

**APPROVED  
REGULAR COUNCIL MEETING  
March 10, 2009  
6:30 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I  
WARD II  
WARD III  
WARD IV

COUNCIL MEMBERS PRESENT:

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

COUNCIL MEMBER ABSENT:

WARD II

Heath Horyna

Flag salute was led by Council President George Arnold.

The invocation was led by Pastor Brad Beets, Pleasantview Baptist Church.

**CONSIDERATION OF  
MINUTES**

Minutes of the February 24, 2009, Regular Council Meeting.

MOTION: Arnold moved to approve minutes of February 24, 2009 Regular Council Meeting. Meidinger seconded.

VOTE: Motion carried 7-0, Horyna absent.

**PUBLIC FORUM**

**Ron Coonce** lives around the corner from the proposed Burger King. In his opinion from a traffic safety point of view it's not a very good site in his mind. The reason he believes that is because it is an abnormal turning situation there and he blames that on the access road that goes north and south. It lends itself to some unusual traffic situations with people wanting to go north and south and other people wanting to go through Meadowlark and get onto and off of K-15. He believes that egress on to north Nelson drive from K-15 is an abnormal turning situation. It doesn't matter if you are coming from the north or from the south on K-15 to get on north Nelson Drive. And as if entering this intersection from K-15 is not challenging enough, exiting north Nelson Drive traveling toward Meadowlark to make a left turn or to continue south would be sheer madness for others waiting in traffic. He feels that the egress into and exiting this site at a minimum is a traffic accident waiting to happen and to throw another item into the mix, there's train traffic directly to the west which also tends to create bottle necks and adds to congestion at certain times. It's not an all the time thing but if its 5:00 on Friday and you're wanting to get

wherever you're at and you go through that intersection and it makes for some interesting and colorful situations. Additionally, the Quik-Trip which is located directly to the south of this location already has high traffic volumes during peak travel times of the day. Adding a fast food restaurant he feels at this location will only create increased traffic volume in an intersection in its current design configuration is an aberration and a traffic safety problem. Normally these fast food establishments that are built are clustered together, we are only talking about one restaurant today but what are we looking at a year, two, three down the road, potentially adding more traffic. In his opinion with its current configuration it is a traffic nightmare down there. He travels through this intersection daily going to work and his son travels through it going to school at WSU. He is not against the Burger King, he loves their food but he is not convinced it is the best site for it. All you have to do is look to the north or south and there has to be a site that is as nice and probably would not create nearly the traffic nightmare that he envisions and maybe he is just off base on this.

**Jerry Lucas** is concerned with the Sachi Addition, or possible Burger King is the access onto Fulton Avenue directly east of the proposed property going on to Overlook Drive and on to Village Lake Drive from the proposed property. At this time there is no access and up until today he understands the land owner did sign an agreement that he would not ever build or request access onto Fulton that leads to Overlook and Village Lake. If access was ever granted there you would have a lot of traffic, regardless of what type of restaurant went in that would try to sneak around the light and the major headache of trying to get back on to K-15 from Meadowlark and try to sneak through onto Village Lake Drive to Red Powell Drive or Overlook to Buckner. In talking with a lot of his neighbors on Overlook and Village Lake they were all concerned about the safety of their children. Just about every other family there has small children, 5-8 year olds that like to play in the front yards, they like to ride their bicycles on the streets. We need to make sure that access from that property onto Fulton never happens. Mr. Coonce also brought up some excellent points about traffic on Meadowlark trying to get onto K-15 from Nelson. Many times coming north on K-15 making a right hand turn to go east on Meadowlark he has had people pull out in front of him from both northbound and southbound Nelson Drive and almost hitting him in his car and on his motorcycle. That is a pretty scary situation. He asks that before any establishment, whether it be a Burger King or Daylight Donuts or whatever, any high traffic facility, some type of study be done and some type of better traffic improvements be made. In talking with Mr. Bud Newberry, the city planner yesterday he said that is already a bad intersection, more traffic volume is only going to make it worse. He requested the council keep the safety of our residents, especially our children in mind.

**Susan Erlenwein**, Director of Environmental Resources for Sedgwick County, her department is responsible for developing the solid waste plan for the county and updating it on an annual basis. Last year was their 10-year update for the plan. In that update the Kansas Department of Health and Environment required them to do an extensive review of the plan and to include ways to minimize waste that we dispose of in our community. They looked at waste minimization techniques and recycling and other items. To help guide them through their solid waste plan update they took the advice of the 15 member solid waste management committee for the county, they had a public hearing and the commissioners also heard from citizens through emails, letters and phone calls. One common theme was recycling; people really wanted improved, convenient recycling in our community. Many people felt they were being penalized for having curb side

recycling. They typically were paying the same price for trash disposal as their neighbor and the neighbor could have trash overflowing from their trash cart and those recycling cut back on their trash but were paying extra for the advantage of having curbside recycling. They wanted us to look at how we could improve the system. The commissioners considered all of this and looked at how we could have convenient curbside recycling. National studies have shown that the more convenient you make recycling the more people recycle. How can we make it equitable across the community and lower prices at the same time? In developing this one of the things that came out was our current solid waste collection system is really not very efficient. There are numerous trash trucks going down the road, a trash truck may pick up one customer, pass five potential customers before he picks up his next customer. That is a waste of time for the driver and fuel in the vehicle which drives up the cost of collection in our communities. Most of the nation has either public collection for trash or contract or franchise for trash collection, by doing this they lower their prices. The county looked at what other communities are doing and determined the best thing to do would be to include in the plan a system of expecting cities to contract a franchise for solid waste collection and include curbside recycling and volume based trash rates by January 1<sup>st</sup>, 2011. That would provide enough time to go out for bid, have companies gear up and get the equipment they would need and educate the public to service them through the new programs.

**Council Member Meidinger** asked what the recommendations are for grass clippings and trees that fill up landfills real quick.

**Ms. Erlenwein** advised the committee looked at composting and whether or not we should have a ban on grass clippings. This is something we looked at 10 years ago and a lot of people did not want a ban on leaves because they said it wasn't their trees, it was their neighbors trees dropping leaves in their yard, why should they be responsible? Part of the decision about grass clippings and a ban on that, part of the decision on that is we are in the process of a year long trash analysis at the two transfer stations where we are picking through people's trash to determine percentages and material through seasonal variations. At the end of that, which would be the end of the summer, we will have knowledge of how much material is being thrown away and the commissioners will look at that at that point to determine if we should ban grass. Grass can be composted, the best thing is to just cut it and let it mulch and drop into the lawn. We will be looking at that at the end of the summer as part of our plan.

**Council Member Warren** stated that if we can make recycling more affordable and easy that more people would do it. That seems to be the big thing for most people he has talked to and it's a big issue with him. Input he is receiving is 9-1 in not wanting to be told who they can use for their service. He asked the question at the last meeting if it would be possible to require anyone that does business in Derby to provide as part of their base rate recycling at no extra charge. The other issue in terms of pricing is a method that companies would be required to post their prices. Ms. Sexton got back with him and advised there is a way to do it but in order to do that we would franchise multiple businesses. One of the things we lose with that is we don't pick up the advantage of traffic on our streets; we still have multiple trucks going down. He does believe that we probably would lose the advantage of collective bargaining with having just one company doing all of the trash, we would probably not be able to get as low of a rate. What he is hearing from his constituents is that they are willing to pay a little bit more for the right to

choose. He knows this is not an action item and Ms. Sexton asked him if she should do some more research. He advised that if nobody else on the council is willing to go down that road, let's not spend staff time researching it. His question to the council is, if you are interested in multiple franchising that would require recycling from anybody that does business. Basically to do business you would have to be franchised but we could offer multiple franchises. If that is something the council would be open to let him know or let Ms. Sexton know to see if there is enough interest to pursue that.

**Mayor Avello** asked Ms. Erlenwein if she had heard of other areas doing that.

**Ms. Erlenwein** advised there have been communities that have franchised by dividing the community up into halves or quadrants. Tulsa has done that and divided the city up into quadrants for franchise. The smaller the city the less economical that becomes and the price goes up. The key to franchising is the efficiency of picking up every house along the route. The driver uses less time, less fuel and they fill the truck up faster and go dump it. Instead of a franchise if you licensed everybody and required volume based rates or recycling you would actually see rates go up in the community from where they are at right now. The reason for that is although a lot of people think they shouldn't be paying for curbside recycling, they should be paying me because they are getting my material, the cost for the driver to drive the truck, the fuel, the maintenance, the people back at the facility that receives the recyclables, there is a cost involved in recycling and recycled materials is a commodity. A year ago for some paper products they were receiving \$125 a ton, now it's \$5.00 a ton. The market swings drastically and it costs to pick up that material. If you just add curbside recycling and fold it into the base rate, what you will see is the base rate go up for everybody in the community instead of down. It should go down with the franchising. Park City is a good example; they contracted for recycling collection recently. When they did that they said they wanted a bid for trash as well so the citizens can chose a company and know what the price is. People's quarterly trash bills went down from \$85 a quarter to \$33 a quarter through that contract. It was a huge difference.

**Mayor Avello** asked if that cost included recycling.

**Ms. Erlenwein** advised that recycling was an additional price, that was just for the trash. The recycling is put on everybody's water bill whether they recycled or not and that was \$4.50 a month. The trash part only went from \$85 to \$33 a quarter. Other communities have seen similar drops in their prices because of the efficiency of the collection. Anything is possible as far as going through and creating a request for proposal, it's what's the best and most efficient for the community. The most efficient is one collector going through and collecting all of the trash and recyclables. Holding them accountable through the city that people can complain to the city if their service is not appropriate and providing a list of services. Whether all companies can answer all components of that request is yet to be seen but that is the point of requests for proposals, what can you offer our community.

**Council Member Craig** asked where the majority of solid waste picked up in the area ends up.

**Ms. Erlenwein** advised it goes to the Plumthicket Landfill in the northeast part of Harper County.

**Council Member Craig** advised he had constituent who was under the impression that a certain percentage of it ends up in Oklahoma.

**Ms. Erlenwein** stated that it hasn't gone to Oklahoma for several years now. When Waste Connections first built their transfer station near K-96 and West Street they already had a landfill in existence in Oklahoma so the trash went there. In the meantime they looked for a new location for a landfill and built one in Harper County and now the trash goes there. Waste Management's trash used to go to Topeka until the one in Harper County opened and now their trash goes there as well.

**Council Member Craig** asked about some of the requirements companies would face to establish a new landfill.

**Ms. Erlenwein** explained the EPA and the Kansas Department of Health and Environment both have rules and regulations for landfills. You have to have a liner system under the landfill, it has to be a certain distance above the groundwater table, you have to consider bird strike situations because landfills attract scavenger birds. You also have buffering distance from the neighbors, storm water collection runoff, monitoring wells in case something leaks through the liner system, methane gas collection system. There is a lot of monitoring and rules and once the landfill reaches capacity and closes it has to be monitored for 30 more years to determine if it's leaking or not. The people who built it have to have money set aside for that monitoring and in case it does leak for the cleanup of that landfill.

**Council Member Craig** wants the people to understand that it's not like it used to be that you can start a dump someplace, there are tremendous guidelines and restrictions that are very costly to start a landfill. The one thing that franchising tries to do is reduce the amount that goes into the landfill so that those costs are kept to a minimum. That is one of the main things that people don't realize that there are an incredible amount of environmental requirements that have to be met.

**Ms. Erlenwein** agreed. The more you can recycle and keep material out of the landfill that extends the life of the landfill so a community does not have to go through that siteing process again. No one wants a landfill in their backyard so it becomes quite contentious. The longer you can make a landfill live no matter where it's located the better.

**Council Member Bannon** advised that next week, March 16-20<sup>th</sup> the Derby Dash will be having a special of \$3 a round trip instead of the normal \$4 round trip.

**Kathy Sexton**, City Manager advised that Council Member Horyna is out of town for work, that is the reason is was not able to attend tonight.

#### **APPOINTMENT OF MUNICIPAL JUDGE**

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

**Mayor Avello** stated that everyone on the selection committee agreed on the top 4 candidates, it was quite an impressive event to get to this point.

**Background:**

- The Municipal Judge position became open January 30, 2009 when William M. Kehr tendered his resignation. Since then, pro-tem judges have been filling in at weekly court sessions.
- The position was advertised in the Wichita Business Journal, and a total of 38 applications were received.
- The Mayor set up an ad hoc committee to review applications and interview candidates. The committee included Council Member Mark Staats, Police Sgt. Larry Alumbaugh, Court Administrator Shelli Adams, City Attorney Phil Alexander, Human Resources Manager Jenny Thrush, and Mayor Dion Avello (chair). Committee members were selected based on their knowledge of and involvement with the judge on a weekly basis, as well as their familiarity with the judicial system and what's needed in the position.
- The committee narrowed the field to nine candidates to interview. Interviews conducted over a two-day period yielded four finalists, all of whom are well-qualified practicing attorneys in the metro area. Over the course of several weeks, references were checked and observations were made of courtroom management skills for those finalists currently serving in judicial roles.
- The Municipal Judge presides over a weekly appearance and trial docket on Thursday afternoons. The appointment is with an independent contractor for approximately five hours of service per week. The position is not an employee.
- At the time of this writing, the name of the nominee is not available. As soon as the name becomes available, it will be made available to the public.

**Financial/Sustainability Considerations:**

- The draft agreement for municipal court judicial services provides for \$500 per week of service, which is essentially the same amount as previously paid and is in the approved budget.

**Legal Considerations:**

- Charter Ordinance 45 provides for the Governing Body (including the Mayor and Council) to appoint a Judge of the Municipal Court.

MOTION: Staats moved to approve the appointment of James Wilson as Municipal Judge and authorize the City Manager to enter into an agreement for municipal court judicial services in substantially the form presented. Arnold seconded.

**Council Member Bannon** asked if the week of Thanksgiving would be a paid week or unpaid week since Thanksgiving falls on a Thursday.

**Phil Alexander**, City Attorney explained that the contract as drafted and approved by Mr. Wilson specifies that he will be paid for each week for which a docket is scheduled unless he is

not there, then he will not get paid. There would be no docket scheduled for Thanksgiving so that would be a paid week. He would not be paid for weeks when a docket is conducted and he is not present.

**Ms. Sexton** added that because we have a Thursday afternoon docket and most holidays are Mondays, the Thanksgiving week is really the only time that that would be affected. That has always been the case here, we don't move our dockets to Monday or Tuesday during Thanksgiving week, we just cancel it. Otherwise, we have court every week.

**Council Member Bannon** clarified that we still pay out even though no dockets are scheduled.

**Mr. Alexander** advised that is correct. He does do other duties from time to time beyond the docket itself, so we thought that was the most equitable way to approach it.

VOTE: Motion carried 7-0, Horyna absent.

**Mr. Wilson** advised that Shelli had called and talked to his wife today and asked if he was excited. He didn't really get excited about it until Shelli asked for his measurements for a robe. It's a pleasure and an honor and something he didn't expect when he sent his resume in. He liked coming down here the first time Stan called and asked him to fill in and that became a habit for a while. It was enjoyable, Shelli was here and some other people that are still here, it was fun to work with them. He is kind of laid back on the bench, he knows Mr. Linn and they get along and thinks they will move things along fairly well. If anyone comes up with some ideas that can be helpful he is open to them. The Mayor asked if he could do some computer work and he said yes. The Mayor asked if he had any ideas about changes and he asked how much money he wanted to spend. He has a short memory for council members and does that intentionally, that way no one can say he did any favors for anyone. He told the council not to be offended if he doesn't run off and shake their hands because that is just his way of doing things.

**Mayor Avello** told the council that they have set up a permanent pro-tem to take Mr. Wilson's place when he can't be there. Her name is Susan Lind. That is a system he put in place and thinks that Judge Wilson will do a very good job for the City of Derby.

## **FINAL PLAT OF SACHI ADDITION**

**Bud Newberry**, City Planner presented the staff report.

### **Background:**

- This property is approximately 1.5 acres in size and is located north of the Quik Trip convenience store located at K-15 Highway and Meadowlark Boulevard.
- This property is zoned B-3, as are the properties both north and south of this location. All of the property east of the subject site is residential. Although this property was zoned B-3 when it was annexed into the city in 1983, it has never been platted.
- The subject site consists of two lots. Both lots have existing structures that will need to be removed prior to any new construction. In the meantime, the residence located on the

north lot is considered a legal non-conforming use. The Final Plat for this addition was approved by the Planning Commission on December 4, 2008 by a vote of 10-0.

**Financial/Sustainability Considerations:**

- Development of this property over the next few years should provide a positive impact on the City's tax base.
- As part of the platting process, and as required by the Subdivision Regulations, the developer has submitted petitions as guarantees for the construction of required infrastructure improvements (sanitary sewer, drainage and sidewalks,) totaling \$106,000. All of this cost will be paid by the Benefit District.

**Legal Considerations:**

- Pursuant to Kansas law and the City's Subdivision Regulations, the Planning Commission has approved this plat.

**Policy Considerations:**

- The applicant has complied with all requirements of the Subdivision Regulations including the provision of a Developer's Agreement.
- Upon Council's approval of the petitions as submitted, Staff will submit them to Gilmore & Bell to prepare the corresponding resolutions for Council consideration in the very near future.

DISCUSSION:

**Council Member Bannon** asked if the two lots are big enough for two businesses or is there just one business looking at it.

**Mr. Newberry** explained the plat has two lots; both of the lots individually do meet the requirements for minimum size in the B-3 zone. There is a lot of speculation about what may or may not go in there but at this point we don't have applications for anything, what we have is a plat and they are wanting to plat two lots.

**Council Member Bannon** advised that between the traffic coming across from where the railroad would be coming from north and south K-15, north and south Nelson, off of Fulton and just counting one of the exits out of Quik Trip, that is eight different ones that can be funneling into that one drive on Meadowlark. She knows we have no idea really who may or may not be looking at platting that, is this something we need to put some type of restriction on the amount of traffic that can go through there or what can we do to minimize some of the problems. It is a bad corner now at the access road and this is not going to help it.

**Dan Squires**, City Engineer explained that that intersection actually isn't a city intersection it's a KDOT intersection on the state highway system. The county has contract maintenance on it but obviously there are a lot of city residents that utilize that intersection for access to K-15. We have had concerns there for a while and are doing some things to address that. One of the things we are doing right now is a speed study on Nelson Drive along the entire corridor, not just at that

intersection. We have been in contact with KDOT about making improvements similar to what we did on Patriot which he thinks will alleviate a substantial amount of the congestion at that intersection.

**Council Member Bannon** asked where on Patriot.

**Mr. Squires** advised at Patriot/K-15 they remarked the outside lane, which was a thru and right turn lane, to a right only lane. That allows vehicles when there is train traffic across K-15 to continue to make the right turn and proceed north on K-15, which is a heavy demand at both of those intersections. He has been in contact several times recently with KDOT and got them just today to allow us to do that even though that is their intersection. That by itself is a substantial improvement. We are also working on a TEAP (Traffic Engineering and Assistance Program) application to the state to evaluate the entire corridor where Nelson Drive abuts K-15 and look at options. There may be some great option that we've missed. They are hopefully going to take a look at that entire corridor, not just at Meadowlark but also looking at Red Powell and Crestway through there. We have several things in the works to look at that corridor because of the proximity of that access road to K-15 and the way it affects the intersection. At this particular location we are actually platting access control portions of this plat, reducing from six existing entrances to three and controlling the locations of those entrances. We are actually, in his opinion, improving the safety from what exists now at the intersection by limiting the locations where traffic can enter in and moving them further away from the intersection. What we are looking at now represents a good compromise between the developer's need for access to the lots and improved safety at the intersection.

**Council Member Bannon** asked if there were any way we could put a limit to traffic counts for a type of business. We are dealing in the unknown. We don't know if this is a high traffic fast food location that's been rumored, or it very well may be something that is very low traffic.

**Mr. Newberry** advised that is true, we don't know for sure what is going to go in there. He asked for Ms. Bannon to repeat the question.

**Council Member Bannon** advised if she was told something very low traffic, insurance offices for example, was going on the corner she wouldn't worry about the additional traffic and safety. She would if you told her a high traffic fast food business is going on this corner. She knows there is going to be much more traffic involved with that. Is there any way to plat it while reserving the traffic count or volume of business?

**Mr. Newberry** advised there really isn't anything. What we have to go by are the uses that are established as being allowed in this location and being zoned B-3 allows a lot of different types of uses, both of which Ms. Bannon mentioned. It could either be a fast food restaurant or it could be an attorney's office or something like that. Those are really the only guidelines we have that we can enforce.

**Mr. Squires** explained that is typically something that is controlled by zoning, not platting and this is already zoned B-3 for those uses. We are platting and improving access control legally that we have through this process with the plat but we also have the opportunity and some

discretion on the face of the plat to look at access points and some of those issues when we do site plan review which is still required to be approved by the city. This isn't our last look at this. When we see a site plan, then we have the benefit of knowing the nature of the business and the configuration of what they are looking to put on that site.

**Council Member Warren** advised the zoning is in place, it's B-3 zoning. So there is no change from that standpoint. By going through the platting process we are able to improve the traffic situation. We are moving the access as far east as we practically can, which pulls it as far away from the intersection as we can to reduce the problem that we have. We all know it's a bad intersection, and the best we can do is take it as far east as we can and that's part of what we do here. He is assuming that we are also going with the first lot as far north with that to get the ingress and egress as far away from the intersection as we possibly can. The zoning is in place. Let's limit the number of access points we have, put them as far away from the intersection as we can. That is the best that we can do.

**Mr. Newberry** explained there are three access points to that lot along the south edge. The two accesses closest to the corner have both been eliminated. We have already told the applicant they need to locate the access as far east in that section as they possibly can. On the west side they have asked for a little latitude, but they understand we want access as far north as we possibly can get it. We've done everything we feel like we can do. He knows there was some concern stated tonight about possible access on Fulton. There is none platted. It is open as far as that's concerned, but the developer has said that they have no plans to put any access onto Fulton Street. The Planning Commission tries to minimize the number of accesses they allow onto a lot like this, they try to keep them as far away from any intersections as they can, they try to align them with any accesses that might be across the street. He pointed out the proposed access will align very well with the one going into Quik Trip. Another thing that was not mentioned is that we have already received the document from the developer with a cross lot access agreement; there will be access between them which will allow cars to go even further north to exit the property. We are trying to do everything we can.

MOTION: Warren moved to approve the Final Plat of Sachi Addition and authorize the Mayor to sign the plat and Developer's Agreement, approve the petitions submitted as guarantee that certain required improvements will be installed, and instruct staff to record the Developer's Agreement, Certificate of Petitions, and the Final Plat. Meidinger seconded.

**Council Member Craig** clarified that the access lot is going to be aligned with the west lot of Quik Trip.

**Mr. Newberry** pointed it out on the plat. The reason for the alignment is so that people can see each other coming out.

**Council Member Craig** is not comfortable with the agreement that the developer will not come back and petition for Fulton Avenue. He thinks we should have some protection there.

**Mr. Newberry** advised if that is the wish of the council, the applicant is prepared to present a document tonight that will restrict access.

**Kris Rose**, Baughman Company, presented a signed and notarized dedication of abutters rights of access to Fulton and to Overlook. That would give all the rights to the City.

**Council Member Craig** asked if there has been any discussion with the state about what they might have in mind as far as this intersection goes.

**Mr. Squires** advised he had not and the state hasn't studied it in any depth. The state has pulled accident history for that intersection and that did not identify any specific issue. The state has a program for communities who don't have specific engineers on staff to gain that expertise from the private sector at the state's expense. It's good for items like this that they will refer it to a consultant who is trained and sees and thinks regionally and has experience with ideas in other areas to look at it. That is one of the reasons we want to refer it to them and get some outside expertise on improvements that could be made. The intersection, when he says it's the state's, is really to the edge of Nelson Drive, once you get off of Nelson Drive. Obviously, the plat we are looking at is within the city limits.

**Council Member Craig** pointed out that just an estimate there could be eight cars at the most could be in queue there to get across the street.

**Mr. Squires** advised that we intend to remark that intersection so those vehicles will be less likely to be queued up waiting to cross the street. The one vehicle wanting to cross K-15 will not restrict the availability of people to access K-15.

**Council Member Craig** presumes that the right lane is looking at the right lane only and the next lane over would be straight through or left turn to go to K-15 to go south.

**Mr. Squires** advised that was correct, but that is not the way it is configured currently.

VOTE: Motion carried 7-0, Horyna absent.

**POWER LINE  
RELOCATION ALONG  
BUCKNER STREET  
(HARRAL TO  
GREENWAY)**

**Dan Squires**, City Engineer presented the staff report.

**Background:**

- Buckner Street between K-15 and Meadowlark Boulevard is scheduled for reconstruction this summer. It is necessary to decide whether electric power lines should be relocated overhead or underground for the project.
- Overhead relocation is done by Westar entirely at its expense under its franchise agreement with the City. If the City prefers Westar relocate its facilities underground, the City is responsible for the additional cost.
- The area currently being considered for underground relocation extends from the end of the intersection relocation project (near Harral Street), south to Greenway Street along the

east side of Buckner. All other overhead power lines in the project will be relocated underground regardless of whether the City chooses to relocate the lines in this section underground or overhead.

- The section of line being considered for relocation is adjacent to 21 lots and could impact as many as 30 existing trees. If overhead relocation is selected, existing power poles will be relocated approximately 5 feet closer to the existing residences.

**Financial/Sustainability Considerations:**

- The City is responsible for the cost difference between Westar’s cost to relocate the lines underground and their cost for overhead relocation.

Underground Relocation Cost	\$646,033
Overhead Relocation Cost	- \$256,184
Cost Difference	\$389,849

- If approved, the additional cost would be added to the bonds that will be issued for the project. This project would add approximately \$36,000 per year to the debt schedule for 15 years.

**Legal Considerations:**

- Westar’s liability for the cost of relocating infrastructure is governed by its franchise agreement with the City.
- While legal concerns do not militate in favor of either alternative, several property owners along Buckner have objected to having power poles moved closer to their homes.

**Policy Considerations:**

- A new zoning district is also being developed for the Buckner corridor to allow properties to transition from existing residential uses to business uses that, while compatible with the residential uses, are more likely to benefit from high traffic volumes.
- The street reconstruction project includes parking, sidewalks, landscaping, and other improvements intended to facilitate redevelopment of the area and improve the value of adjacent properties.
- Relocation of power lines below ground is consistent with overall project goals and minimizes the impact of the relocation upon the adjacent residential properties.
- Relocation of power below ground is consistent with the Council’s earlier decision to relocate power underground at the intersection of Meadowlark Boulevard and Buckner Street.

DISCUSSION:

**Council Member Craig** asked if the underground relocation on the west side would eliminate all the power poles on that side.

**Mr. Squires** stated he believed they would all be underground. For the most part the residential properties on the east side are served from the rear so it’s not an issue there. Further north there may be a couple of poles that remain because those houses are served from the front and are not part of this project.

**Council Member Craig** clarified that would be north of Harrel.

**Mr. Squires** advised that was correct.

**Council Member Meidinger** stated that as he looks at this project the council is in a real catch 22. If we don't do it we're gonna catch heck, and if we do it we're gonna catch heck for spending so much money. We started this project, and he didn't realize what we were getting into as far as the underground cost. This really puts the council in a predicament as far as the cost on this issue. This is an additional \$389,000, is that correct?

**Mr. Squires** advised that was correct.

**Council Member Meidinger** stated he really finds it difficult to vote for something like this. He still wishes they had gone with his original plan and gone to three lanes. If we had done that we wouldn't have this exorbitant cost. What he would like to do, if this thing is designed for a back door approach to get light commercial in there, he would like to see those guys that come in the future pay for it, of course you can't do that. He just really can't support this. He doesn't think it's right for this cost, and he is against it.

**Council Member Warren** commented that he didn't know of anyone trying to take a back door approach to make this commercial zoning. This street has gotten busier and busier and the city has grown. Allowing some of that to go commercial is just a way to offset what he thinks some of the residents are going to lose in value from a residential standpoint. Who wants to live on an extremely busy street? If we can open up a way they can recover from that loss then we owe it to them to give them that option. That is the only reason that the possibility of giving them that type of zoning is out there, to help those people in that situation. Buckner has been a difficult situation to deal with because of the way the city has grown and there was no way 50 or 60 years ago for people to understand how it was going to grow. If we were to sit down today with a blank piece of paper we would design this totally different. We would not have allowed the commercial to go in on the west side of the street, you wouldn't put residential houses facing commercial. You would have either made that commercial all at the same time or put residences on the west side of the street. That didn't happen; we can't go back and change that. Now we have to deal with what we've got. He thinks this is expensive and he's not crazy about it from that standpoint, but it's the right thing to do. This plan is what he considers to be a 50-year plan, the three lanes when we looked at it was a pretty good 20-year plan. If we don't look more than 20 years down the line, then we are just passing on the buck to a future council with those problems.

MOTION: Warren moved to authorize the Mayor to execute a contract and any other necessary documents with Westar Energy to relocate overhead power lines along Buckner Street underground at a cost not to exceed \$389,849. Arnold seconded.

**Council Member Bannon** stated this is tough for her. If anyone has gone down there, and she urges you if you have questions why we are doing this, drive down the street and look at the east

side. In order to do this we have already agreed that we needed to widen Buckner to make it a long term plan. When you do that Westar is going to come in and move those poles and butcher the trees. We are already affecting those homeowners to a great extent. That's the reason she thinks we don't have a choice, it needs to be done. The flip side of this is that the cost is not \$389,000. It is \$540,000, because whenever you finance this for 15 years on bonds that's what you get. The problem she has with this is because she doesn't see that we have a choice in doing it, she is not happy in the way we are financing it. She has had discussions with Ms. Sexton and so far we have not come up with too many viable alternatives. She does believe that whether we got boxed into a corner, not knowing it, whether Westar put us there or whether just through happenstance we got there, we are there and it has to be done now and we need to pass this this evening.

**Council Member Meidinger** stated that it really wasn't Derby's growth that created this problem. It was a problem when the county changed the street from the intersection of Oliver and K-15. They changed it and forced the traffic into Derby. We didn't create this problem, the county created the problem for us and now we have to pay for it. He doesn't know if we can send the county a bill for this blunder they made but they sure created it for us. He will probably vote for it although he is opposed to it. He thinks we got a bad deal here and what's going to be worse; when we go south on Buckner the people south of the existing construction will expect the same thing. They will expect wiring to go underground and he expects that to come to pass. It's gotten to be a very expensive project.

**Council Member Craig** asked if the houses from Harrell to Lincoln get their electrical service from the front or back.

**Mr. Squires** stated his understanding is on the east side they receive the electrical service from the rear.

**Council Member Craig** asked why they couldn't have put that up on those poles that run in the back of the houses. He is looking for other things that come to mind where they could intercept that. He knows this is the 11<sup>th</sup> hour but if we have existing poles in the back of the house why they couldn't hang that, it's just one line is it not?

**Mr. Squires** advised it is actually three lines. These are unshielded lines and based on that they have to be concerned about arcing and other things to the ground or nearby trees, which is why they want to keep the separation from the trees. He thinks their pole heights and other things are adjusted based on the lines they are putting on, both from a structural standpoint of the pole to hold the line and also the height of the poles and other things to address the arcing issues they have to deal with.

**Council Member Craig** apologized to his constituents because he was under the impression that a utility could not come onto private property and do whatever they wanted to. He has since found out from Mr. Squires's research that that is untrue. A utility can come across your property line and cut your tree down and put in a power pole if they decide to do that because you are a customer to the utility.

**Mr. Squires** stated that is true. He learned that on the previous project when they dealt with it on the intersection. That is not true of all utilities, but it is true of Westar.

**Council Member Craig** asked Ms. Sexton if there were anyway we could buy this down and pay some cash so it doesn't cost us so much in the end. He too has a problem swallowing \$390,000 that turns into \$540,000 over 15 years. Is there any possibility of creative financing in this?

**Ms. Sexton** advised the council knows how conservative staff is on making sure this organization runs at a good financial clip, keeps good bond ratings, has good reserves, is prepared for the rainy day. She advises she has a great deal of confidence in how things are, how we ended the year of 2008 with our reserve fund and how we are cutting expenses in this current budget year to make sure we are prepared should our revenue slow down. She has told the council about some things that have been cut and we have probably cut some more things since she talked to the council last, just to take another look at things to be sure we need this this year or is it something we can hold off on. Those decisions do get made on a day-to-day basis. We do not bring a recommendation to the council in a tough economic climate like we have to spend \$389,000 that was not budgeted in this fiscal year lightly. She and Jean have discussed this a lot. We could go in and cut something else, some other projects. One thing we have done, we had a street project that was in the plan for this year that was to be bonded for \$250,000 and we discovered some issues with bonding that and decided to delay that project. You can certainly think about this project as \$389,000 more of new bonded indebtedness that you hadn't planned on when you did the budget but minus \$250,000 from that other project that we ran into problems on. When you subtract the two the net increase to your debt level is \$150,000 rather than \$390,000. There was another project that Jean was just mentioning, a drainage project that we had planned to bond and when we sat down with our bond counsel and started talking about all the projects we thought we were going to bond, we decided that was a better project to pay cash for. It was \$289,000 that in the budget was approved to be bonded; we ended up paying cash for that for some other logistical reasons, to make sure we could get it done. It was a drainage project and we needed to get it done before the rainy season as opposed to waiting until the fall if we bonded it. You get down to thinking about some of these and that's why some things change. That project was \$300,000 in the budget and came in at \$289,000 that we were planning to bond but didn't, we paid cash and that all happened before this issue came up. When you take into consideration both of those projects, even if you approve this today you are actually at a lower bond indebtedness than what you thought you were going to be when you approved the budget in August.

**Council Member Craig** stated that with that information it sheds a completely different light on the question of do we have the money. Yes we have the money and we are not stretching it, you have actually worked the problem by not doing other things. You don't need creative financing because you have already done it; you need to take credit for that.

**Mayor Avello** asked if there were a clause that we could pay down the debt.

**Jean Epperson**, Director of Finance, explained that typically there will be a call date for the bonds, usually about eight years out. That all depends on what your financial picture is in about eight years.

**Council Member Craig** pointed out that he didn't mean for that discussion to be negative, he meant for it to be positive because the work that is done behind the scenes sometimes just needs a little blurb upfront to give us a confidence that all that has been done, even though we knew in our minds that it is taking place. It reflects very positively on the work that's done finance-wise. The next question he was going to ask was what does this do to our debt percentage. We have a target of 20% and if you are protecting that, and he knows you are doing it, but give him the words to tell him that. He has full confidence in your ability but other people need to understand that also. He thinks that probably changed some of the minds up here. He wasn't ready to add another \$390,000 on top of our existing debt.

VOTE: Motion carried 7-0, Horyna absent.

## **2008 PERFORMANCE MEASUREMENT REPORT TO THE COMMUNITY**

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

### **Background:**

- In 2007, the City of Derby embarked on a cutting-edge performance movement. Derby's 360 Performance Program is innovative in its approach of getting a full perspective (a full 360 degrees) in the development of new measurements by including input from citizens, businesses, elected and appointed city leaders, and city staff.
- In August 2008, Citizen Satisfaction Surveys were mailed to 400 residents in the City of Derby. Addresses were randomly selected from the utility billing database to ensure each ward received 100 surveys. There were 139 responses equating to a 35% return rate.
- This report is the first of its kind for the City of Derby. The report was created with input gathered from focus groups, open houses, and citizen satisfaction surveys designed to probe individual responses by asking "why did you respond the way you did."
- It is the City's intent to produce an annual report to the community. The content and look will change as our community grows, but the purpose will remain the same: to ensure that citizens are informed about the performance of their city departments.

### **Financial/Sustainability Considerations:**

- Originally, this program began using a \$10,000 grant from the National Center for Civic Innovation. Maintaining the program each year has become a routine part of doing business and requires no additional revenues.
- This survey will be done annually at an estimated cost of \$500.

### **Legal Considerations:**

- None

**Policy Considerations:**

- Performance measurements can be effective tools to prioritize goals, and align services and budgets to those goals.

DISCUSSION:

**Council Member Bannon** asked if we questioned how many people knew about the [www.derbyweb.com](http://www.derbyweb.com) website in addition to the [www.derbyks.com](http://www.derbyks.com) website. If not she would like to see that added for next year.

**Ms. Knebel** pointed out this particular measurement is low, that tells us we need to work on that area.

**Council Member Bannon** stated that is why she was wondering what the measurement was on the city site.

**Council Member Craig** pointed out the measurements concerning the website should tell us something.

**Ms. Knebel** stated that some of the comments that indicated that some of the people who responded to the survey may not have immediate and good access to a computer. We need to figure out how to get those people interested in knowing about the website.

**Council Member Craig** asked if this report would be available at the library and the senior center.

**Ms. Knebel** advised it would. The other thing we will start doing is placing copies at the table in the back of the room, so if you are new to the meetings you can take a chance to learn a little bit more about our city government.

**Council Member Warren** asked if the 74% satisfaction under road conditions is a good number or is it a poor number.

**Ms. Knebel** advised one of the next steps will be to start comparing ourselves to other communities and how they are doing in their measures. We need to be a little careful when we start looking at other communities because not everybody goes out and asks their citizens what they think about how the city is doing. We need to remember where the measurements are coming from when we start to compare.

**Council Member Warren** asked if someone wanted to see all of the responses, is there a way to do that.

**Ms. Knebel** stated they could be found on the website under the community tab where it talks about the 360 performance review, the entire survey is there with the results. If you wanted to read 36 pages of comments and calculations, it is there.

**Mayor Avello** asked if there were any surprise comments that weren't mentioned here.

**Ms. Knebel** advised there were. Under Public Works and Water, she was surprised about how high the numbers were for water. Having recently moved to Derby and the things she heard about Derby water she expected those numbers to be low and people to think the water cost was too high and that the water tasted bad. To her that was a surprise because of how high those numbers were. That was her learning about the people that responded to this survey. The surveys were mailed out randomly to homes only, no businesses or apartments. All in all, the comments were positive about all of the departments. It was a good survey.

**Council Member Warren** asked if this would be available at the Chamber.

**Ms. Knebel** stated she had not talked to the Chamber about that. Perhaps they could have a link on their website to make it available. Allison Moeding and Rhonda Cott at the Chamber both know about this, and people knowing about it and where to get a copy will help with that.

MOTION: Warren moved to receive and file the report. Bannon seconded.

VOTE: Motion carried 7-0, Horyna absent.

## **CONSENT AGENDA**

### **Kansas Water Pollution Control Revolving Fund Application**

#### **Background:**

- In May of 2007, the City Council authorized a contract with Camp, Dresser & McKee (CDM) for study and design of the Bio-Solids Handling Improvements at the Derby Wastewater Treatment Facility.
- These improvements are required to improve the capacity of the bio-solids holding and aeration facilities and to reduce the amount of hauling to agricultural fields.
- The 2009 budget indicates the use of the Kansas Water Pollution Control Revolving Fund, or commonly called the State Revolving Loan (SRL) for this project.
- The City has submitted preliminary documentation to the Kansas Department of Health and Environment (KDHE) and the City has been placed on the state's priority list for project approval.
- Staff is now preparing the various application documents required for this loan program. One of the KDHE requirements is a resolution authorizing the filing of the application and authorizing a representative of the City to execute the application documents.

#### **Financial Considerations/Sustainability Considerations:**

- The 2009 budget indicates that \$2,853,000 will be paid by the State Revolving Loan and \$340,000 by the Wastewater Depreciation Fund. Preliminary approval by KDHE includes the full \$3,200,000 for the project.
- The State Revolving Loan program typically provides loans at a lower interest rate than the City's bond rate, thus saving interest costs over the life of the loan.

**Legal Considerations:**

- The City Attorney has prepared the required resolution authorizing the filing of the application and naming the City Manager as the City’s authorized representative.

**Policy Considerations:**

- The Federal economic stimulus legislation recently passed by Congress includes federal funds for environmental projects. In Kansas, these funds will be administered by KDHE, which will select certain projects in the SRL for partial or total funding.
- There are no guarantees that the Derby Bio-Solids Handling Improvements project will be selected for funding, but the SRL application must be completed and on file with KDHE to qualify.

**Recommendation:**

- Approve a resolution authorizing the filing of a Kansas Water Pollution Control Revolving Fund application and authorizing the City Manager as the City’s authorized representative.

**RESOLUTION NO. 16-2009  
A RESOLUTION AUTHORIZING SUBMISSION OF AN APPLICATION FOR A  
LOAN UNDER THE KANSAS WATER POLLUTION CONTROL REVOLVING  
FUND ACT.**

**Assessment Ordinance – Mowing, Trash Removal**

**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 the contracting with vendors for the 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 \$625.00.

**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.