Code pertaining to fences remain unchanged and in effect.
- The Ordinance Review Advisory Board unanimously approved the amendments as presented.

DISCUSSION:

**Council Member Schwarz** commented that his house was designed by a builder and the house to the south was designed by the same builder and originally the way it was built, every other lap board alternates inside and outside, all the way around the lot. He noticed on Section 15.28.040 it says “all fencing abutting or on or visible” have to have the finished side facing out. He is not sure what he or his neighbor would do in that situation.

**Mr. Brown** indicated that the intent was to have a fairly uniform appearance from the public streets, especially along the arterial streets, also for safety purposes; if someone were to want to get into your property it is more difficult to do so without the braces for footholds. The way we have written it was for that scenario and he is not sure we even thought of the situation referred to by Council Member Schwarz. We have not considered that in the ordinance but it is obviously up to the council’s discretion if they want to change that.

**Ms. Sexton** pointed out there is a part in the ordinance that does allow for appeals to the Board of Zoning Appeals. If we can find language that would describe that type of thing we could always add it later, or let the BZA deal with some of those issues.

**Council Member Schwarz** advised it infuriates him to drive down the street and see those braces on the outside of the fence. He has had people use those braces to go into his backyard and he has found ways that they have gotten back out, so from that standpoint he has personally never liked the fence. He is kind of saddled with the fact that it’s all the way around the yard. If there is an appeal process there then that might be acceptable.

**Council Member Bannon** stated that a lot of people build that type of fence so you can get some kind of breeze through it instead of a solid fence. Instead of setting up something right off the bat to go to zoning she would rather see the ordinance rewritten and she doesn’t know what technical terms will be used. She asked who approves or denies the request for permit up front.

**Mr. Brown** advised he did.

**Council Member Bannon** asked if she is replacing only one rotten fence post is she supposed to come down to city hall and pay \$25.00 to replace the one fence post? What she doesn’t want us to do is deter people from fixing one rotten fence post and have them wait until they have several and

then pull a permit. Then we could have fences in worse shape than they would be if we had just left it alone.

**Mr. Brown** agreed that was a good point. If someone were replacing one post he probably would not require a fence permit. If all the posts are in fairly good shape and you are putting up all new boards, that is really the intent, before you put all the boards on, come get a permit so we can look at it and make sure it complies with finished side facing the street.

**Council Member Bannon** stated she is not quite sure we are where we should be. She doesn't want to see people doing no maintenance because they don't want to mess with a \$25.00 fee, they would rather just wait until the whole thing falls down and then get a permit.

**Mr. Brown** advised that if they wait until the whole thing falls down then they will be looking at more than the \$25.00 permit fee.

**Council Member Bannon** stated she understands that but she is not sure on this particular ordinance that we have covered everything.

**Mr. Alexander** added, with respect to the maintenance issue, we have a variety of ordinances that require us to distinguish between rebuilding and maintenance. Usually those are based on the value of the project in relation to the improvement. Were we to apply that to this situation we would not require permits for what we would deem to be maintenance; the replacement of 2-3 posts or a couple of sections?

**Council Member Bannon** pointed out that that is not stipulated in here, should it be?

**Mr. Alexander** stated that in his view, but talking about erection, construction, reconstruction or replacement we are not talking about maintenance. He suggested that we make that work in the same way we have applied it in other areas.

**Council Member Meidinger** advised we should not have wooden fences at all. We dropped the ball several years ago when we didn't require the developers to put up stone fences or masonry fences, so now we are dealing with these fences. You can look on Meadowlark for example, east of Dry Creek; the fence line isn't even even. He asked if they could do that again with this ordinance.

**Mr. Brown** stated that there are probably some fences in that general location that are not on the property line and are perhaps on street right of way.

**Council Member Meidinger** stated that some of them have a 20-foot jog inside and he thinks they decided that they didn't want to come out and line up with the rest of the fences.

**Mr. Brown** continued that he didn't recall the history of those particular fences but if they were to come in for a new permit for replacement of that fence then at that point we would inspect and see that it's not on their property and they would be requested to move it.

**Council Member Meidinger** advised he was talking about the ones that are 20-feet to the south of those fences. With this ordinance are they required to be put on the property line?

**Mr. Brown** advised they are not.

**Council Member Meidinger** pointed out you could get that zig zag affect again.

**Mr. Brown** agreed.

**Council Member Meidinger** stated that if part of the policy consideration is to create a pleasing appearance we aren't doing it if we have a zig zag fence. On north Buckner there is one house that has a fiberglass fence and it looks very nice, but the rest of the fences do not match that. Are we going to require wooden fences, or plastic fences. When you get to the wooden fences somebody might think it's really neat to put lattice work on top of his fence, so you could have a 6' board fence and a 5' board fence with 1' of lattice. Again, if it goes back to the policy of being pleasing and a coherent fence code, he doesn't think we are doing it with this one. There are some loopholes that need to be addressed and we need a clearer ordinance if we are going to pass one.

**MOTION:** Meidinger moved to table until we get clearer definition of the ordinance. Bannon seconded.

**VOTE:** Craig yea, Meidinger yea, Nun yea, Warren absent, Schwarz yea, Bannon yea, Staats absent, Arnold yea, 6 yea, 0 nay, 2 absent, motion carried.

**Ms. Sexton** advised the staff will try and find the appropriate words to address the type of fence Council Member Schwarz has. If more than one council member wants us to get real detailed on talking about one property being next door to a different looking, color, fiberglass vs. wood or that kind of thing she needs someone to call either herself or Mr. Brown and let us know because that is a much stronger fence code than what we had envisioned. Obviously we didn't put that kind of time and effort into this ordinance, we were more addressing the need for a permit, property line boundaries and the finished side facing the street, which is not just an aesthetic thing, it is also a safety thing. Anyone that wants to look at the good side from their back yard is probably not thinking about the fact that kids can get over their fence pretty easy. Many cities have adopted these kinds of fence codes and obviously it is a great time now because some of these fences are approaching 15-20 years old so people are going to be replacing fences regardless, so it is a great time to make sure it is done well.

**Council Member Craig** stated that one of the key things is that having the nice side out has multiple positives. As far as replacing posts, he knows that if you add the \$25.00 permit fee it brings the price per post to around \$100 and he doesn't quite go for that. He does think that the inclusion of some type or wording that talks about design so we can cover Council Member Schwarz's fence.

## **CONSENT AGENDA**

**Kathy Sexton**, City Manager presented the staff report.

### **Resignation from and Appointment to Economic Development Board**

#### **Background:**

- One seat on the Economic Development Board is set aside for a member designated by the Derby Chamber of Commerce.
- The Chamber wishes to fill this seat with the Past President of its Board of Directors.
- Current Economic Development Board member and outgoing Past Chairman Jeff Smith submitted his resignation on January 14, 2008.
- Colene Read, incoming Past Chairman, has been designated by the Chamber Board of Directors to fill the seat being vacated by Smith.



Middlecreek Corporation	\$ 156,967
Dondlinger Construction	147,877
Utility Contractors	137,943
Duling Construction	137,876
Nowak Construction	131,442
Mies Construction	127,154
<b>Engineer's Estimate*</b>	<b>\$ 174,535</b>

- The low bid of Mies Construction is recommended for approval.

\*Engineer's estimate prepared by MKEC Engineering Consultants

**Financial Considerations:**

- Funds for the construction will be included in the 2007-2 temporary note issue.
- Costs for the Storm Water Sewer Improvements will be paid 100% by the benefit district and none by the City-at-Large.
- Special Assessments will be spread against the benefit district over 15 years.

**Legal Considerations:**

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

**Policy Considerations:**

- Mies Construction, Inc. has satisfactorily completed several projects in Derby. Mies has submitted all required bonds and financial sureties for the project.
- Upon approval of the bid, staff will prepare the required contract documents.

MOTION: Craig moved to approve Consent Agenda as recommended. Nun seconded.

VOTE: Craig yea, Meidinger yea, Nun yea, Warren absent, Schwarz yea, Bannon yea, Staats absent, Arnold yea, 6 yea, 0 nay, 2 absent, motion carried.

**ADJOURNMENT**

MOTION: Arnold moved to adjourn at 8:17 p.m. Schwarz seconded.

VOTE: Craig yea, Meidinger yea, Nun yea, Warren absent, Schwarz yea, Bannon yea, Staats absent, Arnold yea, 6 yea, 0 nay, 2 absent, motion carried.

ATTEST:

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Dion P. Avello, Mayor

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Jean Epperson, City Clerk