

**APPROVED
REGULAR COUNCIL MEETING
March 11, 2008
7:00 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I
WARD II
WARD III
WARD IV

COUNCIL MEMBERS PRESENT:

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

COUNCIL MEMBERS ABSENT:

WARD III

Charlie Schwarz

Flag salute was led by Council Member Cheryl Bannon.

The invocation was led by Pastor Ben Ray, First Presbyterian Church.

**CONSIDERATION OF
MINUTES**

Minutes of the February 26, 2008 Regular Council Meeting.

MOTION: Warren moved to approve minutes of February 26, 2008 Regular Council Meeting. Craig seconded.

VOTE: Craig yea, Meidinger yea, Nun yea, Warren yea, Schwarz absent, Bannon yea, Staats yea, Arnold yea, 7 yea, 0 nay, 1 absent, motion carried.

PUBLIC FORUM

Kathy Sexton, City Manager went over the items provided to the council at the diaz, including proposals for nursing facilities. Those will be considered by the Economic Development Board at their next meeting. It v come to the council in April after the Economic Development Board renders a recommendation. She also ex the flier provided from "WALES", the Wichita Area Law Enforcement Society. They are having a fundraisin for a law enforcement memorial and this particular fundraising event is a charity golf tournament on Monday, 17th. If anyone is interested in participating in this please give Chief Jay Reyes a call, he is trying to get some from the Derby area to participate and support the local law enforcement efforts. The council also has recei month's copy of the Kansas Government Journal, the magazine published by the League of Kansas Munci Noted on page 49 is Pat Swaney who was recognized as the VFW State Firefighter of the Year. We are p that recognition for Pat.

Council Member Bannon advised last year we had decent attendance at the Summer Concert Series for year. One of the things we heard is that people wanted bigger groups, more well known bands. We have a band coming to High Park on June 21st, the band is Head East. If anyone is from the 70's you remember the *Never been any reason or Love me tonight*, they will know the band. It is a free concert to the public so keep on your calendars. She went on to say that in one hour last week the library committee picked out the interior exterior decorations for our new library. We are making headway, choices have been made and the floor plan done and we are going to have a formal ground breaking in the next couple of months. A couple of months that will be the "real" groundbreaking where they actually start digging.

Council Member Arnold stated that there was a fire a couple of weeks ago where the garage and car caught fire, all of the debris is still there and he has received several calls asking what the follow-up is in referring removing debris and making that site safe.

Ms. Sexton advised she would check on that and see what is happening. She was not aware of any concern might be a private insurance company matter, but we will follow up and make sure it gets cleaned up.

Council Member Arnold stated he told the residents he thought there was a time frame involved simply insurance to do their evaluation and find out what the cost would be and what they would get in return. Another item he has is that some time ago individuals came before the council and talked about building a war memorial Derby at Garrett Park. Robert Mendoza set aside a certain amount of land for that particular memorial and one of the few people that made a donation, yet he hasn't heard a thing since. He asked if anyone in the city be aware of what might be taking place that we aren't hearing about.

Ms. Sexton offered that in terms of her communications with the Derby Community Foundation, who understands are the keepers of the money, they are still accepting donations if anyone wants to make donation organizing group has some efforts still remaining in terms of raising funds. She does not have any particular other than to say they have not raised enough to do the project and they are still taking donations.

Mayor Avello stated he attended the REAP meeting yesterday and one of the topics discussed was Biomedical will hopefully come to this committee, spearheaded by WSU. KU wants to form a partnership and have it up but he believes it will probably come down here because of all the aerospace plants we have in the area. He needs a new hip but there are very few sizes in hips and materials that can be used and they are looking at doing with composites which will open the field tremendously. He hopes that WSU gets it and he thinks you hearing a lot more about that in the media.

OFF AGENDA ITEM

MOTION: Arnold moved to accept an off agenda item. Warren seconded.

VOTE: Craig yea, Meidinger yea, Nun yea, Warren yea, Schwarz absent, Bannon yea, Staats yea, Arnold yea, 7 yea, 0 nay, 1 absent, motion carried.

Mayor Avello explained this was another item discussed at the REAP meeting. Everyone is aware of the tanker deal with Boeing and it was discussed at the end of the meeting of Wichita and surrounding cities forth a resolution backing Boeing on their attempt to overturn the contract. As we were speaking Mayor

was in Washington delivering Wichita's resolution to Congressman Tiahrt. By unanimous vote of the Committee, which is five counties, every one of the counties is going to do this. He asked Ms. Sexton to resolution before the council tonight to join the rest of the cities backing this resolution. Mayor Avello then resolution.

MOTION: Warren moved to approve the resolution as presented. Staats seconded

VOTE: Craig yea, Meidinger yea, Nun yea, Warren yea, Schwarz absent, Bannon yea, 5 yea, Arnold yea, 7 yea, 0 nay, 1 absent, motion carried.

2008 TREE LIST & PLANTING GUIDE

Robert Mendoza, Director of Parks and Public Works presented Dave Peebler. Mr. Peebler presented the 2008 tree list and planting guide.

Background:

- The Parks and Urban Forestry Board is tasked by ordinance to create and recommend a Tree List to help the citizens of Derby understand the benefits of properly using trees in their landscapes.
- The provided list is not designed to be all encompassing, rather a general guideline of appropriate species.
- The Tree List brochure is designed to offer a common list of trees and planting guidance, while providing contact information for other agencies which can provide further assistance.
- The brochure will be printed and distributed in the monthly water bill mailing, available to the public for pick up at City Hall, and is being provided to local businesses that offer plants and shrubs for public purchase.

Financial Considerations:

- Printing Costs: \$300

Legal Considerations:

- In recommending tree species for planting in public spaces, the board is acting pursuant to City ordinance.

DISCUSSION:

Council Member Craig thanked Mr. Peebler for the work that the committee has been doing. He knows this combination of work that takes a lot of folks to get done and he is sure that everyone will appreciate at least his recommendation of what to put in the ground because most of us did it blindly 20 years ago.

MOTION: Craig moved to accept the recommended 2008 Tree List & Planting Guide and thank the Parks and Urban Forestry Board for its work. Bannon seconded.

Council Member Craig thanked everyone for their efforts and the citizens of Derby should be aware there is a garden tour and other things coming along. He has been getting a lot of comments about the city developing green space and this is the way we do it. To make it look better we have to have some good guidelines.

Council Member Bannon stated that we have been a Tree City for several years in a row and this is part of what helps. She pointed out that we are losing a lot of our pines and asked if the Vanderwolf Pine is susceptible to a disease that is wiping out the rest of them.

Mr. Peebler stated he is comfortable in saying that if Mr. Griffin put this on the list he assumes that it must be fairly resistant to the diseases going around. A lot of these pines aren't going to be with us very much due to disease.

Council Member Bannon thanked everyone for their hard work.

Council Member Craig stated that over the last three years he removed three pines out of his yard and this was recommended to be put back in. It is a hearty variety but is not as full as some of the other pines but it does have good disease resistance.

Mr. Peebler strongly recommended anyone that is going to put a tree in their yard and is not sure, Jason G. at the horticulture center is a good place to make a phone call to.

VOTE: Craig yea, Meidinger yea, Nun yea, Warren yea, Schwarz absent, Bannon yea, Staats yea, Arnold yea, 7 yea, 0 nay, 1 absent, motion carried.

ARKANSAS RIVER CORRIDOR ACCESS PLAN

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

Background:

- In 2005, the City of Wichita Parks Department began preparations for creation of the Arkansas River Corridor Access Plan. The purpose of the study was to identify key access points along the Arkansas River from Rice County to the Oklahoma border for recreation purposes.
- The ARCAP Plan is evolved into a multi-jurisdictional plan that included partners from a three-county area. Partners include the cities of Derby, Hutchinson, Oxford, Wichita, and South Hutchinson, as well as Reno County, Sedgwick County, Sumner County, the Arkansas River Coalition, and the Kansas Department of Wildlife and Parks.
- Applied Ecological Services in association with Patti Banks Associates were selected to provide services to develop the Arkansas River Corridor Access Plan (ARCAP). The final report with recommendations has been completed and provided to each partnering agency.
- The ARCAP plan will be used as a future planning tool and as a guideline for future recreational and land development opportunities.
- This project will greatly enhance the quality of life for citizens of Derby and surrounding communities along the Arkansas River by increasing the recreational opportunities and activities in which to participate.

Financial Considerations:

- Each partner provided a financial contribution to this project. The City of Derby invested \$500 in 2006 to participate in the plan.

Policy Considerations:

- This ARCAP master plan is a helpful tool to the region as well as to the City of Derby. It provides the City with the information needed to proceed to develop a master plan for development of a riverfront park at the current site of the Public Works & Parks facility. The PWP facility will relocate to a new site, making a park site available to develop on the riverfront in 2010.
- A city park with river access, parking, restroom facilities, and other park amenities will benefit the community in many ways. Not only will Derby residents have their own access to the river, but people from all around the south-central Kansas region will be able to dock their canoes or kayaks in Derby to enjoy a meal or shopping in Derby along the K-15 business corridor. Just like Rock River Rapids, this river access will bring visitors to Derby who in turn will spend money here. Also, development of a park at the current Public Works site will be an opportunity for beautification of the major west entry into the city with gateway signage and landscaping.

DISCUSSION:

Council Member Warren thanked Mr. Mendoza for his involvement and leadership in this process. We don't have near enough lakes, so one of the few natural resources that we have is the Arkansas River and it is woefully under utilized. Hopefully this is something that will come to fruition. He mentioned there will be some opposition to homeowners along the river corridor and he asked if Sedgwick County stands on this recently. Where are we in terms of the involvement with property owners along the river corridor?

Mr. Mendoza advised this was taken to Sedgwick County for their review and approval. It was not knocked out by citizens but there was no doubt there was concern about availability and access to private property along the river on both sides of the high water bank. They chose, at this point in time to do a little more research and understand what the requirements are and the cost of the system to them if and when they do get involved. That has been at this time and it will be coming back to them. The City of Wichita did the same thing, when they presented their plan to the City Council it was sent back to the Friends of the Arkansas River for review and final opinion. There is no doubt we are all looking at how it affects property owners around us and the plan really addresses that. We need to look at how we best protect these property owners and their basic rights. Some of the things in the plan that will be available to the public are providing some resources and processes such as signage, security, waste and recycling programs, and trash ins and outs. Right now most of the problems occur because people are trespassing on other people's property. By providing a system that is accessible lawfully we hope to deter some of the crime that is out there. The more we invest in the park and the more people are active, crime is deterred.

Council Member Warren encouraged Mr. Mendoza's continued involvement in this. He is not insensitive to the concerns of the people that live along the river but the river should not be reserved just for those that are fortunate enough to have the money to own land along the river. It should be available for everybody and anything we can do as a community to promote that, we need to be at the forefront of that, while protecting the rights of those that do live along the river. He understands their concern but this is not just theirs, it belongs to the community and we need to be able to take advantage of it.

Council Member Staats asked about the access point at Woodland Valley Park, who owns the land up to the river?

Mr. Mendoza advised that is privately owned. The property wrapping around Woodland Valley Park is privately owned and the city only has a small portion based upon the easement given for park land. We don't have direct access from that park to the river.

Council Member Staats asked if managing water levels has been discussed. If you pay attention to the river usually flowing quite vigorously through town, or you can walk across it depending on rain fall throughout the year. Have they talked about trying to manage it so it has a more consistent flow so people could kayak, or would you have to wait until 2 days after it rains when there is enough water flowing through there?

Mr. Mendoza stated there is no doubt that each community has its own way to regulate the water that is flowing through it. This plan does talk about those restrictions and the need that should occur, or can occur to manage the flow. That does not mean we have all agreed on what that answer is yet or what that answer will be a way of getting around obstructions. This allows us to almost work backwards, providing locations and access to centralized recreation opportunities and working through the very long process of finding ways to keep the river flowing on a regular basis. Whether it be through dredging, side barring or a lot of different things, there are many opportunities out there and he does not know how that is all going to play out. We have a lot of sand around us, but we also have just south of us some pretty good flow. They have taken a look at that on an annual basis as far as rain fall goes and the hydrology for these areas to say how far we can go. There is no doubt you will be dragging a kayak or canoe a little bit. Primarily you will be able to have a recreational opportunity from downtown down to Oxford. Even as the north develops into Wichita it is going to take time and there is no set answer to the question yet because each community will define that for themselves.

Council Member Bannon asked if this is approved tonight are we approving the second location across the river because there are a number of concerns she has with that one including cost, utilities and flooding. She asked if that was part of the plan.

Mr. Mendoza advised it was not, he just showed that because he wanted to show this plan is already factored into private development. That is not a public access point or something the city would be involved in at this time to even develop. He just wanted to show that through this process land owners along the river are starting to look at the possibility and the value of river recreation. They put themselves in the plan to say look at this as a future use.

Council Member Bannon clarified that by approving this plan tonight we are just saying that where public access is currently located we are looking at a future access point. It sounds like Wichita and Sedgwick County have approved the plan yet, is that correct?

Mr. Mendoza advised that was correct, it has gone back for more discussion and review although Wichita county is going to build, design and plan for their river front access points from downtown, north and south.

Council Member Arnold he likes to float rivers himself and did for a number of years in Arkansas on the Arkansas River. There is a lot of private land and a lot of them had signage up so when you were coming down you would know where to stop and where not to stop. The area he went to has really developed because of the river, he doesn't know if they have any information they might want to share but it would be worth looking in to.

Council Member Craig asked if there is a comprehensive approach to making the river better as far as clean water and improving it and making it safer.

Mr. Mendoza advised that water quality was a definite conversation. They did all the testing to identify water quality in conjunction with the stopping points. There are a lot of other issues and organizations looking at that as well.

finding ways to clean up the quality of the Arkansas River. There is no doubt that there are some locations worse than others. Some of those things are identified in this plan as things develop, to clean up and improve water quality as well.

Council Member Craig indicated his impression is if we decide to move in this direction, our boundary even we don't own it, would be our responsibility to make that happen. With any type of project that has access to there is a certain amount of liability involved. Do we have an idea what we incur as liability for developing front part that has to do with water?

Kathy Sexton, City Manager advised that we don't know a lot of things. We couldn't tell how much it's going to cost to develop this park, that's why we are just looking for general direction of whether or not to include a park master plan and CIP. We have not done in depth research on any of this, but Mr. Alexander can explain the cost of the city with any park or any type of public facility. There are a lot of questions, you are not approving a park or time schedule tonight. We are just asking if this is the general direction we want to head then we would like it in our master plan and get cost estimates that would include insurance and such.

Council Member Craig stated that as a public amenity the river belongs to the public, he just wonders how to provide access for it that those are just questions that have to be answered in the future. He is sure there is a road ahead of us in doing this.

MOTION: Craig moved to accept the Arkansas River Corridor Access Plan and direct staff to include a riverfront park in the City of Derby's Park Master Plan. Arnold seconded.

Council Member Nun asked why this was brought to the council tonight, we have a consultant hired to work on a master park plan, we have a committee formed to do that and so far they are not to this point. What do we achieve by the council directing this to be input into that plan?

Ms. Sexton advised this was in the paper a month or so again when the County was looking at this and there were some property owners way out in the county who were concerned about it. We have had a couple of meetings of our park master plan committee and people are sometimes looking toward the city staff or elected officials to see if this is going to be an issue. She might be confused but she thought Wichita had already passed this, essentially every governing unit who is a part of it is taking it forward for direction and we wanted the council to know that Derby already has a piece of land and our part would be an access point. In talking with the Park Director with the City of Wichita, the primary piece for the City of Wichita to do is deal with some of those big obstructions. They are going to put their money, and they have already allocated a couple million dollars over the next few years to clean out those obstructions so there will be clear flow. It seems pretty obvious that what some of the other cities should be doing is providing access points and since we have the land and opportunity we thought it would be good to focus the council in so that if there are any concerns then the park master plan would have time to be amended before it is brought to the council for approval.

Council Member Bannon asked if they were provided the whole plan.

Mr. Mendoza advised they had not, that little handout is just some brief information about what is going on, the whole plan is available for the public to view.

Council Member Bannon indicated she would hate to pass a plan she hadn't seen. It is a good direction and is something that is very viable and feels it is great to get in on it, but she has real heartburn about passing a plan she hasn't seen.

Council Member Craig stated that all we are doing is talking about a small piece of property that in a few years hopefully we will be vacating and doesn't see any problem with it right now.

Mr. Mendoza pointed out that this plan does not require us to do anything. It does not set guidelines, timeframes, dollars, anything. What it is, is a plan for the future development as a partnership with other people to identify the best way to allow river recreation to happen. That is the partnership we are entering into with this plan. There are no concrete requirements of this plan but if he could have set a guideline it would have been basically the same thing, trying to find ways that we can all share equitably in creating a system of recreation.

Mayor Avello if the park discussed over the river comes to fruition would that be another access point.

Mr. Mendoza advised that access point does exist now, that is one he showed about 1 ½ miles north.

VOTE: Craig yea, Meidinger yea, Nun yea, Warren yea, Schwarz absent, Bannon nay, Staats yea, Arnold yea, 6 yea, 1 nay, 1 absent, motion carried.

PURCHASE OF 10-TON DUMP TRUCK & SNOW EQUIPMENT FOR STREETS DIVISION

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

Background:

- This is an approved item identified in the 2008 Vehicle Replacement Plan to replace a 1987 Ford F800 dump truck and snow removal equipment. This truck has a failed and obsolete brake system. Parts cannot be purchased to repair and maintain this braking system. The existing vehicle will be traded in and is valued at \$5,000.
- Sealed competitive bids were received and opened on January 2, 2008.
- 6 vendors were contacted, of which 3 responded. These include Kansas Truck w/Midwest Truck Equipment in the amount of \$99,301, Kansas Truck w/Truck Parts and Equipment in the amount of \$96,712 (snow removal equipment doesn't meet specifications) and Roberts Truck Center in the amount of \$94,978 (snow removal equipment doesn't meet specifications). Even though the snow equipment in two proposals is not preferred, all three trucks proposed meet specifications, although the truck proposed by Kansas Truck has a bigger engine with a longer expected lifetime.
- Because of the complexity of the bid specs and the diverse production methods and materials of each vendor, a bid matrix was used to compare the bids. The matrix shows that the bid from Kansas Truck w/Midwest Truck Equipment in the amount of \$99,301 most accurately fulfills our bid specifications and expected quality for snow equipment.
- The Bid Board reviewed all documents and approved the bid from Kansas Truck w/Midwest Truck Equipment on January 31, 2008.

Financial Considerations:

- The 2008 approved budget includes \$120,000 for the 10-ton dump truck. The actual bid received from Kansas Truck w/Midwest Truck Equipment is \$99,301.

- Requested equipment is \$20,699 below budget.

Legal Considerations:

- All legal requirements governing solicitation and acceptance of bids have been satisfied.

Policy Considerations:

- The department followed all bid and purchase guidelines as required by the City of Derby Purchasing Policy.
- Detailed specifications were written for this bid process based on the department’s history of using snow removal equipment of both primary types on the market. Our preference is for the type of equipment that promotes safety (both of the operator and the motoring public) and ease of operations, as well as lower lifetime maintenance costs.

DISCUSSION:

Council Member Craig clarified that two did not meet the requirements for snow removal equipment and that Kansas Truck did meet all requirements.

Mr. Mendoza advised that was correct.

Council Member Craig asked if the motion should have Midwest Truck Equipment included.

Ms. Sexton indicated the motion was written correctly, Kansas Truck is the one making the bid in the contract with the city, they will sub out the snow removal equipment with another company but we are not going to have two contracts.

MOTION: Craig moved to approve the purchase of a 2008 ten-ton dump truck with snow equipment from Kansas Truck for \$99,301 and authorize the City Manager to sign the contract. Arnold seconded.

VOTE: Craig yea, Meidinger yea, Nun yea, Warren yea, Schwarz absent, Bannon yea, Staats yea, Arnold yea, 7 yea, 0 nay, 1 absent, motion carried.

**VACATION REQUEST –
PLATTED FLOODWAY
IN LOT 2, REPLAT OF
PART OF BLOCKS 1 & 2,
OAKWOOD VALLEY
ESTATES ADDITION**

Bud Newberry, City Planner presented the staff report.

Background:

- This lot is located on Sharon Ct. which is a cul-de-sac running north from the intersection of Partridge Lane, Partridge Circle, and Sharon Drive in the Oakwood Valley Estates Addition.
- This lot is zoned “R-1” Single Family Residential.
- The lot is platted with most of the back portion of the lot shown as a floodway. This was done because FEMA’s official map of the floodway along Spring Creek included this lot at the time of platting.
- This case was presented to the Planning Commission during its meeting on February 21, 2008. The Commission agreed with staff’s recommendation and voted unanimously to approve this vacation request without conditions attached.

Financial Considerations:

- None.

Legal Considerations:

- Procedures set forth in K.S.A. 12-504 and 505 have been followed by city staff in regard to all requirements necessary to process the subject vacation request.
- Pursuant to state law and the Subdivision Regulations of the City of Derby, if the Governing Body determines from testimony presented that:
 - a. Due and legal notice has been given;
 - b. No private rights will be injured or endangered;
 - c. The public will suffer no loss or inconvenience; and
 - d. In justice to the petitioner, the vacation should be granted, then, the Governing Body has the authority to approve this request as recommended by the Derby Planning Commission.

Policy Considerations:

- Similar requests in the past have been approved by the City Council.

Mayor Avello opened the public hearing, with no one present to speak the public hearing was closed.

MOTION: Nun moved to approve the vacation of platted floodway on Lot 2, Replat of Blocks 1 and 2, Oakwood Valley Estates and authorize staff to prepare and publish the Vacation Order. Craig seconded.

VOTE: Craig yea, Meidinger yea, Nun yea, Warren yea, Schwarz absent, Bannon yea, Staats yea, Arnold yea, 7 yea, 0 nay, 1 absent, motion carried.

**PROPOSED
AMENDMENTS TO THE
SUBDIVISION
REGULATIONS**

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

Background:

- On October 18, 2007, the Planning Commission conducted initial discussion of the amendments to the Subdivision Regulations that were recommended by staff.
- Refinements by the Planning Commission were further discussed at the November 1, 2007 meeting.
- After the appropriate advertisement in the City’s official newspaper, the Public Hearing was conducted at the Planning Commission meeting on February 7, 2008. No public testimony was received.
- The following are general descriptions of the proposed amendments:
 1. **Section 103** amends the jurisdiction areas of the Subdivision Regulations by eliminating those lands which have been annexed by the City of Wichita.
 2. **Section 202** modifies the definition of a “Private Street” and adds a definition of a “Traffic Circle/Roundabout”.
 3. **Section 307** clarifies the conditions under which zoning/building permits are issued for alterations to existing structures.
 4. **Section 400** streamlines the platting process by eliminating the requirement for Sketch Plats (in some situations).

5. **Section 413** requires developers to submit copies of plats (for subsequent use and distribution to City Council) and to submit electronic copy of the Final Plat.
 6. **Section 418** broadens the scope of the “Final Plat Only” conditions.
 7. **Section 602** modifies the requirement for Arterial Street Right-of-Way to 120 feet, and the Collector Street Right-of-Way to 70 feet. It also modifies requirements for the cul-de-sac radius. Section 602 also clarifies provisions for private streets.
 8. **Section 603** requires 30-foot drainage easements when combined with other utilities and expands the need for pedestrian easements.
 9. **Section 604** modifies the requirement for each non-residential lot to have a minimum 35-foot frontage (amendment allows access easements).
 10. **Section 606** amends the wording for drainage dedications/reserves by eliminating the word “Floodway” which can be confused with FEMA terminology.
 11. **Section 700** clarifies requirements for sidewalks, storm water detention facilities and concrete walls along certain streets.
 12. **Section 901 and 902** changes procedures for Lot Split approval, allowing staff to approve those administratively, but allowing the Planning Commission to hear cases that may be protested.
- In most cases, the proposed amendments will formalize routine actions and requirements already being exercised by staff and Planning Commission.

Financial Considerations:

- There are no financial considerations.

Legal Considerations:

- Kansas law authorizes cities to adopt subdivision regulations.
- Subdivision regulations may apply to the immediate environs of the adopting city as well as to the incorporated area.
- K.S.A. 12-749 provides the governing body with three options:
 - a. Approve amendments to the subdivision regulations as recommended by the planning commission (simple majority required).
 - b. Override the planning commission’s recommendations in one or more particulars (requires 6 affirmative votes).
 - c. Return the recommendations to the planning commission with directions for further study (requires majority vote).

Policy Considerations:

- Both the Comprehensive Plan and Subdivision Regulations recommend periodic reviews and updates of the regulations.

ORDINANCE NO. 1927

AN ORDINANCE AMENDING SECTIONS 103, 202, 307, 400, 413, 418, 602, 603, 604, 606, 700, 901 AND 902 OF THE SUBDIVISION REGULATIONS OF THE CITY OF DERBY, KANSAS, REGULATING DEVELOPMENT OF LAND WITHIN THE CITY AND ITS ENVIRONS; AND REPEALING ORIGINAL SECTIONS 103, 202, 307, 400, 413, 418, 602, 603, 604, 606, 700, 901 AND 902 OF SAID REGULATIONS.

Council Member Bannon stated it is great that the plat is going to indicate ownership and maintenance responsibility of the reserve areas. We have a subdivision in town that would have benefited from that previously and even though it’s not a final solution it will help a lot. She asked about fences being 6’ft in height, previously that applied to a fence abutting an arterial but now it applies if it abuts collector streets, is that correct?

Mr. Brown advised that was correct.

Council Member Bannon asked about Quail Run that was platted not that long ago, a question was brought up about one of the main streets going through there. Is that now going to go by this ruling or will it go by what was in effect at that time. If she remembers correctly one street through there was a collector street.

Mr. Brown agreed. This particular ordinance does not cover all collectors, but to those collectors where lots do not have direct access. In many cases we have a collector and obviously have houses that have direct access to that collector. We try to design our subdivisions without that but occasionally it does happen.

Mr. Alexander asked what section Mrs. Bannon was referring to.

Council Member Bannon explained basically the question is, we have a subdivision that we did the final plat on probably 6 months ago, it had a collector street in it and at that time the question was raised whether or not it could have wood fences. At that point because of our current subdivision regulations then, the answer was yes. Now we are changing our subdivision regulations so that wood is not allowed.

Mr. Alexander explained it is the nature of the subdivision regulations that they apply at the point in time when the property is being platted. Property platted under old regulations, those regulations would continue to apply.

Mr. Brown clarified it would not be retroactive back to that plat.

Mr. Alexander advised that was correct.

Council Member Warren stated there is a section that deals with private streets and reads “such streets shall be constructed by the same standards of a public street”. Recently there was a new subdivision in Bel Aire where all of the homes had their garages and drives open to the back of the property with a street running along the back side that was not a part of the public street per se. He asked if that would be considered a private drive and would that have to have the same width as a street? The one he saw had maybe 10-12 homes with the street open on both ends, it wouldn’t be what you would consider a public street but it is a private street and was considerably narrower than what we would consider our standard street situation, is that going to be a problem with this?

Mr. Brown commented that what Mr. Warren is describing is really kind of like an alley. You have a dedicated right of way that is narrower than our standard street description. The main thing that we wanted to accomplish here is that we have some developers that want to install private streets to put in a gated community. With that gated community they are now responsible for the streets inside that community. What we want to ensure from a safety point of view that the street width, strength, etc. would be there like a normal street would be, it is just that they

maintain it if they want to gate it. We are not trying to address the alley issues presented in this case.

Council Member Warren asked if there is a separate section to address alley driveways.

Mr. Brown stated that alley's are 20-feet in width according to the section in our ordinance, under Section 602, paragraph b. He does not think we can define private street in that case. Private streets are going to be the width of the streets in the table, which are 120-ft for arterial, 70-ft for collectors, and 60-ft for local streets. In that particular case his interpretation of what Mr. Warren is describing is an alley.

Council Member Warren asked if a gated community would be restricting all on street parking as a part of their restrictive covenants, would there be a need to maintain the same width of streets as we have on our public streets that allow street side parking?

Mr. Brown stated that could be done through the Planning Commission, they would have the authority to change the street right of way in certain conditions during the platting process. If a developer wants a no parking street perhaps the width could be narrower, but that is something that would be done through the Planning Commission.

Council Member Warren asked Mr. Alexander if he concurred that that is something that could be waived or changed by the Planning Commission.

Mr. Alexander advised he agreed.

Council Member Craig commented that most developers, when they put a fence around a development do masonry or wrought iron/masonry, what if by chance the area is not fenced by the developer and private owners want to do it, are they now bound by this? A prime example is 71st street with a wood fence that goes from Buckner to Windmill or Montana. The developer did not build a fence but the homeowners did and they are all wood. He asked if this will encumber the homeowner to put up this type of fence.

Mr. Brown advised it encumbers the developer to do it, he will provide a guarantee that he will put up a fence. It is a requirement of the subdivision regulations, just like he guarantees streets, sewer, water, etc.

Council Member Bannon asked if there is a reason we took out the restrictive covenant being filed as far as who is going to maintain that and incur the costs.

Mr. Brown stated that we can put that requirement on the face of the plat rather than in a separate covenant document.

Council Member Bannon indicated that the way she reads this there is no mention in the new subdivision regulations as far as making requirements for guarantees as far as who is going to pay

the maintenance dollars, page 8-36. She doesn't want us to end up with roads and no one to maintain them because it is 2-3 owners down the way.

Mr. Brown stated that may be something we need to add.

Council Member Bannon pointed out all of the wording as far was maintenance, costs on who was going to be responsible for that.

Mr. Brown advised that on page 16, Section 602-L-3 "a covenant shall be submitted for recording which establishes the benefiting property owners will be responsible for all maintenance".

MOTION: Bannon moved to approve an Ordinance amending designated sections of the Subdivision Regulations. Craig seconded.

VOTE: Craig yea, Meidinger yea, Nun yea, Warren yea, Schwarz absent, Bannon yea, Staats yea, Arnold yea, 7 yea, 0 nay, 1 absent, motion carried.

PROPOSED AMENDMENTS TO MUNICIPAL CODE REGULATING FENCES

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

Background:

- City staff recently reviewed all of our nuisance codes with consultant Dave Paulsen who researched issues with other cities, and provided recommendations for modifying our ordinances to address concerns.
- Since then, both the Ordinance Review Advisory Board and City Council have approved amendments to the City Code regarding environmental health (tall grass and weeds, bulky waste, inoperable vehicles, and the like). The Construction Trades Board and City Council recently reviewed and approved new building codes for new construction. The Planning Commission has approved amendments to the Subdivision Regulations which will be considered by the Council at the March 11 meeting. All of these actions are in an effort to update the city ordinances and regulations.
- At the January 22, 2008 City Council meeting, staff presented recommended amendments relative to fences as follows:
 - Require a permit for fence replacement as well as new construction.
 - Require support braces and posts to be on the interior of the fence ("finished" side of the fence will face public street).
 - Give Code Enforcement personnel the authority to cite property owners who have dilapidated fences.
- At that meeting, the City Council requested that staff modify the proposed ordinance so that fences facing a public street could also be constructed with boards on both the exterior and the interior of the supports in an alternating pattern, commonly called a "shadow box" fence.
- Council tabled action on this item to allow the ordinance to be re-drafted for review and consideration.

Financial Considerations:

COUNCIL MINUTES

-14-

03/11/08

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

Legal Considerations:

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

Policy Considerations:

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

ORDINANCE NO. 1928

AN ORDINANCE AMENDING CHAPTER 15.28 OF THE DERBY MUNICIPAL CODE, PERTAINING TO PERMIT REQUIREMENTS FOR FENCING AND MAINTENANCE AND PUBLIC SAFETY STANDARDS FOR FENCING; AND REPEALING ORIGINAL CHAPTER 15.28 OF SUCH CODE.

Council Member Meidinger stated that when he looks at fences in some of our older developments along Madison, Buckner and Meadowlark you see quite an array of fences. You have wood fences, composite or plastic fences, wrought iron and masonry. He was hoping we would get some sort of uniform code for fences along these areas. You can go out and look along Madison right by city hall, some of those fence are in disrepair, in his opinion. If you asked the homeowner they might think there are 10 more years left in them. He looks at these wooden fences along streets that carry a lot of traffic, he was hoping to get some of those wooden fences, or make them more uniform. His real thought would be to have them replaced with masonry fences and go from there. He does not like this ordinance and he’s not sure you can put one together to address those needs unless you are going to masonry fences along those streets he mentioned.

Mr. Brown advised that this particular ordinance does not address that obviously. It is intended that when things are replaced that they come up to this new code. He asked Mr. Alexander if the council would have the right to require masonry fences when they are replaced, that is not addressed in this ordinance.

Council Member Meidinger stated that the other thing that is not addressed, you can look on Meadowlark, the fences aren’t even in a uniform line. Some of them might be 20-feet back from the sidewalk, some are right up to the sidewalk. He would think you would want some uniformity in that respect also.

Mr. Brown explained that typically those are placed at the property line and as the permits come in he thinks we can see that that is taken care of.

Council Member Meidinger pointed out that according to this they are not required.

Mr. Brown advised that was correct.

Council Member Meidinger asked why it wouldn't be put in here as a requirement to have a straight line fence.

Mr. Brown advised if Mr. Meidinger wants it required, then let's change it.

Council Member Meidinger advised he is just asking, it looks like you are opening up a lot of negotiation for an ordinance. That way the land owner couldn't get into a negotiation, you can just say it's going to be this way and that's it.

Council Member Craig asked if maintenance and repair will be detailed in the ordinance. He does not want it to be vague, he wants people to know what they can and cannot do with and without a permit.

Mr. Brown indicated the confusion is perhaps in the word "replace" and where you are doing some maintenance you are actually replacing some boards. That is not the intent, perhaps the words should be "replace any fence in its entirety" to clarify that it is not just a board or post replacement.

Council Member Craig advised he believes we are moving in the right direction to give code enforcement personnel the authority to site property owners who have dilapidated fences. He thinks that will be a big step forward in getting some of those corrected that are in definite disrepair. He would like to see the ordinance contain specific language so that people know whether they have to have a permit or not. If he goes out and replaces posts, he wants to know that he is okay and doesn't have to have a permit.

Council Member Bannon stated that what we just passed in our subdivision regulations will keep all of the brand new subdivisions in line but as far as going back and requiring it now of folks some of these wood fences are in areas where masonry fencing is very cost prohibitive. A lot of our subdivisions now are having difficulty even where the homeowners association has to take care of it because those are set on concrete footings and they break out over time, it is a very expensive type of thing, plus a lot of times you have to insure those things for when people hit them. She wouldn't want to put that cost on the homeowner. The attorney can correct her if she's wrong, but whenever she has dealt with property lines and fences in the State of Kansas you can fence all the way up to, and on your property line, or some people prefer to fence where the easement is. That is a personal choice that she doesn't know that it's up to the city to take that away from the homeowner would be her thought on that.

MOTION: Bannon moved to approve an Ordinance amending Title 15 (fence regulations) of the Municipal Code as proposed. Craig seconded.

Council Member Warren asked about the section on construction and maintenance requirements, how do we deal with a fence that was put up three owners ago and nobody knows exactly where the property line is and the fence falls down and they say “it’s not my fence, it’s his fence”. How do we deal with those kinds of issues?

Mr. Brown advised from the city standpoint it would be easy, we would cite them both and let the judge figure it out. Another solution, perhaps, is that we have a fence permit on file indicating who owns that fence to start with. That is not always the case but in many cases we would have some record of who put the fence in originally.

Council Member Craig pointed out he did make a suggestion about the language pertaining to maintenance and repair and asked if anyone had a problem with putting that in there so we know what is permitted or unpermitted.

Council Member Staats agreed with Mr. Craig, we need to be a little more specific on what constitutes a repair.

Mr. Brown pointed out that under the permit required section it says that “no person shall erect, construct, reconstruct or replace”, it doesn’t say the word repair.

Ms. Sexton advised that at the last meeting when this was discussed that issue came up and it was addressed when Mr. Alexander pointed out there are a number of ordinances that have rules set out but then require staff to make judgment calls on the maintenance issue, but we thought it was pretty clear. If the council wants more specifics, Mr. Alexander has drafted new language to be inserted at the end of the sentence under permit required, “no person shall erect, construct, reconstruct or replace any fence without obtaining permit therefore from the city, provided that no permit shall be required for maintenance, including minor replacement of components”. If you like that we can add it, if you think that the words “erect, construct, reconstruct or replace” sufficiently exclude maintenance then you could leave the motion as is. If someone would like to offer an amendment it would be to add the following words at the end of sentence one in Section 15.28.020 “provided that no permit shall be required for maintenance, including minor replacement of components”.

Council Member Bannon indicated she was the one that brought that up at the last meeting and she spoke with Mr. Brown today and she did feel more comfortable after talking to him because it was difficult to determine where to draw the line but it sounds like Mr. Alexander has come up with a solution. She withdrew her motion.

Council Member Craig withdrew his second.

Ms. Sexton clarified that the person who made the original motion attempted to change it and then decided to withdraw it in order to make a new one, which is proper Robert’s Rules.

AMENDED MOTION: Bannon moved to approve an Ordinance amending Title 15 (fence regulations) of the Municipal Code as proposed, adding the following words at the end of sentence one in Section 15.28.020 “provided that no permit shall be required for maintenance, including minor replacement of components”. Arnold seconded.

VOTE: Craig yea, Meidinger yea, Nun yea, Warren yea, Schwarz absent, Bannon yea, Staats yea, Arnold yea, 7 yea, 0 nay, 1 absent, motion carried.

**STREET AND
STORMWATER SEWER
IMPROVEMENTS FOR
THE OAKS ADDITION**

Dan Squires, City Engineer presented the staff report.

Background:

- A bid opening for the construction of street and storm water sewer improvements to serve the Oaks Addition, Phase 7A was conducted on Tuesday, February 26, 2008 at 2:00 p.m.
- Bids were submitted by contractors after advertisement in the appropriate publications.
- The following bids were received by the City Engineer’s office and witnessed by the City Clerk:

Cornejo & Sons, Inc.	\$337,448.20
APAC-Kansas, Inc.	\$334,736.70
Lafarge North America	\$330,297.95
Kansas Paving	\$327,357.70
Engineer’s Estimate*	\$220,029.80

*Engineer’s estimate prepared by Baughman Company, P.A.

- The low bid of Kansas Paving exceeds the engineer’s estimate and would result in project costs exceeding the costs allowed by the approved resolutions. However, the developer has agreed to pay out-of-pocket that portion of the cost that exceeds the level permitted by the approved resolutions.

Financial Considerations:

- Funds for the project will be included in existing and future temporary note issues.
- Construction costs for the street and stormwater sewer improvements will be paid 8.9% (\$29,214.62) by the developer, 91.1% (\$298,143.08) by the benefit districts (resolutions No. 52-2007 and No. 38-2003), and none by the City-at-large.
- Special assessments will be spread against the benefit district properties over a 15-year period.

Legal Considerations:

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

Policy Considerations:

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

- Negotiating with the developer for payment of a portion of the total project cost protects the City and the landowners within the benefit districts without requiring rebidding of the work.

DISCUSSION:

Council Member Craig asked if the increase the developer is going to pay for have an effect on existing homeowners.

Mr. Squires advised if did not. They looked at several ways to keep this moving forward and it will not. The portion the developer is paying will not be assessed the special assessments.

Council Member (inaudible) asked a question relative to the Baughman Company.

Mr. Squires stated that Baughman Company did the design work for the project and the engineer that does the design work typically prepares the engineer's estimate.

MOTION: Craig moved to authorize execution of a contract with Kansas Paving in the amount of \$327,357.70 for construction of street and storm water sewer improvements to serve the Oaks Addition, Phase 7A. Arnold seconded.

VOTE: Craig yea, Meidinger yea, Nun yea, Warren yea, Schwarz absent, Bannon yea, Staats yea, Arnold yea, 7 yea, 0 nay, 1 absent, motion carried.

**PROPERTY AND
LIABILITY INSURANCE
PROCUREMENT**

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

Background:

- The City of derby property and liability insurance policy will expire on March 31, 2008.
- The current insurer is St. Paul Fire & Marine through the agency of Hilb Rogal & Hobbs (HRH). The city has experienced excellent service from HRH during the past four years. It is the City's practice to secure competitive proposals every few years to ensure competitiveness and the best use of taxpayer dollars.
- The services of James Charlesworth, of Charlesworth & Associates (an insurance consulting and risk management services firm) were utilized in the development of the Request for Proposal and analysis of the subsequent responses.
- Three insurance agencies responded with proposals from the following four insurers:
 - Hilb Rogal & Hobbs – St. Paul Fire & Marine Insurance Co.
 - CBIZ – One Beacon Insurance
 - CBIZ – Argonaut Insurance
 - Madrigal & Associates – Zurich Financial Services.
- The programs offered by St. Paul and One Beacon are considered to be of superior coverage and conditions, as noted in the attached letter from James Charlesworth and as detailed on the 13-page spreadsheet attached. Both programs also are offered by agents with considerable experience.

- Without going into extensive detail, some of the items that set the Argonaut and Zurich proposals apart from the St. Paul and One Beacon proposals include:
 - \$10,000 wind & hail deductible
 - Premium subject to audit
 - Retroactive date of Public Official Liability
 - Defense cost supplemental
 - Library coverage not included
 - Law enforcement liability (different insurer)

Financial Considerations:

- The premium for the program offered by St. Paul through HRH would be \$215,326 for the period April 1, 2008 – March 31, 2009. This compares to the past year of coverage, which cost the City \$213,993.
- The premium for the program offered by OneBeacon through CBIZ would be \$172,716, which is a substantial savings of \$42,610 compared to the St. Paul proposal for the same period.
- OneBeacon is a large property and casualty insurer based in Boston with premiums of more than \$2.0 billion and an affirmed A.M. Best Rating of A (Excellent)XV. The company has been in business for 170 years, although it just began underwriting municipal coverage in June 2007. Approval to do business in Kansas has been granted by the Kansas Insurance Department.
- Derby would be the first city in Kansas that OneBeacon would underwrite. The company currently serves cities and counties in Missouri and Colorado. The risk associated with being first in Kansas is considered negligible.
- Due to premium savings of \$42,610 for a comparable level of insurance coverage, staff recommends acceptance of the proposal presented by CBIZ and One-Beacon.
- Representatives of CBIZ, the insurance agency handling the processing of the claims, are located in Leawood, Kansas. However, most of the city’s contact will be electronic or via phone, so physical presence should not be a barrier in providing adequate customer service.
-

Legal Considerations:

- The Council can authorize the City Manager to enter into a contract with an insurer.
- The city’s current contract expires March 31, 2008. Entering into a new contract before April 1st is essential to avoid uninsured exposures.

Policy Considerations:

- Most of the proposals include insurance coverage for the Library Board, the cost of which will be allocated to the library’s budget. Several years ago, this arrangement replaced the library obtaining its own separate policy and was a substantial cost savings for the library.
- The proposals include optional coverage for floods, but procurement of this coverage is not recommended at this time. Flood insurance will not cover property located within Flood Zone A. The wastewater treatment facility and several park structures are located within this zone and would not be covered by this insurance. All other city facilities are located outside of the 500-year flood plain with a .02% or less chance of flooding.
- The proposals include optional coverage for earthquakes, which would not normally be required and is not coverage that the City currently has. As indicated on page three of the spreadsheet, the one Beacon proposal for earthquake and earth movement coverage would cost only \$490, which is substantially less than the other proposals. Staff is looking into this offer more closely to determine if this coverage should be added due to the low cost.

DISCUSSION:

Council Member Craig asked if the current insurance that we have now covers any additional items that the proposed insurance does not.

Mrs. Epperson indicated her memory is no, basically the same package was bid and they all have the same coverage.

Council Member Craig stated it looks like a lot of the coverage that we paid separately for from our present company is included in their overall general policy and that's where the savings appears to be to him.

MOTION: Craig moved to authorize the City Manager to enter into contracts with CBIZ and OneBeacon Insurance for the period beginning April 1, 2008 and ending March 31, 2009. Meidinger seconded.

Council Member Bannon asked if the total of 173 include Rock River Rapids, the Library, Wastewater, everything?

Mrs. Epperson advised it did.

Council Member Bannon pointed out we are looking at a \$67,000 savings. She stated that with everything going on in the insurance industry it is very surprising to her that both companies could be that much lower. She is concerned that this is going to be a one year introductory rate, we are talking a very substantial savings.

Monty Giddings, CBIZ advised that is a great question. We specialize in municipality insurance and he has never kept a client that they did that with and can't remember a client they have ever done that with. As health insurance rates are going up, property and casualty premiums are going down much more rapidly. It has to do with the fact that there is a lot of black ink in large insurance companies. The city has had about \$85,000 in losses in the last 5-years and you have paid \$1.15 million in premiums. There is supposed to be a better correlation between your claims have been and what your premiums are. He thinks this is the right premium and he thinks it will continue to be that barring some catastrophic event like 9-11 or something of that magnitude.

VOTE: Craig yea, Meidinger yea, Nun yea, Warren yea, Schwarz absent, Bannon yea, Staats yea, Arnold yea, 7 yea, 0 nay, 1 absent, motion carried.

CONSENT AGENDA

Kathy Sexton, City Manager presented the staff report.

Purchase Two Mowers for Parks Division

Background:

- The Parks Division is trading in 2 riding mowers to purchase 2 new 2008 mowers. Both trade-in mowers are Hustler Range Wing riding mowers and have been in service since 1993 and 1995.
- Six vendors were sent requests for bids.
- Sealed competitive bids were received and opened on January 15, 2008.
- Bids were received from three vendors.
 - Wichita Tractor bid two models in the amounts of \$10,990 and \$12,710. The lower priced option did not meet the specifications.
 - Conrady Western bid two models in the amounts of \$21,265.97 and \$17, 527.96.

- Kansas Golf bid two models in the amounts of \$18,956.40 and \$15,686.
- The bid that most meets the specifications and needs of the department is from Wichita Tractor in the amount of \$12,710.
- The Bid Board reviewed all documents and approved the bid from Wichita Tractor on February 11, 2008.

Financial Considerations:

- The 2008 approved budget for both mowers is \$12,400.
- The lowest and best bid was received from Wichita Tractor in the amount of \$12,710, which is \$310 over the estimated budget. Funds are available from savings in connection with prior equipment purchases this year.
- This is an approved purchase identified in the Equipment Replacement Plan.

Legal Considerations:

- All legal requirements governing solicitation and acceptance of bids have been satisfied.

Policy Considerations:

- The Department followed all bid and purchase guidelines as required by the City of Derby Purchasing Policy.

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

VOTE: Craig yea, Meidinger yea, Nun yea, Warren yea, Schwarz absent, Bannon yea, Staats yea, Arnold yea, 7 yea, 0 nay, 1 absent, motion carried.

Mayor Avello inquired about the estimated completion of the Rock Road project.

Ms. Sexton responded that we are on schedule for the Rock Road construction and it is scheduled to be complete in August. We have a number of months to go so we will see how rainy of a spring and summer we have.

Council Member Warren stated that had received a letter from an applicant of a case voted on at the last council meeting having to do with annexation. He asked if the council does nothing does that give Ms. Sexton or the Mayor the ability to respond to this with no action taken, that what we did is what we are going to stay with.

Ms. Sexton advised that no action is needed because essentially the applicant asked for the same thing you have already considered. We will call her and talk to her about what her options might be. If she wants to withdraw her plat and submit a different plan with different information or if she wants to come and speak before the council for 5 minutes during public forum, we will try to explain to her what her options are.

Council Member Craig thanked those that participated in the booth at the lawn and garden show; it was good publicity for our city. At the end of May there will be a Derby Garden Tour during Derby Days on May 31st.

ADJOURNMENT

MOTION: Warren moved to adjourn at 8:50 p.m. Staats seconded.

VOTE: Craig yea, Meidinger yea, Nun yea, Warren yea, Schwarz absent, Bannon yea, Staats yea, Arnold yea, 7 yea, 0 nay, 1 absent, motion carried.

Dion P. Avello, Mayor

ATTEST:

Jean Epperson, City Clerk