

**APPROVED MINUTES
REGULAR COUNCIL MEETING
May 11, 2010
6:30 PM**

Council President Vaughn Nun presiding.

ROLL CALL:

WARD I
WARD II
WARD III
WARD IV

COUNCIL MEMBERS PRESENT:

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

Flag salute was led by Council Member Staats. The invocation was led by Pastor Tom Wilson, St. Andrews Episcopal Church.

CONSIDERATION OF MINUTES

Minutes of the April 27, 2010 Regular Council Meeting.

MOTION: Warren moved to approve. Horyna seconded.

VOTE: Motion carried 8-0.

Kathy Sexton, City Manager, pointed out that in the Mayor's absence there are eight voting city council members this evening as there are at all council meetings. If there should happen to be a tie on any given item there is no mayor to break a tie, so that means a tie vote is a failed vote. At that point another motion would be in order. Filling in as council president to chair the meeting does not change Mr. Nun's ability to vote on any item.

PUBLIC FORUM:

Bob Sweet, owns the property north of O'Reilly's Auto Parts where Kaw Valley currently has its greenhouse products for sale. Tonight there is an action before the council involving the discharge and sale of fireworks. He hoped the council would vote in favor of the changes. Most of their sales that generate income for the City of Derby and the First Christian Church's youth program comes from sales (about 60-70%) are on the last two days, July 3rd and 4th. All the other ones help pay for the city permit fees, lease fees, etc. Those last two days are really where they generate any kind of sales. If they ever have a bad day on those two days it's not a good year. Usually by that time of year it's pretty hot and people don't come out until around 5:00 p.m., then they maybe go to the city fireworks show and by 9:00 realize they forgot to buy fireworks. If we close the sales down at 10:00 p.m., it really prohibits some people from buying products. You are looking at stopping discharge at midnight which is great but we would hope you would allow sales until 11:00 p.m. on the 3rd and 4th. Most of the time people aren't working those days and want to spend some time in the evenings with their kids and families. By 9:45 p.m. to 9:50 p.m. is when people usually begin to shoot because it gets dark about that

time. When you stop the sales at 10:00, those people who did forget really don't have a chance to buy.

Jerry Lucas, Chairman of Independence Day parade committee, sponsored by the VFW and the American Legion spoke about the July 4th Parade. There has been a change in the parade route this year due to some road construction on Madison. We will still assemble at the football stadium parking lot; from there we will go out the south entrance on Market to Woodlawn south to Kay Street, west to Georgie, north to Market, Market to Woodlawn, north to the school parking lot south of the middle school. This year our theme is honoring our fallen heroes. The parade route this year will take us right by the cemetery where some of our local heroes are at rest. He announced the widow and mother of Joe Herndon have agreed to be the grand marshals for our parade. This year the parade will be on Saturday July 3rd due to church activities on Sunday morning. He advised he is looking for volunteers and parade participants. He requested those interested to call him at his home number, 789-9466.

Council Member Haynes commended Mr. Lucas for heading this up. He invited everyone to come out and support this effort and the Herndon family. You don't realize the freedom you have until you don't have it anymore.

Council Member Bannon invited the public out to see the new artwork hanging at city hall as well as the Gathering Space Gallery at the library.

RECOGNITION OF OUTGOING BOARD & COMMISSION MEMBERS

Kathy Sexton, City Manager, presented the staff report and announced names of outgoing board members. She gave special recognition to Dolan Pelley for serving on the Planning Commission for 32 years, as well as Linda Wood for serving on the Library Board for 10 years and Elizabeth Kinch for serving on the DRC Board for 7 years. Council President Vaughn Nun presented the awards to those present.

The following individuals are recognized for the diligent and dedicated service they have provided the City by serving on City Boards and Commissions.

ADA BOARD

Susan Smith

DERBY RECREATION COMMISSION

Elizabeth Kinch

ECONOMIC DEVELOPMENT BOARD

Kristin Ward

Robert Ash

Jason Wiley

Brenda Knipfer

LIBRARY BOARD

Linda Wood

ORDINANCE REVIEW ADVISORY BOARD

Van Willis

Jeff Boone

PLANNING COMMISSION
Ken Mulanax
Dolan Pelley
SENIOR SERVICES ADVISORY BOARD
Bob Newkold
Lucy French

SALE OF GENERAL OBLIGATION BOND SERIES 2010-A AND 2010-B

Jean Epperson, Director of Finance/City Clerk, presented the staff report. She introduced Joe Norton of Gilmore & Bell and Charles Young of the Public Finance Group.

Greg Vahrenberg, Piper Jaffray & Company, explained the bids to the council. The low bid on the 2010-A issue came from Morgan, Keegan at 3.162%. The low bid for the 2010-B bond came from UMB Bank at 2.07%.

Background:

- Bids for the purchase of General Obligation Bonds Series 2010 A and B will be received via facsimile, mail, and the Internet to be opened at 11:00 a.m., May 11.
- Upon acceptance of the best bid, the next required action is approval of the ordinance authorizing and providing for the issuance of the bonds along with the resolution authorizing and directing the sale and delivery of the bonds.

Financial/Sustainability Considerations:

- The 2010-A Series of bonds provide permanent financing for infrastructure for various subdivisions throughout the city. The debt service will be paid from special assessments against properties in the benefit districts over 15 years.
- The 2010-B Series of bonds provide permanent financing of the new library and will be paid from a city-wide retailer's sales tax over 7 years.

Legal Considerations:

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

Policy Considerations:

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

RESOLUTION NO. 23-2010

A RESOLUTION PRESCRIBING THE FORM AND DETAILS OF AND AUTHORIZING AND DIRECTING THE SALE AND DELIVERY OF \$3,020,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION BONDS, SERIES 2010-A, OF THE CITY OF DERBY, KANSAS, PREVIOUSLY AUTHORIZED BY ORDINANCE NO. 2018 OF THE ISSUER; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS CONNECTED THEREWITH.

ORDINANCE NO. 2018

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF \$3,020,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION BONDS, SERIES 2010-A, OF THE CITY OF DERBY, KANSAS; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON SAID BONDS AS THEY BECOME DUE; AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH; AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO.

RESOLUTION NO. 24-2010

A RESOLUTION PRESCRIBING THE FORM AND DETAILS OF AND AUTHORIZING AND DIRECTING THE SALE AND DELIVERY OF \$7,300,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION SALES TAX BONDS, SERIES 2010-B, OF THE CITY OF DERBY, KANSAS, PREVIOUSLY AUTHORIZED BY ORDINANCE NO. 2019 OF THE ISSUER; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS CONNECTED THEREWITH.

ORDINANCE NO. 2019

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF \$7,300,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION SALES TAX BONDS, SERIES 2010-B, OF THE CITY OF DERBY, KANSAS; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

MOTION: Bannon moved to accept the bid of Morgan Keegan & Co., Inc. and authorize and direct the Mayor and City Clerk to execute the bid form selling the Series 2010-A Bonds to the best bidder on the basis of said bid and the terms specified in the Notice of Bond Sale, Accept the bid of UMB Bank, N.A. and authorize and direct the Mayor and City Clerk to execute the bid form selling the Series 2010-B Bonds to the best bidder on the basis of said bid and the terms specified in the Notice of Bond Sale, Adopt an ordinance authorizing and providing for the issuance of \$3,020,000 principal amount of General Obligation Bonds, Series 2010-A and \$7,300,000 principal amount of General Obligation Sales Tax Bonds, Series 2010-B, and Adopt a resolution prescribing the form and details of and authorizing and directing the sale and delivery of \$3,020,000 principal amount of General Obligation Bonds, Series 2010-A and \$7,300,000 principal amount of General Obligation Sales Tax Bonds, Series 2010-B. Warren seconded.

Council Member Warren asked why would the true interest cost be an advantage over the net interest cost.

Mr. Vahrenberg explained that when we set up the parameters for the sale of the bond we notified all of the bidders that we will be using the true interest cost form of calculating the average interest rate as the method of selecting the winning bidder. He has had this come up a couple of times in his career over the last 20 years where the actual low bidder from a percentage basis has a lower interest rate but a slightly higher interest cost over time. The reason for the difference is that true interest cost calculation takes into account not only the amount of interest you are paying but when you are paying that interest. When you look at the two bids, the key difference he sees is that Morgan, Keegan is paying a premium to the city of \$22,000. That money is paid to the city up front, you will actually hold that in your debt service fund and will be able to invest that premium that's paid into the city up front so the interest earnings help to offset that interest expense and that's what causes their total interest cost on the bonds to be higher, yet their percentage to be lower. We don't run into this very often but that is something that can occur on true interest cost. Despite the bid being \$116 higher, he still feels that is the best bid and the one the city should accept. Especially since that award parameter was set forth in the notice of sale provided to the bidders.

VOTE: Motion carried 8-0.

COMMUNITY WAYFINDING SIGNAGE PROJECT UPDATE

Stephanie Knebel, Assistant City Manager, introduced Jeff Best from Law Kingdon who presented information to the council.

Background:

- Community wayfinding signs were one of several recommendations made by City Image Communications and included in the Derby Community Marketing Plan in 2009.
 - In addition, several years ago both the Derby Recreation Commission and City staff recognized the need for such signage.
 - In August 2008, the City Council approved in its Capital Improvement Program the design of signs in 2009 (\$25,000). In August 2009, the Council reaffirmed that phase of the project and approved \$40,000 in 2010 for sign fabrication and installation.
- On February 23, the City Council approved selection of LawKingdon Architecture to perform design and engineering services for the project. LawKingdon's team included brand management and graphics work by Greteman Group and civil engineering by TranSystems.
- The Design Team worked closely with the Community Marketing Planning Group to develop the recommended design.
- As part of their scope of services, the Design Team will create a document to help the city manage the wayfinding signage program (long-term maintenance, process to add new assets, etc.) on an on-going basis.

Financial/Sustainability Considerations:

- Specifications for fabrication and installation will be developed so that on-going maintenance and replacement can be done by Public Works.

Legal Considerations:

- Design of wayfinding signs located in the K-15 right-of-way meet requirements of the Manual of Uniform Traffic Code Design.

Policy Considerations:

- A system of community wayfinding signs is essential to orienting visitors and helping newcomers navigate through the city. The wayfinding signage program will remain important as the city continues to attract new residents and as new community assets are constructed.

DISCUSSION

Council Member Meidinger stated that the national transportation signs have a green background because they are more visible and easier to see. He questioned why we are using blue. They tried blue and the problem with blue was that people driving by at 60-70 mph couldn't see it. He would assume the same thing would happen here, obviously at a different speed. Why would you go to blue?

Mr. Best explained that in wayfinding they are not held to the exact same restrictions as regulatory signage. Along K-15 you are really starting to decrease speeds once you get into town so we aren't dealing with those types of speeds. We are sending these back to KDOT who has already seen them once and liked where it was going. We are currently sending it back again to make sure they are comfortable with the color selection, sizes and font sizes. The other things we are talking about is the contrast between the white and the background color and adding a reflective character to the white.

Council Member Bannon stated that Rock River Rapids is open about 70 days a year so she would have liked to have seen the Welcome Center moved to the top. She didn't know if in the final sign design if that had been looked at.

Mr. Best advised that how these are listed on the sign is actually how you would arrive at them along the route. It's not a significance factor, just a logical progression.

Council Member Haynes indicated his first thought was when he first saw the slide with the signs is that it just doesn't blend, that color green and blue. He knows a lot of time went into it to come up with those colors but when he first saw it he wasn't sure of it. The more you look at it though, it kind of grows on you. He has some concerns also with the light blue and white background lettering. When you talk signs you talk basic marketing 101, you have your 30 ft. rule, your 30 yard rule and 100 yards away you should be able to see it if you are trying to sell something.

Mr. Best pointed out it is a little washed out in the PowerPoint.

Ms. Sexton stated you do lose some of the color trueness when you put it up on a projector like this. We have a sample of the printed blue and green on the actual paper it would be printed on and it's a better contrast between the white and the blue. On the PowerPoint the green part at the top looks more brown than it really is.

Mr. Best indicated he had the same reaction of being taken aback when he first looked at it. He thinks everyone they have shown it to has the same reaction, then they look at it and think about it and they think “okay.”

Council Member Haynes asked when we would have some prints available.

Ms. Sexton advised they are in the other room. It’s just one sample of the blue and how it prints on the paper. She thinks what Jeff is getting at is a lot of people have already vetted this in the sense of the Community Marketing Committee, staff people from the DRC, the city, school district, Community Foundation, Chamber of Commerce and in terms of working with the design team. We also took it to the larger Community Marketing Committee which is two members of the city council, DRC board and school board. She has also shown it to people around town to see what they think about it. She remembers at the Community Marketing Committee, Theresa Hearn commented that they were bright. We don’t want these signs to blend in; we want them to be very visible.

Ms. Knebel presented a printed copy of a sample sign to the council.

Mr. Best advised the lettering is a reflective vinyl.

Ms. Sexton added it is like the lettering on stop signs, there is some reflectiveness on the white so it wouldn’t be true to what you are seeing in the picture.

Council Member Haynes indicated the printed copy gives a much better picture of the colors.

Council Member Warren asked what the posts will be made out of to keep the signs from flapping in the wind.

Mr. Best stated there is 4 inch square steel post with a bracketed connection so it won’t rotate like a strap connection would. The sign is a significant gauge steel with applied vinyl lettering.

Council Member Warren asked if there was a guarantee the signs won’t flap in the wind and we won’t have to replace these in 3-4 years.

Mr. Best guaranteed these will not need to be replaced in 2-4 years. He would be shocked if they rotate, he doesn’t know how they would rotate with the connection being used unless it rips the connection right out of it.

Ms. Sexton indicated that early on in some of the meetings discussed lessons learned by some of the different people on the design team that we hired from other wayfinding sign projects in other cities.

Mr. Best advised they looked around at other signs before starting this project. Obviously being in Wichita, it was easy to look at that system. One of the major complaints was the signs rotating. That was based on the strap and round pipe and that’s why we did choose the square

and the different connection point. We didn't want them rotating, or the potential for that rotation. Topeka recently put up new wayfinding signs right before they got a windstorm and half of them rotated and they had the strap system. The paint is a high quality, UV resistant paint that won't degrade and fade as quickly as different paint would. There are still limitations and there will be fading, looking 10 years into the future. There is nothing we can do about that but we are spending a little bit of extra money on the materials and paints. It would be nice not to so we could get more but the fact of the matter is we don't want to skimp on the material. You build what you can correctly and add to it as you can.

Council Member Staats agreed that when you first look at that it kinds of jumps out at you but that is what we want when people are driving down the streets to be able to recognize them.

MOTION: Staats moved to approve the community wayfinding signage design and direct staff to solicit bids. Haynes seconded.

Council Member Horyna advised the first thing that comes to mind when he looks at this is the signs in Clearwater, Florida. He asked if this was unique only to Derby.

Mr. Best advised the composite is, it's not been taken from someone else. The mark is definitely original, it is unique to Derby.

Council Member Horyna asked if these signs are constructed in a way they can't be stolen.

Mr. Best stated they can use an attachment with tamper resistant fasteners.

Council Member Craig doesn't like the "o.d." green. He asked if this conforms to our sign ordinance.

Ms. Sexton advised it does. In the first paragraph of the sign ordinance it notes that the ordinance does not cover permanent governmental, traffic and school signs. These would be considered permanent governmental signs.

Council Member Craig asked if we had a plot of where we think these signs are going to go.

Ms. Sexton stated that is still under development and the maps are still being worked on. There is a lot of work that goes into that in terms of city right-of-way, making sure there is room in the right-of-way, figuring out which other signs are out there now that need to come down or be moved.

Council Member Craig indicated he was in favor of moving forward but is not fond of the colors.

VOTE: Motion carried 8-0.

WINTER WONDERLAND PRESENTATION & FIREWORKS ORDINANCE UPDATE

Kathy Sexton, City Manager, presented the staff report. She also recognized the Rockford Friends Club for its donation and the Swan Fitness morning crew for their input on holiday lights.

Background:

- After receiving numerous requests from Derby residents to enhance the city's outdoor lighted displays during the winter months, staff proposed a Winter Wonderland of displays primarily on K-15 and Rock Road. The community was asked to participate. Several responses have been received so far:
 - Rockford Friends Club
 - Swan Ladies
 - Chamber of Commerce
- City participation is recommended, including (1) continuing to encourage community groups to contribute to the Winter Wonderland effort, (2) authorizing the use of fireworks permit fee revenue to match private contributions and purchase displays, and (3) participating in the Chamber's *Look for the Green Lights* program.

Fireworks Ordinance Update

- The fireworks ordinance was last updated and approved by the City Council on December 9, 2008. The current ordinance addresses both legal use of fireworks and the guidelines for sales and operations of Fireworks stands.
- Staff routinely reviews existing ordinances to ensure that they are accomplishing the City's needs. Recommended changes to the current ordinance include the following:
 - Beginning in 2011, applications for permits to sell fireworks would be due May 15 rather than the current June 15 deadline. This change would allow the Derby Fire & Rescue Department more time to adequately advise vendors of City regulations, inspect all sale tents, and resolve any problems prior to opening day sales on June 27.
 - Clarification that the City will provide printed information about fireworks rules and regulations in a utility bill, but that the document will not necessarily be a brochure.
 - Some proceeds from fireworks stand permit fees would be used to provide lighted outdoor winter displays and to match private donations for such displays.
 - Fireworks could be discharged until midnight on July 3 and 4. Currently, fireworks can be discharged until midnight only on July 4, while discharge until 10:00 p.m. is allowed from June 27 through July 3.
 - One of the local vendors requested this change. Since discharging fireworks is usually very popular on July 3, and this year the 3rd falls on a Saturday, it's expected to be a busy night.
 - Since it gets dark at nearly 9:30 p.m., ending the discharging of fireworks at 10:00 p.m. is not viewed as a particularly reasonable expectation.
 - Fireworks could be sold on July 3 and 4 until 11:00 p.m. Currently, city code provides for sales until 10:00 p.m.
 - One of the local vendors requested this change. If discharging is allowed until midnight on these two days, then allowing sales until 11:00 p.m. is expected to increase sales volume on the two days as well.

Financial Considerations:

- The proposed ordinance is not expected to have a financial effect on the City’s permit revenue from fireworks stands but does make Derby a more attractive site for fireworks vendors by allowing additional hours for sales.
- Allowing the additional hours for discharge will likely affect workload challenges of the police department on July 3 as they attempt to enforce an ordinance that is nearly impossible to enforce.
- Using permit fee revenues for lighted outdoor winter displays would be considered by many people to be fulfilling an important community need with a non-tax source.
 - No reduction in the City’s commitment to the other programs funded by the fees is anticipated.
 - As per City policy, any purchases over \$10,000 would come before the Council for approval.
 - Also per City policy, any donations received would be recognized at a City Council meeting unless the donor wishes to remain anonymous.

Legal Considerations:

- Regulation of the sale, possession, and use of fireworks is within the general police power of the City.
- Chapter 5.36 of the Derby Municipal Code outlines the fireworks regulations.

Policy Considerations:

- Adoption of the recommended changes to the fireworks ordinance supports the City’s values of Safety and Stability as noted in the strategic plan: *“Good planning ensures stability in codes and community standards...”*
- Creation of a public/private partnership for the Winter Wonderland program enhances community pride and ensures the program advances at a pace acceptable to and in keeping with the values of the community.

ORDINANCE NO. 2020

AN ORDINANCE AMENDING SECTIONS 5.36.010 AND 5.36.020 OF THE DERBY MUNICIPAL CODE, REGULATING THE STORAGE, SALE AND DISCHARGE OF FIREWORKS WITHIN THE CITY; AND REPEALING ORIGINAL SECTIONS 5.36.010 AND 5.36.020 OF SAID CODE.

DISCUSSION:

Council Member Craig advised he has no problem with changing sale dates. He asked how much is in the reserve fund for the fireworks.

Ms. Sexton explained this money is not kept in a separate fund; it is kept in the general fund. We do keep some data on what we have. After you divide up the money per the ordinance some of the money is used for ACE Grants, some used for Community Safety Education program, the 4th of July display and the brochures and such. All those things would continue but all those things are budgeted at a certain level but they don’t always spend that amount of money so there is sometimes some “left over.” What we have figured is that there should be somewhere in the neighborhood of \$50,000 to \$60,000 that could be used for this, keeping in mind that is not an

exact balance number today. That's the kind of number that if we got people into this we could do a lot of displays.

Council Member Craig asked what our license intake was last year, if he remembers right it was somewhere around \$75,000. If we go by the previous ordinance, there would be an allocation of \$17,500 for two specific lines of funding. When you commit \$12,000 to the next year with a bump of 5% each year his concern is, if you use last year's numbers, taking in \$75,000 that meant there was approximately \$47,000 that was allocated, leaving \$28,000. The ordinance indicates any remainder shall be deposited into the general fund, he doesn't agree with that and thinks it should be a defined amount so we have other options available. He thinks there should be a limit placed on the green light project based upon the fact if you roll everything in there it's in the general fund for this one project which is the lighting project for the holidays.

Ms. Sexton pointed out on page 2 of the ordinance, item #5, it might be better to insert after the word "and" the word "may be". She thinks what Mr. Craig is saying is that it's directive instead of permissive.

Council Member Craig agreed. In the other parts there are "shalls" and "mays" and in this one there is not. He does not think it's crafted very well and just directed at one specific item.

Ms. Sexton pointed out that allocating is not the same as spending. If you put 25% toward public safety education doesn't mean we spend that exact amount every year but you know that's available in the budget if there is a project worthy of that. It's the same thing with the ACE Grant, it says you shall allocate it for that but it doesn't say it has to actually be spent because we have a grant committee and the grants come to the council. It's the same way with the fireworks.

Council Member Craig understands that but the variable is the amount of money taken in each year. This year it might be only \$50,000 so those things are going to change and it's wise to put percentages in there so it's not confusing.

Ms. Sexton pointed out that the inserted lines would say "use to provide lighted, outdoor winter displays and to match private donations." The idea is you wouldn't only be matching private donations; the implication would be that you can buy some other ones too. The other implication here is that it wouldn't be a specific limit, like we can only spend \$18,000 this year. It would depend on how much we have. The idea was to find a way to use this reserve balance that's sitting there. These are one-time expenses; when you buy these they are expensive but they are going to last 30 years. One display, the kids jumping rope for example, that is a \$5,000 display. If the group says they will raise \$2,500 and we say we will match that, great. On the flip side, if you have some money sitting there and you don't have very many groups come out and do it, we have one time money here, let's go ahead and buy another display. That would allow you to do that. The implication of the way it is written now, absent of any amendments today is that we could use that money for something else. A couple of years ago council told us don't do that, we want you to keep segregating that and not using it for general fund expenditures. The implication was that money was there for some other community enrichment type of thing and we are bringing you one of those things today. You might come up with other things.

Council Member Craig thinks we should generalize the statement “to be used for outdoor winter displays.” That tells him that’s what that is rolled in there for.

Ms. Sexton advised it is intended to be permissive language. It can be spent for that now. The idea was to get council discussion and input as to whether or not they want to do this.

Council Member Bannon stated that some of the money in this fund is left over money from the ACE Grant as participation has not grown as hoped. At the time that was crafted we expected any left over monies to be there so that as it grew we could give out more grants. If we take that money and use it all for this we are taking away that availability, correct?

Ms. Sexton explained that we are currently at \$18,000 a year budgeted. In 2008 we spent \$8,000 on ACE grants; in 2009 we spent \$5,900 on ACE grants; this year, \$5,300. Even though \$18,000 is allocated in this ordinance, if people don’t apply then you spend less. Every year you start over with another \$18,000, her feeling is we are pretty far away from that (actuals to budget) so using up some of the reserve really is a low risk deal.

Council Member Bannon has some of the same concerns Mr. Craig does, adding the words “may be” instead of the definite. If we have this reserve money, at \$5,000 a piece that is 10 displays, not including what we would collect this year that would go towards the green lights. That \$50,000 in that reserve if we were to use all that to either match or purchase displays, then we have this year’s income. She hates to see us say we are going to give 1/3 of our fireworks stand money, which is about what this comes out to, that would be going to this forever. She hates to lock us into that. In four or five years we may have other things to spend the money on. She would rather see a cap put on this one.

Ms. Sexton advised you could put a cap on now in the ordinance or you could look at the fact we open this ordinance up every couple of years. We are not going to plaster the whole city with these things but have some sense of how many we want to buy. The options are to buy one or two a year (which would take awhile), or if you bought a lot in the first 2-3 years and then be done, then change it.

Council Member Bannon asked if we could make it something simpler. Instead of #5 being specific, “any remainder deposited in to the general fund for community enhancement or enrichment”, that way we are not specifying what it has to be used on and we could make those decisions at budget time or throughout the year, however it needed to be done. That would simplify and she wouldn’t have any problem if it went for community enrichment because what enriches the community today may not in five years.

Ms. Sexton this is kind of a weird ordinance anyway in terms of allocation to specific programs, it’s like you are doing a budget. We could even take the whole thing apart but just doing what Mrs. Bannon said guarantees the consistency of the old programs and allows council to use the money for various items and you won’t happen to open up this ordinance every time you want to make an allocation decision.

MOTION: Bannon moved to adopt the fireworks ordinance as presented with a change to item #5 to read “any remainder shall be deposited in the general fund to be used for community enhancement.” Warren seconded.

Council Member Meidinger indicated the lighting could fall under the ACE Grant. There is not much difference between an ACE Grant and a community function. His concern is, the ACE Grant could be zero because if the Swan ladies raise a ton of money, that could dry up that fund in nothing flat. At least we would have community activity and enhancements and he supports that. The other thing is, are you going to match dollar for dollar?

Ms. Sexton advised that was the idea. If you don’t say a percentage in a grant the assumption is it’s dollar for dollar, assuming funding is available.

Council Member Meidinger thinks that should be in here that’s going to be dollar for dollar, that way there is no question.

Ms. Sexton advised as the motion is stated now it is very generic, which is fine. She doesn’t think budgeting by ordinance is a great idea but we are going by what this city has done for years. If we want to get away from it she thinks it is fabulous, you deal with it in the budget process.

Council Member Horyna stated that just because we are allowing this money to be allocated for certain sources; we are not obligated to spend it. If we are allowing funding for winter displays then we are providing the option to pull that money out, we are not saying you have to take a certain percentage out. He would rather the wording include the word “may” in the motion.

AMENDED MOTION: Horyna moved to amend the motion to read: Adopt the fireworks ordinance as presented with a change to item #5 to read “any remainder shall be deposited in the general fund and may be used to provide community enhancement.” Warren seconded.

Council Member Bannon indicated her interpretation was the entire sentence would read “any remainder shall be deposited in the general fund and used for community enhancement.” The rest of the sentence would then go away so there would not be a need for a “may.”

Ms. Sexton stated it’s good to put it in there to say what we are doing is some kind of community enhancement but either way of wording it probably gets you to the same end point.

Council Member Horyna asked Mr. Alexander if there were any difference in either wording.

Mr. Alexander suggested that the original motion, as well as the motion to amend are substantially identical in their meaning.

Council Member Horyna withdrew his motion, Warren withdrew his second.

Council Member Warren advised he gets some rather heated phone calls about late night fireworks. From a practical standpoint they are already firing into the night and it's difficult to enforce. He also agrees that going from 9:30 and cutting it off at 10:00 is not very practical but he has some heartburn going to midnight. He would like a compromise here to shut off sales at 11:00 and discharge of fireworks at 11:00. He is dreading the phone calls he's going to get if we open this up to midnight on the 3rd and the 4th, two nights going that late.

Council Member Bannon advised she too gets those phone calls. We have been at midnight on the 4th forever. A lot of people go to the city display and then go home and shoot fireworks. It can be late at night by the time you get home. She has no problem going to midnight on both nights because it makes the ordinance more match what reality is. She understands it is upsetting to some animals but you have to remember this lasts for two days really bad. Your dogs bark into the wee hours of the night 365 days of the year. It's a trade off. That one extra hour is not going to cause her any more or any less heartburn or any more or any less phone calls than what we currently have.

Council Member Meidinger pointed out this year it is on a weekend so that will help us ease into it; next year, and the year after it will be in the middle of the week. She agrees with Ms. Sexton about enforcing it, you can put any arbitrary number out there but it's very difficult to enforce. You will get the phone calls but he doesn't know what to do about it.

Council Member Staats agrees with Mrs. Bannon. It's fruitless to try and stop this. With the ordinance in place it allows it up until midnight. When the phone calls come into the police department they can tell the person on the phone that the ordinance says until midnight. People will not like it and we probably will still get the phone call but that will keep the resources from the police department and fire department from having to respond to every 911 call that comes in between 11:00 and 12:00. As far as the 3rd he doesn't have a problem with that because most people don't work on the 4th. It's the night of the 4th that people have to work the next day. The 3rd is less of a problem than the 4th for a lot of people. He is okay with midnight, from an enforcement standpoint there is not anything that can be done. A lot of people by that time that have any common sense or decency start shutting it down about that time anyway. At 9:30 or 10:00 your kids are out there, it's hard to shut them down at 10:00. He is in favor of the ordinance as it's written.

Council Member Horyna agrees this is probably the best time to bring this up with the dates falling where they are and with the county allowing shooting in the county. This may allow more citizens to purchase more fireworks in Derby and shoot them off in Derby. He is surrounded by military families in his neighborhood and they are going to fire off all night, and we are going to set our lawn chairs outside and enjoy a show. If you can't beat them, join them.

Council Member Warren indicated at least he can say he tried.

VOTE: Motion carried 8-0.

The council took a 10 minute recess at 8:03 p.m. and returned at 8:13 p.m.

**RESOLUTIONS FOR PUBLIC IMPROVEMENT TO SERVE TALL TREE ADDITION,
PHASES 2 AND 3**

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

Background:

- Tall Tree Addition is located east of Rock Road and south of Tall Tree Road.
- The Final Plat was approved by the Council on July 24, 2007.
- Along with the Final Plat, the Council also approved the petitions submitted by the developer for two phases of sanitary sewers, water lines, drainage improvements, streets, sidewalks and a sanitary sewer pump station.
- Phase 1 improvements were constructed in 2008, and home construction is underway in that area.
- The developer is now requesting the original Phase 2 resolutions (sanitary sewer, water lines, street and drainage, and sidewalk improvements) be split out into two new phases (Phase 2 and Phase 3).
- Gilmore & Bell, the City's bond counsel, has prepared the corresponding resolutions for Council consideration.

Financial Considerations:

- The benefit district will pay 100% of Phase 2 costs, which total \$606,000. There is no required city-at-large contribution.
- The benefit district will pay 100% of the Phase 3 costs except for oversizing the collector street. The benefit district will pay a total of \$295,931 and the city-at-large share is \$21,069.
- Special Assessments will be spread against the benefit district properties over a 15-year period.

Legal Considerations:

- These are valid petitions in accordance with Section 12 6a of the Kansas Statutes.

Policy Considerations:

- The Council routinely finances such proposed improvements through the use of special assessments according to adopted city policy.

RESOLUTION NO. 25-2010
SANITARY SEWER IMPROVEMENTS-PHASE 2/TALL TREE ADDITION; AND
REPEALING RESOLUTION NO. 67-2007

RESOLUTION NO. 26-2010
WATER LINE IMPROVEMENTS-PHASE 2/TALL TREE ADDITION; AND REPEALING
RESOLUTION NO. 62-2007

RESOLUTION NO. 27-2010
STREET IMPROVEMENTS-PHASE 2/TALL TREE ADDITION; AND REPEALING
RESOLUTION NO. 65-2007.

RESOLUTION NO. 28-2010

STORM WATER SEWER IMPROVEMENTS-PHASE 2/TALL TREE ADDITION; AND
REPEALING RESOLUTION NO. 68-2007.

RESOLUTION NO. 29-2010

SIDEWALK IMPROVEMENTS-PHASE 2/TALL TREE ADDITION.

RESOLUTION NO. 30-2010

SANITARY SEWER IMPROVEMENTS-PHASE 3/TALL TREE ADDITION.

RESOLUTION NO. 31-2010

WATER LINE IMPROVEMENTS-PHASE 3/TALL TREE ADDITION.

RESOLUTION NO. 32-2010

STREET IMPROVEMENTS-PHASE 3/TALL TREE ADDITION.

RESOLUTION NO. 33-2010

SIDEWALK IMPROVEMENTS-PHASE 3/TALL TREE ADDITION.

DISCUSSION

Council Member Bannon asked if we shouldn't take this item after the next item.

Mr. Brown recommended that since this subdivision is already in place, the developer already has his marketing strategy based on existing petitions and resolutions that we would follow with our existing policy on any existing subdivision. The new policy you are going to get to hear next probably would be only for new subdivisions.

Council Member Bannon clarified Mr. Brown meant new plats, and if so how many currently platted subdivisions do we have that don't have the resolutions?

Mr. Brown advised we have no plats that exist that do not have resolutions.

Council Member Bannon clarified that Quail Ridge already has resolutions.

Mr. Brown advised they are already in place and already approved by the council.

Council Member Craig asked what the city at large share was in the original plan.

Mr. Brown advised it would be approximately the same amount of money. We have updated the cost estimates as we prepared the new resolutions. The city at large share would be in the same \$21,000 ball park.

MOTION: Craig moved to approve the revised resolutions for public improvements to serve Tall Tree Addition, Phases 2 and 3. Horyna seconded.

VOTE: Motion carried 8-0.

AMENDMENT OF PUBLIC IMPROVEMENT FINANCE POLICY

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

Background:

- The City’s Public Improvement Finance Policy is set out in Resolution 13-2010 and covers infrastructure projects that are eligible for city financing, financial guarantee requirements for developers, and methods for releasing or reducing developer guarantees.
 - The most recent update, approved by the Council on March 9, 2010, included 50% city-at-large contributions on sidewalks designated as “Priority Sidewalks” by the City’s Sidewalk Master Plan.

Oversizing Collector Streets

- On March 9, 2010, the Council also considered a proposal to eliminate city-at-large contributions for oversizing collector streets. Current policy has the improvement district and the city-at-large sharing the cost of collector streets. The improvement district pays for the equivalent of a local street; the city-at-large pays for the extra width and pavement thickness.
- This item was tabled pending a review of a comparison with other cities in the region, because modifications to the finance policy could affect Derby’s competitive position with other area cities.
 - A summary of these comparisons is attached and will be reviewed at the Council meeting.
 - Policies in both Wichita and Andover provide for 100% assessment of collector streets to the benefit district. Newton and Valley Center have policies like Derby’s with the extra width paid by the city-at-large.
 - Derby charges less than average on total fees associated with home construction (building permit, water and sewer connection fees, equity buy-in fees, and impact fees).
 - Derby’s water and sewer rates are below the average charged by other area cities.
 - Derby’s overall mill levy is second lowest only to Wichita.
- Since collector streets primarily serve the neighborhood in which they are located, staff recommends the improvement district be responsible for the entire cost.
 - Because the City of Wichita generally sets the standard for most development in the region, Derby’s competitive position would not be worsened if the Council approves the recommended amendment.

Financial/Sustainability Considerations:

- Requiring improvement districts to pay 100% for collector streets would occasionally increase special assessments but produce substantial savings for the City.
- In the past 6 years, only 3 bond issues included projects for collector streets serving Glen Hills Addition, Stone Creek Addition, The Oaks 2nd, Southcrest 2nd, Spring Ridge Addition, and Tall Tree Addition. City-at-large payments for those collector streets were as follows:

<u>Bond Issue</u>	<u>City-at-Large Payment for Collector Streets</u>
2003-C	\$44,626
2004-C	\$280,656
2008-B	\$54,087

- If the City Council approves the recommended resolution, the normal city-at-large contribution would be shifted to the improvement district and paid through increased specials.
 - Example: 2003C Issue: $\$44,626 \div 54 \text{ lots} = \826.41 per lot

Arterial Sidewalks

1. Construct during first phase (as part of Phase 1 Streets or as a separate project) and assess at the same time as other Phase 1 projects (sewer, water, streets, and drainage).
2. Build later as warranted and assess at that time (existing policy).
3. Build later as warranted but assess early – at same time as other Phase 1 improvements (assessment for the sidewalk would have to be based on estimates, with rebates to land owners required if actual costs are less than original estimate and with the City paying any overage if actual costs are greater than original estimates).
- 4. Build later as warranted but collect cost up front from developer during platting process (recommended).**
5. Build later as warranted but collect pro-rata cost with each new building permit.
6. Build later as warranted with 100% paid by city-at-large (no special assessments).

Decel Lanes

1. Where located on an existing urban roadway (curb & gutter, storm sewer), construct at the same time as the adjacent street project (separately or as a part of the street project), with 100% payment by Improvement District.
2. Construct later as traffic volumes warrant; assess at that time (existing policy).
3. Construct later as traffic volumes warrant; assess early – at the same time as other Phase 1 improvements (assessments for the decel lane would be based on estimates, with possible rebates to land owners if actual costs are less than original estimate and with the City paying any overage if actual costs are greater than original estimates).
- 4. Construct later as traffic volumes warrant and collect cost up front from developer during platting process (recommended).**
5. Construct later as traffic volumes warrant and collect pro-rata cost with each new building permit.
6. Construct later as traffic volumes warrant and charge entire cost to city-at-large (no special assessments).

RESOLUTION NO. 34-2010

A RESOLUTION ESTABLISHING POLICIES FOR MUNICIPAL FINANCING OF CERTAIN PUBLIC IMPROVEMENTS AND LEVYING OF SPECIAL ASSESSMENTS WITHIN THE CITY OF DERBY, KANSAS; AND REPEALING RESOLUTION NO. 13-2010 OF THE CITY.

DISCUSSION

Council Member Warren asked what streets currently are classified as collector streets and how this policy would apply.

Mr. Brown showed the council a map indicating the collector streets in the city. He explained with collector streets you are providing citizens a method to get to the arterials so they don't have to wind through local neighborhoods along a distance to get to a road that will take them to their work and to major points of interest and to businesses. Even the new subdivision, Quail Run, you see Kay Street, ultimately that will connect Kay Street in the subdivision Dove Hollow and also runs through Tiara Pines.

Council Member Warren asked about the classification of streets such as Meadowlark, Chet Smith, Madison.

Mr. Brown advised those are arterials.

Council Member Warren asked how arterial streets are currently paid for.

Mr. Brown explained the existing policy is 100% city at large.

Council Member Warren appreciates the work done by staff. It shows we are essentially right in the middle which is where he thinks we need to be. This morning's paper showed cities, some a little higher, some a little lower than us that are actually having to offer incentives to get building going on. It's a testimony to our market and what we are doing and how we are doing it that we don't have to offer incentives to bring business to Derby. He has a concern about upsetting that balance. He disagrees with the statement about collector streets serving the neighborhood in which they are located. He contends there are two kinds of collector streets. Some streets he agrees with, for example, Spring Ridge and Quail Run, maybe Park Hill and Woodbrook. Those would be the kind of arterial streets that are designed to serve those neighborhoods and the residents in that area. Then we have other streets that have been built and designed not necessarily for the purpose of taking care of the people in those neighborhoods but are designed to take the entire city through our streets. For example, James Street, it carries a ton of our city's residents from Buckner Street all the way out to Rock Road and beyond to get people across town. He thinks it would be wrong to try and put the cost of that on the residents that live in that area. He used to live on Fontenelle, Mr. Horyna lives in that same subdivision. It's difficult to tell him that the benefit of James Street just east of Rock Road is a benefit to the subdivision right there. That street was designed to handle high school activity, now that we've opened up the roundabout at High Park it's designed to take all of our citizens from Rock Road and beyond out to that area. It is not necessarily the benefit to the people that live in that area but to the entire city. One of the things that we may want to consider is a new classification of street, a collector street and maybe a super collector. We have streets that really are designed to benefit the entire city. At the heart of any tax system has to be the basis of fairness, not what we can afford to put off on people, but what really is fair. Looking at Tall Tree, James Street and Kay Street had it ever been completed the way it was designed to be completed; when we look at streets like that the policy we have is a fair policy and needs to be maintained. When we look at Park Hill for example he would agree, that does benefit that subdivision and the people that live in that subdivision. The other thing that we've talked about on special assessments is how we are going to deal with oversized sewer and water lines in anticipation of future growth trying to come up with a fee so that subdivisions that come on line 5-20 years down the line end up paying their fair share of that oversizing that was put in place in anticipation of them being there. They are getting the benefit, they should pay for it. It's a fairness issue.

Mr. Brown stated, regarding oversizing sewer and water lines, that is what many cities call an "equity fee" and we went through that draft fairly quickly but there are some cities, Wichita included that have an "equity fee." Basically their citizens are paying for the treatment plant and collection system that is already in place, been paid for by other folks, that is something that's on our list to look at.

Council Member Craig asked if there was any data from Maize.

Mr. Brown advised that Maize has no written policy, that's why they are not on the list.

Council Member Craig asked if there was no written policy does that mean they pay nothing?

Mr. Brown advised in some cities the city manager negotiates with the developer.

Council Member Craig indicated we need to find out about that since Maize is one of our biggest competitors.

Ms. Sexton stated it is exactly as Mr. Brown indicated. Some cities do not have written policies on development. Whether that is because they have very few developments and they want to have the flexibility to negotiate and get whatever, or whether that is like Maize. Remember, a lot of the Maize school district development is actually in the City of Wichita so the City of Maize itself is a pretty small city. He mentioned Andover and their increase and indicated perhaps it was rightfully so.

Council Member Craig tried to clarify his confusion of the data in the staff report.

Ms. Sexton explained that those that received paper packets, there was a mistake in the staff report and there is a new version that was on your desk tonight and emailed a few days ago.

Council Member Craig withdrew his comments about the data. He agrees with Mr. Warren's comments. He too lives on a street that to his advantage is a wide street and to his disadvantage is the Indianapolis Speedway at 7:30 a.m. As it meets Armstrong it changes from a collector street to a regular neighborhood street as it narrows down by 10 feet and goes from Armstrong all the way to James. With that in mind he can see his point, if we have access to one particular development, that development should pay for it. If it's a through street like James or like Tall Tree is going to be, or in the future Triple Creek, those could benefit some people that want to traverse from Meadowlark to Patriot. There has to be some differentiation between what we consider now a collector street and what should be considered in the future.

Council Member Bannon agrees with the super collector versus the collector street. A lot of people use Park Hill and Woodbrook. A lot of the city at large use those for school access, and she doesn't know that it would be fair to assess the benefit district only on it. However, then you look at the road in Amber Ridge, not many people other than those that live in Amber Ridge use that particular road. River Street, she can't tell you the last time she was on River Street. It depends on where you are and whether you use it. Personally she uses Timberleaf to cut through but people on the west side of Rock Road probably hardly ever use Timberleaf. She likes the idea of the ones we truly believe city at large will use and the ones that subdivisions only will use. When we get down to the dollars, \$6.00 a month sounds okay but when you take that over 15 years it is over \$1,100. If you have city at large portion that you have now put on to the benefit district and you add to it the decel lane and an arterial sidewalk you could be at \$2,500 over that 15- year time period. When we compare ourselves to Andover, she is guessing

percentage- wise they may have a lower growth and she would advise everyone to drive through Andover and look at their amenities, the size of their city hall and library in comparison to our community. We have some great communities around us and this is not a comparison. If you throw a comparison up to us that we are at mid- price or below on our cost to build within the community, we need to watch that and watch it carefully. We just sent out a report recently that our permits this year have exceeded what we permitted last year so far. The fees a city imposes for building costs can have a direct impact on the number of permits you are going to issue in your city and the amount of growth. She would like to see the super collector versus collector.

Council Member Meidinger agrees with the comments made. If you have a super collector why don't you just redesignate the streets rather than just throwing another curve in and having super collector, collector, it gets confusing at that point. He suggested making James Street an arterial street and just change the classification of the street rather than introduce a new level of confusion. Is there a difference in the cost?

Mr. Brown explained that per the existing policy an arterial is 100% city at large. He doesn't know if you really want to do that.

Council Member Meidinger stated that James Street is designed for east/west traffic.

Council Member Warren pointed out that James Street does have some residential use. You have homes that are on that street; they are parking on that street and should still pay their fair share. He doesn't think we want to put the entire street on the city. That would be going too far the other way.

Council Member Meidinger sees the point of the super collector or arterial.

MOTION: Horyna moved to approve a resolution modifying the city's public improvement finance policy by adding a requirement that the improvement district's share the cost for decel lanes and arterial sidewalks be paid by the developer upon approval of the final plat by the city council. Warren seconded.

Council Member Bannon clarified that at this point we are taking the collector street component out of this particular motion.

Mr. Brown stated that if that is the case then the existing policy on collector streets would remain.

Mr. Brown described the other policy issue in the staff report of paying for decel lanes and arterial sidewalks.

Council Member Bannon stated we have been wrangling this problem every since she has been on this council and this is probably one of the better solutions to date. However, the cost is still a question because if we assess it at today is dollars and it's something that doesn't get built for 10 years then city at large is out of pocket, correct?

Ms. Sexton advised that would be correct. We would be careful and diligent in our engineer's estimates on those up front. We would also be gaining interest on that money if we were holding it for 10-15 years after that money was paid and that should make up for some of it but it's still a guesstimate. You don't really know what a construction project will cost until you bid it. The other thing is when we do these little bitty specials that you don't spread when you spread the rest of them, that's a lot of staff time and that's paying the financial advisors, mailing costs and postage, etc. She is comfortable with that risk as it was described. To her, it's manageable.

Council Member Bannon agreed that up front the developer will pass the cost onto the builder and the builder will have to have it in his lot cost, and he will turn around and pass it onto the consumer. She is not thrilled about higher lot cost, however, the one big difference she sees in this is the consumer knows up front what their costs are. We won't be having packed rooms of citizens claiming they didn't know about something. She thinks this is probably the best solution she has seen to date. She asked for a clarification on the motion made, if we take the collector portion out of this and pass it, what does that do to this resolution because it is filled with collector language.

Ms. Sexton advised the motion on the floor is to amend the policy to add the requirement for decel lanes and arterial sidewalks.

Council Member Bannon clarified that the draft resolution would then be changed to take out everything else.

Ms. Sexton stated you are no longer voting to pass this resolution, you are only doing the part that pertains to decel lanes and arterials.

Council Member Warren asked which of the six options are we talking about, #4.

Mr. Brown advised that option #4 is the one staff is recommending.

Council Member Warren asked about the more expensive example, it was \$125,000?

Mr. Brown advised it was the Patriot sidewalk along The Oaks. Keep in mind that sidewalk is a mile long, that's not typical of subdivisions, it was a huge project.

Council Member Warren asked what we would be looking at for a typical decel lane.

Mr. Brown advised it would be \$30,000 for any entrance into one street. The Stone Creek decel lane was \$96,000 but it was 3 or 4 side streets. If you take that \$100,000 divided by 4 it is \$25,000 to \$30,000.

Council Member Horyna asked if the fee will be assessed on every lot that is platted or every lot that is occupied.

Mr. Brown advised typically developers will assess every lot in the subdivision those general improvements like sidewalks and decel lane because everyone in the subdivision will use them. Once we get to the point where we have estimates prepared and we know the number of lots in the subdivision, basically the developer will divide it out and each lot will be bumped a little. We will get the full amount up front if this option is passed from the developer, and he will divide it out and charge that against each lot.

Council Member Horyna gave an example of a subdivision that sits for 10 years and only gets half full, is all that going to be constructed immediately or how is that paid for?

Mr. Brown advised that typically what we do on the decel lanes, east Madison for example is a 2 lane county road, right now our policy is to put a temporary decel lane in to give us a turning lane off of the county two- lane road. That would be built with the first phase of streets; it wouldn't be a separate assessment. Then, the permanent decel lane is typically done once we widen the street to an urban standard. When we take Madison from two- lane to four- lane at that point, regardless of the number of lots that are developed, we will go ahead and put it in because we don't want to build a four- lane road and come back in later and tear part of it out and put in a decel lane.

Council Member Nun asked for the motion to be reread.

RESTATED MOTION: Approve a resolution modifying the city's public improvement finance policy by adding a requirement that the improvement district's share of the cost for decel lanes and arterial sidewalks be paid by the developer upon approval of the final plat by the city council.

Council Member Warren asked how the City of Wichita currently charges developers for decel lanes and sidewalks?

Mr. Brown advised that typically it's a separate petition, just like we do today. It is built in the same fashion as we do today.

Council Member Warren asked why people don't go to the Wichita city council meetings upset.

Mr. Brown stated he has talked to the engineering staff in Wichita and they do. They are looking for solutions to this same problem like we are.

VOTE: Motion carried 8-0.

Council Member Craig asked Ms. Sexton if she needed direction to deal with collector streets.

Ms. Sexton indicated she did not. She sees where the council is coming from on some of the streets, but that changes over time. Some of those collectors are not connected to anything right now but 10 years from now they might be. If a school gets put in a neighborhood then they will

be used more. She doesn't know how they would come up with that definition and even if we did come up with a definition, what would you want the percentage to be, 100% for some and 75/25 for others? If you want something let us know, she didn't hear anything tonight that made her think we could actually do better than the policy we have, but Charlie may have some ideas later we could talk about. Her guess is there are higher priorities than to try and come up with something that's not been invented before.

Council Member Craig advised an example of this is we have a street that no one ever imagined would go across town east/west. One is James Street the other Kay Street. A lot of those things are hard to envision what they could be.

Council Member Bannon advised that we could really muck up the works, if it's not broke don't fix it. Right now we don't have a better fix.

ANNUAL UPDATE ON ECONOMIC DEVELOPMENT INCENTIVE AGREEMENTS

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

Background:

- Currently, the City has four economic development incentive agreements (EDX agreements) in effect. Two are industrial revenue bond (IRB) agreements, and two are constitutional tax abatements, which are available only to manufacturing facilities.
- Tax abatements involving IRBs take effect the calendar year after the year in which bonds are issued, so new to this year's report is Derby Hotel, Inc./Hampton Inn.
- State statute requires verification be provided to Sedgwick County stating that companies continue to meet the criteria set forth in their EDX agreements, to ensure that their eligibility for tax exemptions should continue.
- Mid Continent Controls:
 - Mid Continent Controls was granted a 100% property tax exemption for 10 years in May 2001. The company agreed to create 66 new jobs over the 10-year period and construct a 20,000 SF building at 901 N. River in the Derby Business Park, along with new equipment valued at \$250,000. The building was completed in 2002, and the first year of the exemption was 2003.
 - According to the Sedgwick County Appraiser's Office, the valuation of the building is \$1.8 million.
 - Currently, Mid Continent Controls has 47 employees, the same number of employees last year at this time. The previous year was a decline from 64 employees one year ago, but overall MC2 has added 25 employees since the start of the project (38% of target employment).
 - The company, which manufactures in-flight entertainment and cabin management systems for business jets, continues to be affected by the problems plaguing general aviation. Last year, owner Rick Hemphill forecasted a low point in the first quarter of 2010 and flat growth for the following 8 quarters.
- BRG Precision Products:
 - BRG Precision Products (BRG) was granted a 100% property tax exemption for 10 years in June 2005. The company agreed to create 103 new jobs over the 10-

year period and to construct a 40,000 SF building at 600 N. River in the Derby Business Park. The building was completed in March 2006, and the first year of the tax exemption was 2007.

- According to the Sedgwick County Appraiser's Office, the valuation of the building is just over \$1.0 million.
- As of January 2010, BRG employed 52.5 FTE, up 2 jobs from last year's report and an overall increase of 27 jobs (26% of target employment).
- Despite the overall poor economy plaguing the country in 2009, no layoffs were required, and none are projected in 2010. BRG President John Bode indicates that they have increased research and development efforts to focus on new product offerings. Also key are measures the company has taken to reduce production costs without reducing staff.
- As anticipated, BRG proceeded with the addition of a warehouse facility adjacent to its existing building. Existing basement office space in the main facility is planned to be finished to house added administrative staff in marketing, sales and support.
- Family MedCenters, P.A.:
 - Family MedCenters, P.A. received approval in May 2005 for \$3.5 million in Industrial Revenue Bonds and a 100% property tax exemption for 5 years, with the option for a 5-year extension. A request to extend the exemption will come to the Council later this year. The company originally agreed to create 15 new jobs over a 10-year period and to construct a freestanding 9,800 SF ambulatory surgery center (ASC) at the site of the current Derby facility at 1101 N. Rock Rd. The bonds were issued in 2005, and the building was completed in July 2006. The first year of the exemption was 2006.
 - According to the Sedgwick County Appraiser's Office, the current appraised value of the building is \$2,212,970.
 - Currently, the ASC portion of Family MedCenter's complex employs 12 full-time and 11 part-time individuals for a total of 17.5 FTE. Those positions include a business manager, a clinical manager, a front office clerk, 5 technicians and 14 nursing positions. Of these 16 FTE positions, 14.5 are filling new positions created by the project (97% of target employment).
 - The use of the ASC continues to grow. In 2008, there were about 3,100 procedures in the ASC. In 2009, the total 3,439 procedures included colonoscopies, upper endoscopies, pain management procedures and various types of surgeries such as hernia repair, gallbladder, tonsillectomy, spinal taps, orthopedic procedures, and gynecological procedures. 24 surgeons are credentialed for use of the facility.
- Derby Hotel, Inc.:
 - Hampton Inn of Derby opened in August 2009 after receiving approval for industrial revenue bonds, a 10-year tax abatement, and a transient guest tax rebate. Bonds for the project were issued in 2008, and the first year of the abatement was 2009.
 - According to the Sedgwick County Appraiser's Office, the hotel's current appraised value is \$2,862,000.

- As of December 2009, there were 8.5 FTE at the hotel. Most hourly workers continue to be employed on a part-time basis, and the number of full-time employees is anticipated to grow as occupancy rates increase. Original plans called for 12 FTE to be created over the 10-year period.
- The first Transient Guest Tax rebate payment to Derby Hotel, Inc. was issued by the City in February 2010 for 2009 collections in the amount of \$15,698, which represents the total collection of the 6% transient guest tax, minus a 2% administrative fee retained by the Kansas Department of Revenue. As described in the Transient Guest Tax Rebate Agreement, these annual payments will continue until the average occupancy rate reaches 70% for three consecutive years and then will decrease annually.
- The average occupancy rate for the period September 2009 – March 2010 was 42%. Given the economic conditions of the hotel industry in general, this compares reasonably well to estimates provided in the original pro forma, which assumed a first-year average occupancy of 55%. Monthly occupancy rates were as follows:
 - September 2009: 42%
 - October 2009: 38%
 - November 2009: 48%
 - December 2009: 28%
 - January 2010: 34%
 - February 2010: 57%
 - March 2010: 47%
- Hotel guests include visitors from Wisconsin, Washington, California, New York, Ohio and Texas. Highlights from the first six months of operation included a number of events related to high school sports, including swimming and volleyball. Several wedding parties used the facility, and the busiest month was February when McConnell AFB inspectors were housed at Hampton Inn Derby for approximately two weeks.

Financial/Sustainability Considerations:

- None at this time.

Legal Considerations:

- None at this time.

Policy Considerations:

- All four companies are making satisfactory progress toward their goals.
- In addition to these agreements, on June 5, 2008, the City passed a resolution indicating the intent to issue industrial revenue bonds to LakePoint Nursing Center for construction of a new skilled nursing facility (SNF). At that time, the SNF project was to be built in two phases with 60 beds built in Phase I and 60 beds in Phase II.
- Since then, the company has hired a new architect and redesigned the building to fit the 7-acre site at Patriot Avenue and Triple Creek Drive.
 - This redesign resulted in changes to the original two-phase construction plan.
 - Current plans call for assisted living rooms to be built in conjunction with the first phase of skilled nursing beds.

- Due to these changes and the length of time that has passed, staff is in the process of developing a revised resolution for City Council consideration at a future meeting, based on the revised construction plan.
- LakePoint's owners have recently conveyed their continued efforts to begin construction in 2011 by either (1) securing bank financing, or (2) locating a willing buyer for bonds.
 - The company has indicated that the success of another skilled nursing facility that opened in October 2009 is a sign to lenders that the Derby market still needs additional skilled nursing beds.
 - LakePoint continues to work with Schaefer, Johnson, Cox & Frey Architects and Baughman Company to prepare for construction.

DISCUSSION:

Council Member Craig asked about the estimates of Mid Continent Controls, with a year left on their contract with us on their tax exemption, they will have to add 41 positions to make their goal. We are just glad they are still in business, right? We will work with them because it's the right thing to do. In the future when we look at some of the criteria we need to have a definitive operational definition between full-time employees and full time equivalents. There is a reason this has digressed to full-time equivalents because what we are looking for are full-time employees that maybe will add to the economic situation of Derby by living here and a lot of your part time folks don't do that. He would appreciate moving forward on trying to build that definition. Regarding the transient fee of \$15,698, does that equate with the figures we have for those percentages of occupancy?

Mrs. Moeding advised they do.

Council Member Craig commented on Lakepoint, if they don't have something moving forward by the end of July he thinks we should revisit this. It's been a long time, there has been a lot of turmoil with design and architecture and the article about them developing on the north side does not give a warm feeling about how quickly they are going to make something happen in Derby.

Mrs. Moeding reminded the council that the original agreement that was approved, gave them 5 years from the date of the agreement which was June 2008 to achieve substantial completion of the 2nd phase of their project. We do have some time constraints in there and we would have to do some guesswork.

Council Member Craig stated that if you haven't even done phase 1 yet, your forecast for phase 2 is pretty grim.

Council Member Bannon asked about the transient guest tax, there is a 10-year max on that correct?

Mrs. Moeding advised that was correct.

Council Member Bannon agrees with Mr. Craig on part-time versus full-time, your part-time employees don't have the benefits and the higher salaries so adding two part-timers and saying we come up with a full-timer, she really doesn't agree with that. She would like to see in the future when we do these agreements, they can estimate how many full-time and part-time employees they will have, 50 part-time employees does not equate to 25 full-time employees. As far as Lakepoint, she would like to see us fish or cut bait. If you have a rock in your hand you can't pick up another rock until you put that one down. Two years is a long time, a lot of changes have occurred. She is not saying there is another company out there that would want to come and do something like this, she isn't saying there is not. Right now our hands are tied, even if there was someone waiting in the wings we can't do anything with them. Lakepoint at the time was the right choice and still would be the right choice if they could get their feet under them and do whatever it is they are trying to do. In the meantime, they are tying us up. She would like to see that change made if possible.

Council Member Haynes stated that the numbers from Mid-Continent Controls coincides with the general aviation community. He is sure we can work with Mid-Continent to help them along the way to stay. Regarding the part-time versus full-time, he wants to see full-time employees with benefits offered. It starts in Derby, KS. We can do what little we can to generate the economy and get some employment going. He agrees about Lakepoint. The original plan was phase 1 and phase 2 with a 5-year limit. Their plans have changed, if that plan has changed our agreement needs to change. We need to look at that again. We can't be sitting here 8 years from now with this still hanging over our heads. There are other opportunities out there.

Council Member Warren understands the concerns about Lakepoint but before he weighs in on that, he asked if staff could email him an outline highlighting the contract to see what we can and cannot do. In order to revisit the contract he wants to see what we've agreed to. After he has seen the options then they can take a look at that.

Council Member Horyna agreed he would like to see the Lakepoint information since he was not on the council at the time. If we already had an original plan set he would hate to change gears now if progress is moving forward, even if it is slow.

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

VOTE: Motion carried 8-0.

CONSENT AGENDA

Kathy Sexton, City Manager, presented the consent agenda.

MOTION: Craig moved to remove the Buckner Business District Sign from the Consent Agenda. Horyna seconded.

VOTE: Motion carried 8-0.

Right-of-Way and Easement for Buckner Street Improvements

Background:

- The adopted 2009 Capital Improvement Plan includes \$55,000 for right of way acquisition for improving Buckner from Kay Street to the south city limits.
- The adopted 2010 Capital Improvement Plan includes \$602,000 for the construction of this project.
- Because of the on-going expense to maintain this portion of Buckner due to poor storm water drainage, the primary purpose of this project is to widen Buckner so that it complies with city street width standards and to include storm water drainage ditches.
- Long-term calculations were completed by Community Development and Public Works to ensure that it will be less expensive to first reconstruct Buckner and then include it in the city's pavement management plan.
- The City engaged Land Acquisitions, Inc. to assist in acquisition of needed easements and right-of-ways.

Financial/Sustainability Considerations:

- Right of way acquisition and easements presented for Council's consideration total \$21,600 and include the following:
 1. Marjorie, Troy and Gary Boswell: \$3,700 for 7,304 square feet of right of way,
 2. Sharon Boswell: \$1,000 for 1,820 square feet of right of way, and
 3. Belinda and Donald Royer: \$7,300 for 14,430 square feet of right of way, and \$2,600 for 11,124 square feet of permanent easement,
 4. Robert Trego: \$7,000 for 11,983 square feet of right of way.
- Additional right of way acquisition is in progress and will be presented at a future Council meeting.
- The total project estimate is \$657,000 and includes design, land acquisition, utility relocations, and construction.

Legal Considerations:

- The City Council is authorized to acquire right of way in support of this project and to determine an appropriate level of compensation.

Recommend a Motion to:

- Accept the deed for the permanent easement and authorize the City Manager to execute contracts for the required right of way.

Annual Motorola Maintenance Agreement Renewal**Background:**

- Each year, the City of Derby enters into a service agreement with Motorola for service and maintenance of radio equipment and infrastructure within the Communications Section (Dispatch).
- Staff has received and reviewed the annual service agreement renewal for the period from July 1, 2009 to June 30, 2010.
- The service agreement provides radio and infrastructure repair and support service on a priority basis.
 - Continuous (2-hour) response for major system failures.
 - Standard business day (4-hour) response for moderate, non-critical features.

- Standard business day (24-hour) response for intermittent or minor issues that do not preclude use of the system.

Financial/Sustainability Considerations:

- The amount of this year's agreement is \$13,988 which is an increase of \$537 (4.5%) over last year's agreement.
- The cost of the agreement is billed to the City in quarterly statements.
- Funding for this agreement is included in the 2010 Operating Budget.
- The City may elect to withdraw from this agreement upon 30 days' written notice to Motorola.

Legal Considerations:

- This agreement has been reviewed by the Legal Department.

Recommend a Motion to:

- Authorize the City Manager to execute a Motorola Service Agreement for service and maintenance of radio equipment and infrastructure for the period beginning July 1, 2010 through June 30, 2011.

Request for Use of Street Rights-of-Way

Background:

- The American Legion and the Veterans of Foreign Wars request use of city streets rights-of-way to conduct the annual Independence Day Parade on Saturday, July 3 starting at 10 a.m.
 - At the March 23, 2010 meeting the City Council approved a request for use of street rights-of-way along a parade route that included Madison between Woodlawn and Georgie.
 - A change in the parade route is necessitated by construction that will occur on Madison during the same period of time as this parade.
 - Parade participants will line up in the Panther Stadium parking lot, leaving through the south entrance to proceed west on Market to Woodlawn, south on Woodlawn to Kay, west on Kay to Georgie, north on Georgie to Market, east on Market to Woodlawn, then north on Woodlawn and return to Panther Stadium.
 - This year's theme is "Honoring our Fallen Heroes."

Financial/Sustainability Considerations:

- The City will supply police patrol, barricades and traffic cones.

Legal Considerations:

- The Council is within its legal purview to allow usage of streets and public rights-of-way for such uses.

Recommend a Motion to:

- Approve the request of the American Legion and the Veterans of Foreign Wars to hold the annual Independence Day Parade on Saturday, July 3, 2010.

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

VOTE: Motion carried 8-0.

BUCKNER BUSINESS DISTRICT SIGN

Background:

- Last June, construction of improvements to the Buckner/Meadowlark intersection began, followed by the corridor reconstruction project in July. The reconstruction projects included amenities to enhance the aesthetics and marketability of the corridor including sidewalks, landscaping, relocation of overhead utilities, and enhanced lighting.
 - The intersection project is complete and the corridor reconstruction is anticipated to be completed this month.
- Following creation of the Buckner Business District in March 2009, staff began to discuss the use of signage to define the district and to encourage small business development in the district.
 - Unique “Buckner Business District” signage defining the area would be an asset to existing businesses and could help attract new businesses by creating a unique identity for the corridor.
- In October, staff met with a landscape architect to select appropriate locations for signage and develop preliminary signage concepts.
 - Meetings were held with existing Buckner businesses to discuss several signage concepts and other ideas for encouraging development.
- One entrance sign design was clearly preferred by the involved businesses, and they also support the idea of hanging banners on the 17 new light poles along the Buckner corridor. Additional ideas for future consideration included concrete planters, benches, and additional landscaping to distinguish the area.
- Installation of signs is planned to occur in three phases.
 - The first phase, on the south end of the district near K-15, is the logical point to begin since it is near most of the existing businesses.
 - The second phase will consist of the installation of unique banners on the 17 new light poles along the corridor, beginning with the 13 poles nearest the existing businesses.
 - The third phase will be a second sign near the southwest corner of Buckner & Meadowlark. This sign will not be installed until business development begins to occur on the north end of the corridor.
- Design of the first phase is complete including: installation of the sign with decorative poles; lighting and related electrical work; landscaping consisting of 28 daylilies and 5 spirea and a concrete mow strip.
- A request for bids was sent to 9 sign companies, and 3 picked up plans.
- The bid of \$13,930 from TriMark Signworks was the only bid received.
- TriMark Signworks will sub-contract with Tendercare Lawn & Landscape for the landscaping and mow strip portions of the project.
- The engineer’s estimate for the work was \$11,750. The two sign contractors who picked up plans but did not submit bids indicated they did not bid due to their current workload and reluctance to coordinate with sub-contractors on a project of this size.

Financial/Sustainability Considerations:

- The street construction project budget has adequate funds to accommodate the cost of the sign and related work without exceeding the original project budget.
- In accordance with city policy, the City Board of Bids reviewed the bid and recommended it for approval.

Council Member Craig asked where the sign will be located.

Ms. Sexton advised it would be the southeast corner of the intersection of K-15 and Buckner.

Council Member Craig stated that he understands why the businesses on Buckner were contacted for input but he has 39 residences on the east side that no one contacted about what they thought about putting a sign up in their neighborhood. He wants to make sure everyone is satisfied with this. One gentleman he talked to that lives on the corner there indicated it is fine with him as long as it doesn't conflict with any clearance problems as he maneuvers out of his driveway into traffic. He thinks it's a consideration we need to look at that we are putting a sign up that is going to designate a business district where the major portion on the east is a residential neighborhood and no one has asked them what they think about that. He thinks it's in our best interest before we put a monument sign down there to learn what people that are living there think about it.

Council Member Bannon asked how we are going to appear to people when you turn on Buckner and on the right hand side of the street it says Derby Business District and yet all it is houses on the right hand side of the street. There are no businesses when all the businesses are on the left hand side of the street.

Ms. Sexton stated that when we envisioned this deteriorating, declining neighborhood and determined a year or so ago to take proactive action on the city's part to reverse that decline by converting a half- business, half- neighborhood that has become more than ½ rental property into more of a neighborhood commercial, mixed use neighborhood, we knew we were going to have difficulty working through it. It won't look the same as it did before, when do you make changes, etc. When we brought this to council for the signage we heard your comments, we heard don't put the banners up past the Pleasantview Church to the south because that's all residential on both sides. We put in the staff report the idea would be when there is later development of businesses you would probably have a sign on the north end by Meadowlark. The thought that we should go ahead and put the sign up now at the south end, yes there are residences on that side but it is a neighborhood in transition into a business district. There are a good many businesses on the left side. It may seem odd but if you want drivers to see a sign you have to put it on the right side, you don't put them on the opposite side of the street, those signs are turned the other way. All street signage is on the right hand side. The idea of development of the transition we are planning for, residential properties in to neighborhood business uses, nudging along is a good thing. The sign does that. It doesn't tell people they can't live there anymore but certainly when we explained the project to the property owners in the open house, a good many of them are investors, they own the property but don't live there, a good many of those people were very pleased to see that we were doing something and thought it would help redevelopment efforts and values of the properties. The idea of telling people what you're doing

by putting up a sign is not meant to offend but rather to define and improve the visual character of the total environs. Mostly at this point it is focusing on the south end.

Council Member Craig stated all he is trying to say is we need to be sensitive to some of those folks on the south end. That's their home and that's their neighborhood. There are a couple he did not talk to because he thought there might be a conflict but has since found out there is not. Those folks are not transient, that's their home and a lot of them have done improvements to them. Some parts might be deteriorating but not all of it is and those folks call that home. He doesn't know if he would like to turn the corner and see that they are targeting his neighborhood as a business district. It is a well founded idea to make options available but he was under the impression when we left this last time that we were going to wait and see what developed as far as businesses before we went on with this initiative. He guessed he was wrong about that.

Ms. Sexton apologized, that was not her impression. Her impression was that we were waiting on the north end for banners and signage but were proceeding on the south end. She does not disagree with Mr. Craig, we want to be sensitive and some people weren't in favor of the project in the beginning. Throughout the construction process our city staff, inspectors and others have been positive in their comments about what people along the route have primarily said. That's not to say there aren't some who are never going to like the project. What we knew in the beginning was that everybody who drives the street is happy that we are fixing a very poor street but people on the street are inconvenienced during construction. Reports coming back to her are that most people are pretty happy that the city invested millions of dollars in that project. They are getting their sidewalks and driveways improved, they are getting a crosswalk, bike path and landscaping. It's definitely going to be good for the neighborhood.

Council Member Craig did not disagree with that. He just thought we would let it develop a little bit more before we put a sign up.

MOTION: Warren moved to authorize the City Manager to execute a contract with TriMark Signworks for \$13,930 for construction of a Buckner Business District Sign and related appurtenances. Horyna seconded.

VOTE: Motion carried 8-0.

EXECUTIVE SESSION

MOTION: Staats moved to recess to Executive Session at 9:41 p.m. to discuss acquisition of real estate for 30 minutes. Craig seconded.

VOTE: Motion carried 8-0.

The council returned at 10:11 p.m. and Staats advised no binding action was taken.

ADJOURNMENT:

MOTION: Staats moved to adjourn at 10:13 p.m. Haynes seconded.

VOTE: Motion carried 8-0.

Dion P. Avello, Mayor

ATTEST:

Jean Epperson, City Clerk