

**APPROVED
REGULAR COUNCIL MEETING
July 14, 2009
6:30 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I
WARD II
WARD III
WARD IV

COUNCIL MEMBERS PRESENT:

Jim Craig
Heath Horyna
Chuck Warren, Cheryl Bannon
Tom Haynes, Mark Staats

COUNCIL MEMBERS ABSENT:

WARD I
WARD II

Jim Meidinger
Vaughn Nun

Flag salute was led by Council President Mark Staats. The invocation was led by Pastor Paul Wilke, Woodlawn United Methodist Church.

**CONSIDERATION OF
MINUTES**

Minutes of the June 23, 2009, Regular Council Meeting.

MOTION: Warren moved to approve minutes of June 23, 2009 Regular Council Meeting. Horyna seconded.

VOTE: Motion carried 4-2, Bannon abstain, Staats abstain, Meidinger absent, Nun absent.

PUBLIC FORUM

Rhonda Cott, Derby Chamber of Commerce spoke about the military discount medallion program that the Chamber is working with McConnell Air Force Base to establish here in Derby to promote our local businesses and give appreciation discounts to our military personnel. The program will allow all businesses in town to display a medallion in their window with the opportunity to give a minimum 10% discount on 80% of their services or goods to military families. We are partnering with the Wichita Metro Chamber of Commerce, Andover Chamber of Commerce, Metro Independent Business Association as well as the Derby Chamber. Businesses that can't give discounts based on laws governing their business are allowed to still display the medallion and then whatever they can do they can still at least participate in this program in some way.

Council Member Horyna asked if that discount covers veterans as well.

Mrs. Cott advised it does cover military retirees. She added that all of the businesses participating will be advertised on the McConnell website.

Council Member Bannon advised she toured the library and it appears to be on schedule and the general contractor could finish tentatively before Thanksgiving.

Mayor Avello read emails provided by Lisa Spillman regarding Parents Weekend with the Derby Twins. He thanked Mr. Warren for letting the Twins use Warren Farm for their picnic. He spoke with many families on Friday and they had wonderful things to say about this city and the effort the Derby Twins put forth. We have a diamond in the rough with the Twins and he would like to see the city continue to support them. He attended the REAP Board meeting yesterday where there was a presentation of the Siemens company coming to Hutchinson to produce wind generators. They are going to start hiring people in 2010 and build a building that will be 325,000 sq. feet and employ 400 people. There will be a secondary hiring of 600 people. Siemens is insisting on hiring subcontractors in Kansas to do all of their work. They are looking for people who do work with Boeing and Spirit. That will increase the whole region and bring in other big corporations.

SALE OF GENERAL OBLIGATION BONDS SERIES 2009-A AND B

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

Greg Vahrenburg, Piper Jaffrey provided the details on the bond sale to the council.

Background:

- Bids for the purchase of General Obligation Bonds Series 2009 A and B will be received via facsimile, mail, and the Internet to be opened at 11:00 a.m., July 14.
- Upon acceptance of the best bid, the next required action is approval of the ordinance authorizing and providing for the issuance of the bonds along with the resolution authorizing and directing the sale and delivery of the bonds.

Financial Considerations:

- The 2009-A Series of bonds provide permanent financing for infrastructure for various subdivisions throughout the city. The debt service will be paid from special assessments against properties in the benefit districts over 15 years.
- The 2009-B Series of bonds provide permanent financing for three projects of which the debt service will be paid from the following sources over 20 years:
 - Sanitary Sewer Interceptor (Wastewater user fees)
 - Public Works Building (Ad valorem tax)
 - Buckner Street Reconstruction (Ad valorem tax)

Legal Considerations:

- The legal work for this process is being performed by the City's bond counsel, Joe Norton, of Gilmore & Bell. Mr. Norton and his staff worked with City staff to determine the timeframes and are preparing all of the necessary legal paperwork, in strict adherence to state law, which ultimately governs the special assessment process.

Policy Considerations:

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

ORDINANCE NO. 1989

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF TAXABLE GENERAL OBLIGATION BONDS (BUILD AMERICA BONDS-DIRECT PAYMENT TO ISSUER), SERIES 2009-A AND GENERAL OBLIGATION BONDS, SERIES 2009-B, OF THE CITY OF DERBY, KANSAS; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON SAID BONDS AS THEY BECOME DUE; AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH; AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO.

RESOLUTION NO. 30-2009

RESOLUTION PRESCRIBING THE FORM AND DETAILS OF AND AUTHORIZING AND DIRECTING THE SALE AND DELIVERY OF TAXABLE GENERAL OBLIGATION BONDS (BUILD AMERICA BONDS-DIRECT PAYMENT TO ISSUER), SERIES 2009-A AND GENERAL OBLIGATION BONDS, SERIES 2009-B, OF THE CITY OF DERBY, KANSAS, PREVIOUSLY AUTHORIZED BY ORDINANCE NO. 1989 OF THE ISSUER; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS CONNECTED THEREWITH.

DISCUSSION:

Council Member Bannon advised she noticed the debt service on the 2009-A series is going to be covered by special assessments over a period of 15 years however the maturity date is a 20 year loan.

Mr. Vahrenburg explained the 2009-B issue is the one paid from special assessments.

Council Member Bannon pointed out that could be but the staff report is switched then.

Mr. Vahrenburg advised the assessments will match up with the payments on the bond issue.

Mayor Avello asked if BMO was out of Montreal.

Mr. Vahrenburg explained the Bank of Montreal is actually Griffin, Kubick, Stevens and Thompson, a brokerage firm in Chicago that was acquired by BMO.

MOTION: Staats moved to accept the bid of BMO Capital Markets and authorize and direct the Mayor and City Clerk to execute the bid form selling the Series

2009-A Bonds to the best bidder on the basis of said bid and the terms specified in the Notice of Bond Sale. Accept the bid of Country Club Bank and authorize and direct the Mayor and City Clerk to execute the bid form selling the Series 2009-B Bonds to the best bidder on the basis of said bid and the terms specified in the Notice of Bond Sale. Adopt an ordinance authorizing and providing for the issuance of \$10,255,000 principal amount of General Obligation Bonds, Series 2009-A and \$2,680,000 principal amount of General Obligation Bonds, Series 2009-B, and adopt a resolution prescribing the form and details of and authorizing and directing the sale and delivery of \$10,255,000 principal amount of General Obligation Bonds, Series 2009-A and \$2,680,000 principal amount of General Obligation Bonds, Series 2009-B. Craig seconded.

VOTE: Motion carried 6-0, Meidinger absent, Nun absent.

2010 RECOMMENDED BUDGET

Kathy Sexton, City Manager presented the staff report.

Background:

- Each year the City Manager recommends and the Derby City Council approves a budget for providing essential services to residents. This budget document is a plan; it is the framework for how the City will allocate its resources to assure continuing excellence in the community's quality of life.
- The proposed budget for fiscal year 2010 has been developed by city staff with input from the governing body as informed by the public. It includes departmental operating budget and supporting plans. The supporting plans consist of the updated five-year Capital Improvement Plan, the five-year Vehicle Replacement Plan, and a ten-year Pavement Management Plan.
- The budget also provides for staffing, tools, and other resources that continue to enhance quality of life for Derby residents through the quality of services offered by the City.
- The Council heard about departmental budget, Vehicle Replacement Plan and CIP requests at a workshop on June 2.
- Opportunities for public comment include the Council meetings on July 28 and August 11. The official budget hearing and formal adoption will occur on August 11.

Financial Considerations:

- The proposed 2010 budget totals \$35,071,155 which is a decrease of \$2,207,789 (5.92%) from the revised 2009 expenditures of \$37,278,944. The decrease is primarily attributed to reductions in capital improvement projects, in addition to other cost-saving measures. This amount does not include cash reserves, bond proceeds, or bond redemption.
- The proposed 2010 Operating Budget provides for maximum budgeted expenditures of \$42,026,227. This amount includes the General Fund cash reserve and transfers between all budgeted funds. However, it does not reflect reserve funds (CIP Reserve, Wastewater CIP and Capital Projects Fund) totaling \$1,415,103 that are exempt from budget requirements.
- The amount of ad valorem tax projected to be levied for 2009 is \$8,165,289 based upon a mill levy rate of 47.756.

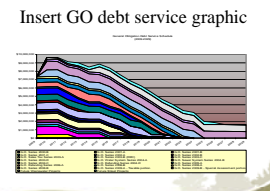
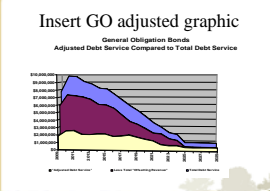
- The budget differs from the statutory budget maximum because it includes the El Paso Water Company yet is reduced by the amount of transfers between funds and cash reserves.

Legal Considerations:

- It is the City Manager’s responsibility to present an annual budget that not only meets the needs of the city but also complies with state laws governing municipal budgeting.
- The motion will authorize publication of the Notice of Budget Hearing in the July 29th Derby Weekly Informer. Upon adoption of the budget on August 11, the City cannot exceed the maximum expenditure outlined in each fund as certified to the Sedgwick County Clerk.

Policy Considerations:

- The budget and supporting plans comprise the primary policy document of the city. Each document is updated annually to meet the current needs of the community.

<p>2010 Recommended Budget</p> <p>Kathy Sexton, City Manager July 14, 2009</p>	<p>Introduction</p> <ul style="list-style-type: none"> • 2009 - 2014 CIP • 2009 Revised Budget • 2010 Budget • New: <ul style="list-style-type: none"> – Retire RRR debt mid-2010 	<p>Why We Budget</p> <ul style="list-style-type: none"> • Accounting document • Operational guide • Policy document • Communications tool 	<p>Our Mission</p> <ul style="list-style-type: none"> • Create vibrant neighborhoods • Nurture a strong business community • Preserve beautiful green spaces
<p>Our Challenge</p> <ul style="list-style-type: none"> • Address the needs of our growing community during a time of constricted revenue growth 	<p>Budget Overview</p> <ul style="list-style-type: none"> • 2009 Revised: \$37.3 million • 2010 Budget: \$35.1 million (-5.92%) <ul style="list-style-type: none"> – Smaller CIP – Staff additions balanced by other staff eliminations 	<p>Revenue</p> <ul style="list-style-type: none"> • Countywide Sales Tax <ul style="list-style-type: none"> – 5.7% reduction in 2009 – 0% growth in 2010 • 5% increase in assessed valuation <ul style="list-style-type: none"> – \$170M (up from \$162M) • 47.756 mills (no change) • State aid cut \$183,413 	<p>Taxation Profile</p> <ul style="list-style-type: none"> • City only: 8th highest of 18 cities <ul style="list-style-type: none"> – Reader’s Guide, p.10 • Total Property Tax: 135 mills <ul style="list-style-type: none"> – City, county, school, state, & cemetery – Ranks 4th lowest of 18 area cities <ul style="list-style-type: none"> • Wichita, Newton, & Goddard
<p>Capital Improvement Plan</p> <ul style="list-style-type: none"> • Major projects in Revised 2009 CIP <ul style="list-style-type: none"> – Public Works: \$4.0M – Bike Paths: \$2.0M (\$1.5M grant, incl. USD) – Buckner: \$2.1M – Meadowlark & Buckner: \$1.2M – Wastewater interceptor: \$5.5M • \$25.1M total for 2009 	<p>Capital Improvement Plan</p> <ul style="list-style-type: none"> • Major Projects in 2010 <ul style="list-style-type: none"> – Madison (Buckner to Water) \$784,000 – Buckner (Kay to SCL) \$602,000 – Meadowlark & Woodlawn \$350,000 – Nelson Drive Water Loop \$625,000 – Remodel old library/senior center \$800,000 – Land acquisition \$150,000 • \$4,884,000 total for 2010 	<p>Use of Debt Financing for CIP</p> <ul style="list-style-type: none"> • Spreads costs over useful life • Those who benefit, pay • 30% debt/assessed valuation ratio <ul style="list-style-type: none"> – 20% goal – 26.75% currently – 23% anticipated in 2010 after RRR bonds paid • \$6 million debt capacity 	<p>Insert GO debt service graphic</p> 
<p>Use of Debt Financing for CIP</p> <ul style="list-style-type: none"> • Oldest bond issues on bottom • Top two (blue & white) anticipate future bonds to be issued for projects in the CIP • Most debt paid from dedicated revenue stream • 72% retired in 10 years 	<p>Insert GO adjusted graphic</p> 	<p>Recommended Staffing</p> <ul style="list-style-type: none"> • 2009 <ul style="list-style-type: none"> – Eliminate 7 FT positions, add 6 PT positions – Net -4.75 FTE • 2010 <ul style="list-style-type: none"> – Add 1 FT position & 13 PT positions – Net +5.75 FTE – 167 FT positions 	<p>Recommended 2010 Staffing</p> <ul style="list-style-type: none"> • 4 PT Police patrol & 3 PT dispatchers • 4 PT Firefighters • 1 FT Assistant Public Works Director • 2 PT Library Assistant III

<p>Employee Benefits</p> <ul style="list-style-type: none"> • GPA = 0 • Merit pay budget 3% • Freeze longevity pay system • Pay out old holiday accruals over 4 years 	<p>Recommended Equipment</p> <ul style="list-style-type: none"> • Thermal Imaging Camera, \$15,000 <ul style="list-style-type: none"> – Quickly search structures for trapped citizens and firefighters; pin-point fire hot spots • Mobile Video Recorders, \$9,206 <ul style="list-style-type: none"> – All police vehicles will be equipped with video recorders; assist Police in gathering evidence 	<p>Recommended Equipment</p> <ul style="list-style-type: none"> • Utility billing software \$90,950 • Replacement PCs, servers, & network hardware \$66,000 • Water meter reading equipment \$24,818 • Building controls & security \$20,000 	<p>Vehicle Replacement Plan</p> <ul style="list-style-type: none"> • 3 police patrol cars • 1 pickup truck (wastewater) • Pothole patcher truck & semi-tractor (PW) • Tractor/truck/disk replace TerraGator sludge injector (wastewater)
<p>Program Enhancements</p> <ul style="list-style-type: none"> • DHS Student Services \$35,000 • Welcome Center • Community Marketing Director <ul style="list-style-type: none"> – \$28,275 split salary w/Derby Schools – \$13,750 marketing activities 	<p>Next Steps</p> <ul style="list-style-type: none"> • July 14 & 28 – Citizen comments • August 11 – Public Hearing & Budget Adoption • Questions? 		

DISCUSSION: (questions asked during staff report given by Ms. Sexton)

Council Member Craig asked if our ½ cent sales tax parallels the county-wide sales tax.

Ms. Sexton advised it does not. It will be a different pattern, retail activity in Derby is a different animal than countywide retail activity. It's better. In times of less consumer confidence and less personal income, people don't buy luxury goods like furniture and cars. Our retail activity in Derby is not heavily laden with those things. We're talking Wal-Mart, Lowe's, Target, Kohl's, Dillon's, these kinds of things are generally smaller purchases, more necessary to everyday life. There is some difference in the elasticity, you can count on that moreso than you can count on people buying new cars, furniture and major electronics. The projection is an 8% growth in city tax. As you know, that city tax only funds the aquatic park until mid-year 2010, when it will start funding just the debt on the library. We are very pleased with that, but it really is irrelevant to the rest of our budget.

Council Member Warren asked about the countywide sales tax, how is that redistributed?

Ms. Sexton explained that it's a formula prescribed by state law based on each city's population and ad valorem taxes levied.

Council Member Warren advised in years past we were fairly light in retail sales and were probably getting a pretty big portion. Of course our citizens were driving into Wichita and purchasing at that point. As our commercial and retail develops, is that money going away? Are we losing some and it's going someplace else at a bigger rate or is it coming to us at a slower rate?

Ms. Sexton advised that any retail activity anywhere in the county, in any city is all distributed per this formula. You could make an argument that retail in Derby helps everybody. Certainly we do care about retail sales in the entire county.

Mrs. Epperson advised that the ½ cent citywide sales tax is almost ½ of the countywide which is a 1% tax. They are comparable to each other.

Council Member Warren indicated that in years past he assumed we were getting a bigger piece of the pie in terms of what we were putting in because we didn't have retail. Now that we have more retail we may be actually helping somebody else out.

Ms. Sexton agreed that it is helpful. We get a bigger piece of the pie because of our population growth. The formula each year adjusts for how big our population is compared to everyone else's. Not every city is growing.

Ms. Sexton continued with the presentation.

Council Member Warren asked if the 23% debt ratio to valuation includes the library.

Ms. Sexton advised that is correct, that is why it's so high because we have two debt issues adding to each other. When one is paid off then it pulls us down 3.5 percentage points.

Ms. Sexton continued the presentation.

Council Member Craig commented that when it comes to merit pay he understands we set that aside usually every year at 3%. When that is awarded, is it awarded in a fashion that the employee carries that forever?

Ms. Sexton advised it is a base increase. It's not a guarantee of 3%; everybody gets different amounts according to their merit.

Council Member Craig clarified that it's a 3% pool.

Ms. Sexton advised that is correct.

Council Member Craig asked about the payout of old holiday accruals. As it stands now, if a person works a holiday, for example Christmas Day, do they receive straight pay for that or do they receive time and a half for the holiday they work, and what kind of pay do they receive that they bank?

Ms. Sexton advised the holiday is straight pay that is banked. If they are working it depends on how many other hours they have worked that week.

Council Member Craig stated it could be an expensive day.

Ms. Sexton agreed, it could be time and a half for the hours worked.

Council Member Craig asked for clarification about the ½ cent sales tax on the library, and it just being for servicing the debt on the library. It says something else at another place in the budget regarding hiring people for the library and their salary coming out of that ½ cent sales tax.

Ms. Sexton explained that at Rock River Rapids, the sales tax pays for the debt of building the facility. Running the facility so far has been operating in the black. Sales at the gate, concessions, advertising, etc., have paid for operations. That is not the case of the library, this or anybody else's public library. This new sales tax for the library pays for the debt and also pays for some of the operational costs of the library. Pretty much all of the current library operations are property-tax funded, about 4.5 mills of the city's levy goes to pay for library operations. The enhanced operations, the enhanced utilities, more staffing and new expenses associated with a new, bigger building will be paid for out of this new sales tax. I misspoke earlier.

Council Member Craig advised he found out the library only receives taxes from the city limit of Derby, not the school district. He found that to be very unusual, of all the people that use our library that they only receive taxes from those properties within the city limits.

Ms. Sexton agreed, the library is a creation of city government. The city council created the library; therefore you don't have the ability to tax anyone outside of your city limits. About 1/3 of the patrons of the library do not live in the city limits. That is what made the sales tax be a really good source of revenue for building a new library because just like the aquatic park, every year we get the question at the aquatic park, how come we don't have a discounted rate for the people who live in Derby. That's because the sales tax pays for the place and a lot of people pay sales tax who don't live in the city, it's the same way with the library. The mill levy obviously is different, but the sales tax is a good thing for the library for that reason.

Ms. Sexton continued the presentation.

Council Member Bannon commented that the budget is a good balance of needs and wants, she saw the list of wants early on and this has been dramatically reduced. She gave kudos to the staff on the budget, for a government entity it's very hard for a budget to go backward and she's pleased to see it go backward. In these economic times it's necessary and prudent. She appreciates the creative, outside-the-box thinking on some of the part-time positions. We as a city are growing but given the debt service and everything else we have to look at she was really pleased to see that. A lot of cities are facing layoffs and luckily our community is not in that position and with the budget presented and the employee benefit changes you are looking at doing we are in a better position than most. We still need to keep an eye on the bottom line, the CIP, only having that \$6 million dollars of debt capacity available, she has some concerns but thinks we are doing all we can on that. She thanked everyone, she knows it's not going to be an easy or pleasant year but she thinks we planned for it.

Council Member Craig agreed with Mrs. Bannon on the words of appreciation. He was involved in his first budget in 2005, and we have come a long way. He knows each person has different views on what should be and what shouldn't be, but the only real concern he has is what we bit off for 2008 and 2009 was quite large and he doesn't want us to be in a position of risk. He knows for some folks 2010 will be difficult. We are postured correctly for 2010 and if we watch it we will bring our debt ratio back down to a more reasonable level and we will be okay. He thanked staff, including the new budget analyst for their hard work.

Ms. Sexton introduced Eddie Shepherd, the new budget analyst. She also pointed out that Jean has been working on the budget, the audit and implementing a new software program all at the same time.

Council Member Craig thanked Jean for doing a great job.

Council Member Horyna thanked Ms. Sexton and staff for the wonderful job in putting the budget together. He was very pleased with the report.

MOTION: Haynes moved to authorize publication of the Notice of Hearing of the 2010 Budget, as presented, in the July 29 issue of the Derby Weekly Informer. Bannon seconded.

Mayor Avello stated that he and Ms. Sexton have had several conversations about this budget. Really watching in 2010 about what is going to happen to our city and in the nation. Any project that can be held will be held so that we can stay in the black in 2010. That is the intent of this council. This council is a pretty tough council, they watch your money pretty good and he is proud of them.

VOTE: Motion carried 6-0, Meidinger absent, Nun absent.

Mayor Avello asked if anyone in the audience wished to comment on the budget. With no one present to speak he closed the public forum.

The council recessed for a 10 minute break at 7:50 p.m.

FINAL PLAT OF RENERGER'S ADDITION

Bud Newberry, City Planner presented the staff report.

Background:

- This site is 23.42 acres in size, consists of nine lots and is located approximately one mile east of Rock Road on 87th Street South. A large portion of this property was previously platted as Wolf's Lair and consisted of four lots, each 4.5 acres in size.
- The area surrounding this property is either used for agricultural purposes or for rural residential. This addition abuts Quail Run Addition, a 300-lot residential Planned Unit Development (PUD) platted in 2007, along its northern boundary line.
- The subject property is currently zoned R-R (Rural Residential) by Sedgwick County, which is the appropriate zoning for this development.
- The City of Derby is not likely to extend sewer and water services into this area for several years, so these nine lots will be required to be served by individual sewage disposal systems as approved by County Code Enforcement and Rural Water District #3, or private wells until city services are available.

- Although the subject property is separated from the existing City boundary and will remain in the county for the time being, it is subject to City of Derby Subdivision Regulations.
- The Certificate of Ownership on this plat contains a waiver of protest to annexation of this property by the City of Derby.
- Final Plat for this addition was approved by the Derby Planning Commission on June 4, 2009, by a vote of 8-0.

Financial/Sustainability Considerations:

- As required by the Derby Subdivision Regulations, the developer has submitted petitions as guarantees for construction of required future sanitary sewer, water mains and street improvements. The estimated cost of these improvements is \$185,000. The entire amount will be paid by the benefit district with no obligation by the city-at-large.
- These petitions will be held until such time as larger, overall infrastructure projects are initiated in the area.

Legal Considerations:

- The Planning Commission complied with Kansas law and City Subdivision Regulations in reviewing and approving the final plat.
- This final plat should be approved by the Council unless it is determined that the plat does not conform to the Subdivision Regulations.

Policy Considerations:

- The applicant complied with all requirements of the Subdivision Regulations including execution of a Developer's Agreement.
- Upon Council's approval of the petitions as submitted, staff will submit them to Gilmore & Bell for preparation of resolutions for Council consideration in the future.

DISCUSSION:

Council Member Bannon stated she only sees five lots on the map. Is there a close-up map showing the drainage easement?

Mr. Newberry indicated the council should have a copy of the plat, it shows the nine lots.

Council Member Bannon indicated she was glad to see the 20-foot reserve since there is no homeowners association so that each individual lot owner is responsible for that.

Council Member Warren asked if there were any roads that ultimately would connect that vacant land to the east over to Webb Road. Are there any easements or rights of way into that area?

Mr. Newberry advised there is not.

Council Member Warren stated he was at the planning commission meeting when this was heard and he didn't see it then. The only way into this area is going to be off of 87th Street and there's only one connection on the subdivision to the north that opens up into that vacant piece of land. He wonders if we've got enough ingress and egress in the future for that blank piece of land that lies to the east of this plat. Was that a question that came up with the planning commission?

Mr. Newberry advised it did not come up and he's kind of surprised because those things normally do come up. It was probably because there is access to the subdivision to the north that it didn't become an issue. The developer does own all of the rest of that property to the east over to the next property line. That could certainly be an issue to be addressed when that piece of property comes up for development. It still would limit access to Webb Road.

Council Member Warren clarified with Mr. Renberger that he owns the land to the east of these plats.

Mr. Renberger advised that was correct.

Council Member Warren asked if this was something he was hoping to develop further in the future.

Mr. Renberger advised at some point. As he told the planning commission, he is not really a developer but his wife wanted neighbors so he became a developer. At this point we don't have any foreseeable plans to develop that land. They bought that from the estate of Mr. Wolf and are holding onto that as speculation that some day they will probably be part of Derby and will be worth having at that point. At this time he and his brother don't have any plans to develop that. He hopes that with the land they have that runs along 87th that they would have enough room to get access. There are approximately 42 acres left in the parcel.

Council Member Warren stated that with the access north going into a subdivision with very small lots, it takes quite a snake route around, it's almost like a maze trying to find your way out and get back onto Webb Road.

Mr. Newberry pointed out that the street on the south end of Quail Run could easily be opened onto Webb Road. That would make it a much closer access. It wouldn't be difficult if that opened onto Webb Road and then it wouldn't be quite the maze it is now.

Council Member Bannon indicated that what Mr. Newberry is talking about should be something we look at but that's already an approved plat and that would be something that would help those people on the north end. She holds the same concern Mr. Warren does because we have one small access road coming from the north subdivision, when that 42 acres is developed you are looking at one access point. She suggested that between lots 3, 5 and 1 you can come in there and give us access off of Webb Road. She believes that we are not land locking the 42 acres but we are really reducing the access in and out of that particular subdivision that will be there someday and that's what our planning requires.

Council Member Craig stated that as you look on the large plat, lot #4, what does this access?

Mr. Newberry advised it comes from 87th Street.

Council Member Craig clarified that there is a road that comes between lots 7 & 8.

Mr. Newberry advised that was correct.

Council Member Warren asked Mr. Renberger which lot has his house on it.

Mr. Renberger advised it is lot #3.

Council Member Warren asked if there are any other houses currently built.

Mr. Renberger advised his son is building a house on lot #1.

Council Member Warren asked if the “s” shape is street access between lots 1 & 2.

Mr. Renberger advised that was correct, it’s in place now.

Ms. Sexton suggested a motion to refer this back to the planning commission to deal with the issue that’s been raised. We certainly don’t want to jump to any quick conclusions and want to give everybody a chance to look at things one more time.

MOTION: Haynes moved to refer this back to the Planning Commission to address the access issue. Horyna seconded.

Council Member Bannon added that in looking at lot #4, she does not see a private drive easement to lot #4. That would be a second issue for the planning commission to take up because in the State of Kansas you can’t land lock a plat. Between lots #1 and #2 there is a private drive agreement on file.

Mr. Newberry pointed out there is an opening platted onto 87th Street. He agrees that easement needs to be designated as an access.

Council Member Craig stated that right now it’s designated as a utility easement; they won’t let you put a road over it.

Council Member Warren apologized to Mr. Renberger.

Mayor Avello stated he remembers that the fire department used to look at these plats before they came to us are we still doing that?

Mr. Newberry advised they still do and apparently they were okay with this one. If they have issues with a plat they contact him.

Ms. Sexton stated that as staff understands the issue, there’s not any conclusion that we need to have Webb Road access to the unplatted track east of Renberger’s Addition, but that we need to know that has been considered and that we understand whether there’s going to be two 87th

Street entrances to that piece east of Renberger's or one to Webb and one to 87th. We need to know that it's been thought through and to understand that the Fire Department understands how far a distance that is. The second issue being the driveway access to lot #4. We will take a look at that and take it back to the Planning Commission and bring it back to the council as soon as we possibly can.

VOTE: Motion carried 6-0, Meidinger absent, Nun absent.

**BIDS TO CONSTRUCT
JAMES STREET (BEAU
JARDIN TO HIGH PARK
DRIVE)**

Dan Squires, City Engineer presented the staff report.

Background:

- A bid letting for construction of James Street (Beau Jardin to High Park Drive) was conducted on Tuesday, June 30, 2009. An invitation for bids was disseminated to qualified contractors. The following bids were received by the City Engineer's office and witnessed by the City Clerk:

<u>Contractor</u>	<u>Bid</u>
Cornejo & Sons, Inc.	\$492,913.00
Kansas Paving	466,039.50
APAC-Kansas, Inc.	440,182.75
Lafarge North America	438,077.50
Engineer's Estimate* \$577,076.00	

**Engineers estimate prepared by Young & Associates, P.A.*

Financial/Sustainability Considerations:

- Funds for the construction work were included in the 2009-1 temporary note issue.
- The overall project cost is estimated to be \$528,667.
- Costs for the improvements will be paid 14.57% (\$77,026.78) by the City-at-large in accordance with the City's over-sizing policy for collector streets and 85.43% (\$451,640.22) by the benefit district which includes Spring Ridge Addition - Phase 3, USD 260, and the City of Derby (as owner of High Park).
- The City's portion of the anticipated special assessment is \$116,207.22, resulting in a total project cost to the City of \$193,234 (\$77,026.78 + \$116,207.22).
- The funding for the project will be incorporated into the CIP when we have a more accurate estimate of when the project will be bonded.
- Special assessments not paid off will be spread against the remaining benefit district properties over a 15-year period.

Legal Considerations:

- Solicitation, receipt and analysis of bids complied with all statutory procedures and local policies for planning and securing financing for the project.

Policy Considerations:

- Lafarge North America has satisfactorily completed several projects in Derby. Lafarge has submitted all required bonds and financial sureties for the project. Upon approval of the bid, staff will prepare the required contract documents.
- Construction of James Street from Beau Jardin Street to High Park Drive will provide a valuable second access to High Park allowing for better traffic flow in and out of the park.

DISCUSSION:

Council Member Bannon stated that with all the activity this area had over the 4th of July she hopes this can be done by next celebration year.

MOTION: Bannon moved to accept the bid of Lafarge North America in the amount of \$438,077.50 and authorize execution of a contract for construction of James Street Improvements from Beau Jardin Street to High Park Drive. Haynes seconded.

VOTE: Motion carried 6-0, Meidinger absent, Nun absent.

**CONSULTING
ENGINEER FOR
WASTEWATER
NUTRIENT REMOVAL
STUDY**

Dan Squires, City Engineer presented the staff report.

Background:

- The approved 2009 Capital Improvement Plan (CIP) includes a cost and feasibility study to evaluate options for removal of nutrients at the City’s Wastewater Treatment Facility (WWTF). Nutrients such as phosphorous and nitrogen are present in the City’s wastewater. Removal requirements are expected to become increasingly stringent in upcoming years.
- The study is a requirement of the City’s wastewater discharge permit issued by the Kansas Department of Health and Environment (KDHE).
- In recent years the City has contracted with Camp Dresser McKee (CDM) for study and design services related to wastewater, including the study and design of improvements to the City’s biosolids handling system and a wastewater rate study. As a result of these projects, CDM has developed a mass loading model and a familiarity with the WWTF’s design and operation.
- City staff requested a proposal from CDM to complete the required nutrient removal study. Staff believes that CDM’s experience and modeling expertise make it uniquely qualified to complete the study in the most cost-effective manner.

Financial/Sustainability Considerations:

- While the approved 2009 CIP included only \$50,000 for this study, CDM proposed a fee of \$64,000. Staff reviewed the proposed design fee and believes it is appropriate for the

scope of the project. The CIP for 2009 in the Manager's Recommended 2010 Budget now includes an adjustment to meet the proposed fee of \$64,000.

Legal Considerations:

- Professional services such as those contemplated by the proposed contract may be obtained by negotiation. There is no requirement for competitive bidding.

Policy Considerations:

- Study of nutrient removal options allows the City to evaluate the best options for the removal of nutrients and program funding for design and construction of future improvements to address the changing requirements.
- The study is a requirement of KDHE as a component of the City's wastewater discharge permit.

DISCUSSION:

Council Member Horyna stated that as some know, he is employed by the Kansas Department of Health and Environment and works closely with the bureau within KDHE responsible for requiring this nutrient removal study for the city. While he doesn't have any direct conflict of interest with the recommendation as presented, he feels it prudent to abstain from this vote.

Council Member Craig asked how much new work is going to be involved in what they do for us. We have been associated with them in the same area for quite a while. They should have a fair amount of knowledge, is there really a lot of new work in this that justifies the \$64,000?

Mr. Squires explained that the components, mechanisms, and processes they will evaluate are completely different from what they are doing for the bio-solids study. The familiarity with our plant and some of the modeling and data collection that they've previously done for the bio-solids will be updated as part of the study. We see some cost-benefit in not having to start completely over. Certainly the familiarity with the layout and operation of our plant is a plus for them, but the process is not tied to our bio-solids study. It is completely new equipment that will be evaluated and a whole other process to remove it.

MOTION: Haynes moved to authorize the City Manager to enter into an agreement with Camp Dresser McKee to complete a nutrient removal study at a cost not to exceed \$64,000. Craig seconded.

VOTE: Motion carried 5-1, Horyna abstain, Meidinger absent, Nun absent.

**CONSULTING
ENGINEER TO DESIGN
MEADOWLARK BLVD.**

Dan Squires, City Engineer presented the staff report.

Background:

- The Capital Improvement Plan (CIP) includes several projects to be designed in 2009, including design of improvements to reconstruct Meadowlark Boulevard from Rock Road to the east city limits for the purpose of accommodating eastward growth of the city.
- City staff sent a Request for Statements of Qualification to qualified consulting engineering firms, soliciting their interest in designing this project. Statements of Qualifications were received from 10 firms.
- Consultants' proposals were evaluated and rated based on the firm's overall experience, experience with similar projects, schedule, fee range, and familiarity with the project site and potential design issues.
- Parsons Brinkerhoff is the engineering firm recommended to design the project for a proposed fee of \$154,000.

Financial/Sustainability Considerations:

- The 2009 approved Capital Improvement Plan included only \$100,000 for design of this project. Staff has reviewed the proposed design fee of \$154,000 and believes it is appropriate for the scope of the project. The CIP for 2009 in the Manager's Recommended 2010 Budget now includes an adjustment to cover the proposed fee.

Legal Considerations:

- This solicitation and selection of qualifications and selection of a consultant was accomplished in accordance with applicable City policies and procedures.

DISCUSSION:

Council Member Bannon asked what the distance was from Rock Road to our city limits at Meadowlark.

Mr. Squires advised it was about $\frac{3}{4}$ of a mile.

Council Member Bannon stated that the design fee seems a little higher. Is that because we only have the curbs constructed to the first entrance at Marketplace?

Mr. Squires stated with the design of Rock Road we did a limited amount of work on Meadowlark to tie things in. We did not want to be working in that intersection again. If you remember the phone calls we received about Meadowlark when Rock Road was under construction we certainly didn't want to have to go back and remake improvements after we reconstructed Rock Road again. That's designed to its ultimate section at the intersection but everything from there on east will have to be reconstructed. The entire area will be brought up to what we consider an urban standard with storm sewer, curb and gutter, etc.

Council Member Bannon asked if that would take us to the east side of Hamilton Estates.

Mr. Squires advised it will take us past Hamilton Estates to the edge of Spring Ridge.

Council Member Craig asked if this will be the same design that is currently west of Rock Road.

Mr. Squires stated that from a drainage standpoint it will be very similar. He doesn't know about the lane configuration, there are a lot of different processes for designing arterial streets now. We are looking at potentially a three-lane section for a portion of this because a lot of studies have indicated that three lanes in some instances can carry traffic as efficiently and more safely than a four-lane section because the two interior lanes are used for turning movements. It's more cost effective and appears to be safer for the traffic volume we will be looking at, at least for a good portion of this project. It will be similar to the extent it will be brought to an urban standard, but the lane configuration may not be the same.

Council Member Craig stated that knowing that development is going to be moving in that direction in future years, he would think that we would really be looking forward to where the city limits are going to be in the next 5-10 years, because it's probably going to be all the way to Greenwich.

Mr. Squires advised that we are already collecting information on the volumes of traffic and doing some preliminary projections on how much traffic we may see out there to address that issue. A three-lane section will actually handle a lot more traffic than what people think, which is what we are going to see on Buckner when it's constructed.

MOTION: Craig moved to authorize the City Manager to enter into an agreement with Parsons Brinkerhoff for design of improvements to reconstruct Meadowlark Boulevard from Rock Road to the east city limits, at a cost of \$154,000. Staats seconded.

VOTE: Motion carried 6-0, Meidinger absent, Nun absent.

ASSESSMENT ORDINANCE FOR MOWING & TRASH REMOVAL

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

Background:

- The City of Derby has incurred costs in abating nuisances found to exist upon certain properties located within the City.
- The costs are the charges the City incurred in contracting with vendors for mowing and trash removal service, plus a \$50 administrative fee.
- Each owner of record has been sent notification that Council will consider assessment by ordinance of the charges.

Financial Considerations:

- The costs incurred in connection with the parcels to be assessed total \$7,835.75.
- The assessment costs associated with several of the parcels are higher than normal due to cleanup of extensive debris. Parcels that require repeated mowing will then experience lower assessments due to the initial cleanup.

Legal Considerations:

- City ordinance authorizes staff to mow properties with excessively tall vegetation and remove trash when owners fail to do so.
- City staff seeks to collect mowing charges through informal efforts so as to avoid the need for formal remedies.
- Charges not timely paid may be assessed against the properties on which the work was performed.

Policy Considerations:

- City ordinance has established the policy that requires maintenance of grass and weeds to not exceed the height of ten inches to protect the health and safety of citizens.
- Ordinances are brought before the City Council for action as soon as possible so that recovery of the city’s costs can occur from the owner of record at the time of assessment.

ORDINANCE NO. 1990

AN ORDINANCE LEVYING A SPECIAL ASSESSMENT UPON CERTAIN REAL PROPERTY HEREINAFTER DESCRIBED AS THE COSTS INCURRED BY THE CITY IN CUTTING WEEDS, REMOVING DEBRIS AND OTHERWISE ABATING NUISANCES FOUND TO EXIST THEREON.

DISCUSSION:

Council Member Craig stated that he reviews these every time they come in. It’s easy for him to find the names but he thinks they should be a part of the public record. Some of these people will be tentative about their names being published in our official minutes but the software program he has to pull these up is owned by Sedgwick County. It’s amazing the number on here that are repeat ones that are listed in his memory. They just wait for us to do it and we charge it to their tax bill. He thinks when these are published in the minutes that the name should go right along with it. That way they will know that their name is an item of public knowledge, that they are repeat offenders. That might be a little harsh but some of these have been appearing time after time for the last year or so. It’s their money but he thinks some of them just need to get their attention and maybe their name on the public record will do something for them.

Council Member Haynes indicated his concern was that we notified these people that we are going to be sending them a bill for \$1,800. Mr. Craig probably cleared most of that up in that we do have some repeat offenders so he would assume they have been notified.

Mrs. Epperson advised they have been notified.

MOTION: Craig moved to adopt an Ordinance levying a special assessment upon certain properties the costs incurred by the City of Derby in cutting weeds and otherwise abating nuisances found to exist thereon. Warren seconded.

VOTE: Motion carried 6-0, Meidinger absent, Nun absent.

CONSENT AGENDA

Consulting Engineer to Design River Street Widening

Background:

- The Capital Improvement Plan (CIP) includes several projects to be designed in 2009, including the widening and overlay of River Street from Madison Avenue to Market Street.
- City staff sent a Request for Statements of Qualification to qualified consulting engineering firms, soliciting their interest in designing this project. Statements of Qualifications were received from 10 firms.
- Consultants' proposals were evaluated and rated based on each firm's overall experience, experience with similar projects, schedule, fee range, and familiarity with the project site and potential design issues.
- Crafton Tull Sparks is the engineering firm recommended to design the project for a proposed fee of \$12,500.

Financial/Sustainability Considerations:

- The Approved 2009 CIP includes adequate funding for design of this project. In the Manager's Recommended 2010 Budget, construction is scheduled for 2011.
- Staff has reviewed the proposed design fee and believes it is appropriate for the scope of the project.

Legal Considerations:

- This solicitation and selection of qualifications and selection of a consultant was accomplished in accordance with applicable City policies and procedures.

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

VOTE: Motion carried 6-0, Meidinger absent, Nun absent.

EXECUTIVE SESSION

MOTION: Staats moved to adjourn to executive session for 20 minutes to consult with our attorney on matters of attorney/client privilege. Warren seconded.

VOTE: Motion carried 6-0, Meidinger absent, Nun absent.

The council returned at 8:55 p.m. and Staats advised there was no binding action taken.

Returning to discussion of mowing assessments:

MOTION: Craig moved that those assessments be registered by property owner name and legal description of the lot. Bannon seconded.

Ms. Sexton clarified that Mr. Craig's motion is that for future mowing assessments that we include in the language of the ordinance the name of the property owner rather than just the address.

Council Member Craig advised that was correct.

Council Member Haynes indicated he understands the reasoning behind the motion but would caution printing those names. Someone may move out of state and we may not have the correct names. He suggested to err on the side of caution in printing those names.

Ms. Sexton stated that the assessment would still go to the property so the name in an ordinance would be more of a reference point as of a specific date. This is the name of the owner as of this date. If the house sells and the ownership changes the assessment is still to the property.

Council Member Horyna agrees with putting the names in public record, however he is 50/50 on whose name it should be. If he is a property owner and is renting the property to someone else and it's their responsibility to maintain it he would feel uncomfortable having someone who is responsible to be not publicized.

Council Member Warren has a slight issue with it. He understands where Mr. Craig is coming from and it probably would work in some cases but the flip side of this is that occasionally we have individuals who are out of state and it's a one-time deal and we could potentially embarrass or make someone look bad. We are going to punish the occasional guy along with the chronic offender. We have repeat offenders and we are going to try and shame them into doing a better job of taking care of their properties, the reality is we are getting paid; we aren't losing anything other than the time it takes to put together the ordinance. All of our out-of-pocket expense is taken care of, and we have a \$50 administrative fee. Basically it's a break even from the city's standpoint, it's not costing us. He is afraid we are going to potentially harm somebody's reputation in trying to make the bad guys look bad, we will also get some people that are occasionally caught in this situation and make them look bad. He thinks that would be an unfortunate situation. He will vote against it this time around. He understands you hate to see people abuse the situation but doesn't think this really is a good way to go.

Council Member Bannon stated that as far as someone's name appearing publicly when they may or may not be the current owner, she likens that to if you are late on taxes your name is published in the paper and they don't check on the current owner as to that exact date. It's the best, most recent record. As far as renter versus landlord, landlord is ultimately responsible for property because they are the property owner. If they live out of state they aren't going to be here to read the paper or be embarrassed. To her these are not just necessarily for the chronics, it's not like when we pass this tonight, it's not the first time these people know this. They have gotten letters previously to mow their grass, we send them plenty of notification and it doesn't come as a surprise to anyone. Then we mow it, time lapses between the time we mow it and this ordinance passes because they have been given the opportunity to pay it and it still went at least a month from the time we get them the bill and the ordinance comes before us for late payment.

Mrs. Epperson advised the time period varies, this time it was about a month because of the size of the dollars that are involved. When we get the bill we give them 10 days notice that it is going to be presented at city council.

Council Member Bannon stated they have had chances from being told "mow it or we are going to," to "here's your bill because we had to mow it" and then it's going to be on the

ordinance. It's not going to be a surprise so she thinks we need to go ahead and publish the names.

Council Member Haynes indicated we are talking apples and oranges when we are talking delinquent taxes versus special levy for mowing somebody's yard for whatever reason, they either refused to mow or can't mow, etc. He asked, for repeat offenders, do we have some kind of escalation in pricing. If we have to go out there 4-5 times a year because the property owner refuses to mow, do we have an escalation and if we don't what are the possibilities of looking into that for repeat offenders.

Ms. Sexton stated we do not have an escalation but we could look into that. It might be worth noting that most people can mow it themselves or pay a contractor to do it at a lesser price than what the city's billing them for. There is some motivation to do it themselves.

Council Member Haynes clarified that we do get paid, right?

Ms. Sexton explained that some pay it, as Jean pointed out, one on this list has paid it. If they don't pay it when they get this notice in the mail then we actually assess it to their property tax bill so by the time it comes around 6 months from now when their tax bill is due they might pay it then; a lot of them will. Or, if they can't pay it or don't want to pay it, it will sit there on the tax roll as a delinquent tax for several years before the property actually would go to sheriff sale for not paying your taxes.

Council Member Haynes stated that if they sold the property we would get our money, correct?

Ms. Sexton advised that was correct. That is the case on a lot of these; a lot of them are up for sale or foreclosed upon. That is taken care of when the new buyer buys it; all the taxes are cleared up during the closing of the sale. We often get paid, we mostly get paid but there are times we have to wait awhile for the money.

Council Member Haynes doesn't want us as a city, especially a council to get into a situation to where we start naming names. That's perception of course and he understands where Mr. Craig is coming from but he doesn't want to get into that scenario as a city, as a staff and certainly as a council.

Council Member Staats agrees with Mrs. Bannon. They are notified ahead of time, it's not like this is coming out of the blue. If somebody wanted to go to the heartache of doing the work you can take the addresses and cross reference them with county records and find out who owned every property so it's not like we are keeping some big secret. He does agree with Mr. Craig that every once in awhile you get somebody that falls through the cracks, maybe they are out of town, maybe they are out of town six months out of the year, their rental property gets out of hand and they don't get notified but he doesn't think that is going to happen very often. It's the habitual violators that we can maybe "shame" them but it is notifying the public. He asked where we would put their names, would it be just in the information that we get.

Ms. Sexton explained it would be in the ordinance and the ordinance gets published in the newspaper. More people would see names of who is responsible.

Council Member Staats asked how many we have a year; there isn't a large amount of them anyway.

Mrs. Epperson advised we have all that information to begin with; it's not a problem to get the name.

Council Member Staats indicated that the way he understands the motion is once it gets to the higher level of where the city is actually contracting and having the work done that we are doing this. Not when we are sending just a normal letter out saying their grass is too tall.

Ms. Sexton pointed out that it's important to note that the vast majority of people take care of their grass and their waste. When the inspector tells them they have a problem almost everybody takes care of it. These are the outliers only, the majority of people want to do the right thing and take care of their property, especially once the city staff helps them understand what the code is.

Council Member Staats commented regarding the escalation fee Mr. Haynes alluded to, there is a city ordinance that says you have to do that, wouldn't there be through code enforcement a criminal aspect if we had to do that. Is there something like that as far as a nuisance ordinance that we already have on the books?

Council Member Horyna stated he is not ready to vote yes on this at this time, that's not saying he won't. He would like to see a little bit more information relating to the pros and cons to throwing names in there. He understands it's an attention getter but by doing that what are we actually resolving? We have already adopted the ordinance levying special assessments. What are we really trying to accomplish here?

Mayor Avello asked if we are talking about the habitual repeater in the motion.

Ms. Sexton explained it would be the owner's name of all the properties that are going to assessment. The motion says the names are going to be in the ordinance rather than just the addresses.

Mayor Avello stated that if you put the names in it's just an added incentive for them to cut the lawns. He advised one of the biggest complaints he gets in the city is people saying that they have to cut their lawn, why aren't they doing theirs? Many of them are habitual, if he has to break a tie he's going to vote yes.

VOTE: Bannon yea, Haynes nay, Craig yea, Horyna nay, Warren nay, Staats yea.
Vote tied 3-3. Mayor voted yea. Motion carried 4-3.

Mayor Avello indicated he disagreed with the comment that it doesn't cost the city anything. It takes people away from the jobs they are supposed to do, then we have to wait for the money.

ADJOURNMENT

MOTION: Craig moved to adjourn at 9:11 p.m. Haynes seconded.
VOTE: Motion carried 6-0, Meidinger absent, Nun absent.

ATTEST:

Dion P. Avello, Mayor

Jean Epperson, City Clerk