

**APPROVED  
REGULAR COUNCIL MEETING  
May 12, 2009  
6:30 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I  
WARD II  
WARD III  
WARD IV

COUNCIL MEMBERS PRESENT:

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

COUNCIL MEMBERS ABSENT:

WARD IV

Mark Staats

Flag salute was led by Council Member Cheryl Bannon

The invocation was led by Pastor Rick Wheeler, First Christian Church.

**CONSIDERATION OF  
MINUTES**

Minutes of the April 28, 2009, Regular Council Meeting.

MOTION: Bannon moved to approve minutes of April 28, 2009 Regular Council Meeting. Craig seconded.

VOTE: Motion carried 7-0, Staats absent.

**PUBLIC FORUM**

**Everett Scovel** lives on Valley Stream Drive and referenced an area from Madison to the dam which encompasses about 25 different properties, all of which are affected by flooding in one way or another to some degree. Around the pond every homeowner has an interest. If he can't use it, why don't we reduce our taxes accordingly. Since he moved in there, Timberleaf, the doctor's rehab center (which has no containment pond yet that he feels should have been built before the property was even graded), Bel Arbor, Ashborough, Glen Hills, Hamilton Estates, and Derby Marketplace have all been added and we probably get drainage from as far north as 63<sup>rd</sup> Street. We are not really asking for improvements; we are asking simply that our pond be restored to its original depth at least, the dam be restored and an adequate spillway built so the water can get out. There is a spillway in Glen Hills that is 32 sq. ft., and we have two 24-inch culverts. Our dam is going down the stream. All we are asking for is that our property rights be restored.

**Council Member Bannon** advised there is new art work at city hall done by the alternative high school hanging on the walls. There are haiku poems in the hallway written about a tough time in our history and it's well worth the drive down to look.

**Mayor Avello** stated last night he and Mr. Craig, Mrs. Bannon and Mr. Meidinger attended a police dinner that we have every year during police appreciation week. We heard a story about a young police officer in Wichita that brings home the fact that sometimes we take these people for granted. A 24-year-old man was on the force for six months or so, was wounded very severely and almost died. It's a chilling story and he wishes everyone could hear it. Don't take these officers for granted, they do a good job, they keep us safe. They pull us over once in awhile when we are doing wrong just to keep us safe. If you have the chance to thank them for what they do, please do that.

**Council Member Craig** advised there are police appreciation signs available to put in your front yard. Those officers that drive the streets would appreciate seeing one in your yard. He echoed the Mayor's comments about the speaker at last night's banquet; he had quite a story to tell. Be aware of our officers out there, they do a good job for us.

## **PROCLAMATION**

Mayor declared the week of May 17-23, 2009 as Public Works Appreciation Week in the City of Derby.

**Robert Mendoza**, Director of Public Works, accepted the proclamation. He invited everyone to a public event on Thursday, May 21 at the Derby Middle School from 8:30 a.m. to 2:30 p.m. It is during the day so we can focus on the kids. In today's society we are looking at replenishing our own career fields, who's going to take our place in the future and he really wanted to talk to our students. We will have 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> graders throughout the whole day coming through our display. We will have representatives from parks, streets, water, wastewater as well as some GIS things out there. The optimists will also be there and we really appreciate what they do for us in providing entertainment: the bounce house, cotton candy, sno cones, balloons and stickers. We really want to have some fun and if you've ever wanted to touch one of these machines and understand the power and things you can do with them, this will be the time. Our folks are very proud of what they do and very proud of the jobs they do for the city.

**Kathy Sexton**, City Manager, added that the City of Towanda was very pleased that our public works crew went to Towanda on Friday when they had 100 mph straight line winds. We were pleased to be one of several cities that converged on that community. Some Towanda residents called the office yesterday and expressed their gratitude. Our guys stayed until 9:00 Friday night and cleared half of the city streets of all the limbs and trees. They made great progress and had a really long day.

## **PUBLIC HEARING & ORDINANCE LEVYING SPECIAL ASSESSMENTS**

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

**Background:**

- At the April 14<sup>th</sup> Council meeting, the assessment roll was approved, calling for specific special assessment amounts to be spread against properties in several subdivisions in the City.
- The Public Hearing presents the opportunity for affected property owners to appear before the Council to clarify any uncertainties regarding the assessments.
- All affected property owners have been notified by mail as to the nature and amounts of the assessments, as per state law.
- The project costs to be assessed consist of infrastructure improvements in The Oaks Addition, Anderson Farms Commercial Addition, Derby Downs Addition, Stone Creek Addition, Tall Tree Addition and a sanitary sewer serving an unplatted tract owned by the Easton Family, L.P.
- The property owners will have until noon on June 17<sup>th</sup> to pay the assessment in full with no interest and eliminate the need for the specials to go on the tax roll. If property owners choose not to pay the assessment prior to the pay-in deadline, the special assessments will appear on the tax statements mailed to property owners by the County in November 2009 and will be due in tax year 2010 (½ due on or before December 20, 2009; ½ due on or before May 10, 2010).
- The source of permanent financing for these projects, General Obligation Bond Issue 2009 A, is scheduled to close August 1, 2009.

**Financial/Sustainability Considerations:**

- Total project costs to be assessed in the 2009-A Bond issue are \$2,711,765.
- In addition, city-at-large costs of \$10,100,000 will be included in this bond issue for construction of a \$4,000,000 sanitary sewer interceptor, \$4,000,000 public works facility, and \$2,100,000 for reconstruction of Buckner Street.
- Repayment of the city-at-large projects is planned for a 20-year schedule due to the type of projects and the corresponding revenue streams.
  - The public works facility is planned to be repaid on a 20-year schedule due to the expected long life of the buildings and to be consistent with past practices. A 20-year debt service schedule is very common in financing public buildings, both regionally and nationally
  - When sewer rates were revised earlier this year, the rates were set to cover a 20-year schedule not only because the lifecycle of the infrastructure is well beyond 20 years but also because a shorter debt-service schedule would have required a larger increase in sewer rates.
  - During the 2009 budget process, both the public works facility and Buckner reconstruction projects were incorporated into the 2009 Capital Improvement Plan under the premise that the total mill levy would not require an increase. Shorter debt service schedules would require either an increase in the mill levy or cuts in other areas of the budget
- Another consideration in establishing a 20-year maturity schedule is to take advantage of lower interest rates we are currently experiencing. As rates rise in the future, future

schedules will require more funding. Establishing lower-cost repayment schedules on these projects will provide more flexibility in the future.

**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
- The job of calculating the final costs, notifying and mailing notices to property owners and the "spreading" of specials is a combined effort of City staff and the City's Financial Advisor, Greg Vahrenberg of Piper Jaffrey Company and Charley Young of the Public Finance Group.

**Policy Considerations:**

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

**ORDINANCE NO. 1983**

AN ORDINANCE LEVYING SPECIAL ASSESSMENTS ON CERTAIN PROPERTY TO PAY THE COSTS OF INTERNAL IMPROVEMENTS IN THE CITY OF DERBY, KANSAS, AS HERETOFORE AUTHORIZED BY RESOLUTION NOS. 101-2007; 72-2007; 73-2007; 11-2008; 28-2005; AS AMENDED BY 41-2008; 29-2005; 30-2005; 38-2003; 26-2008; 23-2008; 24-2008 AMENDED BY 74-2008; 25-2008 AMENDED BY 73-2008; 64-2007, AS AMENDED BY 78-2008; AND PROVIDING FOR THE COLLECTION OF SUCH SPECIAL ASSESSMENTS.

**Mayor Avello** opened the public hearing. With no one present to speak, he closed the public hearing.

MOTION: Craig moved to approve an Ordinance levying special assessments on certain property to pay the costs of internal improvements as authorized by the resolutions noted in the ordinance and providing for collection of such special assessments. Bannon seconded.

VOTE: Motion carried 7-0, Staats absent.

**RECOGNITION OF  
OUTGOING BOARD &  
COMMISSION  
MEMBERS**

**Mayor Avello** presented the outgoing board members with a token of appreciation.

The following individuals are recognized for the diligent and dedicated service they have provided the City by serving on City Boards and Commissions. We would like to give special thanks to Gial Kaegi who served on the Tree Board/Parks & Urban Forestry Board for 11 years, and to Betty Lyerla who was on the Library Board for 10 years.

**CONSTRUCTION TRADES BOARD**

Samuel Slayden

**ECONOMIC DEVELOPMENT BOARD**

Colene Read

**LIBRARY BOARD**

Betty Lyerla

**ORDINANCE REVIEW ADVISORY BOARD**

Daniel Cady

**PARKS & URBAN FORESTRY BOARD**

Gial Kaegi

**PLANNING COMMISSION**

Tom Haynes

**TRASH/RECYCLING ADVISORY BOARD**

Rebecca Faulk

Larry Gould

Jack Halldin

Heather McCreight

Orpha Parish

Becky Robinson

**YOUTH ADVISORY BOARD**

Tyler Underwood

Courtney Frantz

Regan Williams

Rorie Milner

Steven Schaaf

**VALLEY STREAM  
STORM WATER  
DRAINAGE DISCUSSION**

**Council Member Bannon** recused herself from the bench and took a seat in the audience.

**Kathy Sexton**, City Manager, presented the staff report and a PowerPoint presentation.

**Background:**

- At the April 28 City Council meeting, several property owners on Valley Stream Drive requested City assistance with their storm water runoff issues related to their privately owned pond.
- City staff researched the issue and will present the Council with some background information and options to consider regarding future City involvement, if any, with this issue.

**Financial/Sustainability Considerations:**

- To be determined.

**Legal Considerations:**

- To be determined. Since none of the property in question is publicly owned, and the City has no access easements to the property, any involvement by the City will necessarily involve some consideration of liability and authority issues.

**Policy Considerations:**

- A decision by the Council to involve the City could set a precedent in terms of expectations of other residents for City involvement in drainage issues on their privately owned land.

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| <p><b>The Issue</b></p> <ul style="list-style-type: none"> <li>• Small, privately-owned pond fills up and pools water in back yards during heavy rains when Spring Creek is full.</li> <li>• Platted floodway</li> </ul>   | <p><b>The Issue</b></p> <ul style="list-style-type: none"> <li>• Property owners requested City assistance <ul style="list-style-type: none"> <li>- Dredge pond, fix dam, &amp; create spillway</li> </ul> </li> <li>• Floodways = responsibility of owners until governing body elects to assume (per plat)</li> </ul>  | <p><b>Timeline of Events</b></p> <ul style="list-style-type: none"> <li>• 1960-1986? Stock pond built on Lauber farm (shallow; not meant for storm water detention)</li> <li>• 1987 Residential plat (before storm water detention requirements)</li> <li>• 1993-96 Most houses built</li> <li>• 1990s Two 24" pipes installed to drain pond into creek (Lusk)</li> <li>* Unknown: Has any maintenance occurred since houses were built around the pond?</li> </ul>  |
| <p><b>City Policy</b></p> <ul style="list-style-type: none"> <li>• City maintains City-owned ponds, pipes, &amp; drainage easements if not functioning properly</li> <li>• If a City crew is at privately-owned pond/creek <ul style="list-style-type: none"> <li>- Protect our drainage structures or streets, or</li> <li>- Clear blockage in stream flow</li> </ul> </li> </ul> | <p><b>Comparisons</b></p> <ul style="list-style-type: none"> <li>• Tiara Pines – backhoe cleanout 15-20' to clear flow from City pipe</li> <li>• Southcrest pond – cleaned out box culvert to fix City pipe area</li> <li>• Timberleaf – backhoe cleanout 15-20' of drainage line west of pond to protect integrity of City pipe</li> <li>• Dredge SpringCreek west pond – no</li> </ul> | <p><b>Comparisons</b></p> <ul style="list-style-type: none"> <li>• Dredge Boyd Power's pond – no</li> <li>• Park Hill backyard drainage – special assessments to install storm drain</li> <li>• Oak Ridge Estates – drainage ditch <ul style="list-style-type: none"> <li>- City has drainage easement</li> <li>- Property damage</li> </ul> </li> </ul>   |
| <p><b>Analysis</b></p> <ul style="list-style-type: none"> <li>• Valley Stream pond is not part of the City's planned storm water drainage system <ul style="list-style-type: none"> <li>- Floodway is a natural part</li> <li>- No clear public responsibility</li> <li>- City pipes drain Valley Stream Drive into the floodway</li> </ul> </li> </ul>                            | <p><b>Analysis</b></p> <ul style="list-style-type: none"> <li>• If Spring Creek surcharges into floodway, the pond is irrelevant for detention purposes.</li> <li>• Assuming property owners prefer to keep pond, several options exist.</li> </ul>  | <p><b>Options</b></p> <ol style="list-style-type: none"> <li>1) City staff share drainage reports from upstream with engineer hired by property owners to design solution.</li> <li>2) City assume responsibility for floodway maintenance, obtain easements to enable property owners to finance improvements through special assessments. <ul style="list-style-type: none"> <li>- State permits?</li> <li>- Entire floodway?</li> <li>- Majority rules (neighborhoods often divided)</li> </ul> </li> </ol> |
| <p><b>Options</b></p> <ol style="list-style-type: none"> <li>3) Upon review of design prepared by civil engineer hired by private property owners, City Council consider financial participation. <ul style="list-style-type: none"> <li>- Requires change in City policy</li> <li>- New policy would apply to other areas as well</li> </ul> </li> </ol>                          | <p><b>Options</b></p> <ol style="list-style-type: none"> <li>4) In 2011, when the City designs Madison Avenue widening, we will coordinate w/Valley Stream owners.</li> <li>5) Derby Medical Campus detention pond built w/i 45 days.</li> </ol>   | <p><b>Questions/Discussion</b></p> <p><b>Recommendation:</b></p> <ul style="list-style-type: none"> <li>- Take the options under advisement and direct staff to communicate further with property owners.</li> </ul>   |

**DISCUSSION:**

**Council Member Craig** commented that we have difficult issues in this town including streets, sidewalks and streams. It will always be that way because we use the stream system to evacuate

storm water. He asked if the pond is a contributing factor to the flooding of the backyards on these properties.

**Ms. Sexton** asked if Mr. Craig was making comments or if he wanted someone to answer.

**Council Member Craig** indicated it was a comment, but a question inside the comment. To him that needs to be answered. The other thing is, years ago there was a stream team that used to work a lot of these things, Mr. Mendoza's employees work to keep the streams we do have control over in shape to handle the storm water. Regarding item #5, that is too little too late, by the time 45 days goes by we will be in July. That will help next year, but not this year so much. He questioned how important the pond is to the landowners, if the pond needs to be removed to keep flooding down, that is a decision the landowners have to make. They are asking us for assistance, we've helped other places, but as Ms. Sexton has pointed out all of those are related to a city drain or easement or something we should be responsible for. We are in a completely different ballgame now if helping owners of private property. He understands the process of the drainage is dropping silt into the pond, that is a natural tendency. What is the contributing factor that causes the flooding of the backyards which seems to be the point the homeowners are trying to eliminate?

**Mr. Scovel** advised the pond is a very valuable asset to the properties in that community. If you were to drain it as your chief engineer once suggested as a solution to the problem you end up with a mosquito bog. The question he would ask, would you appreciate it if your neighbor were to change his landscape and dump all of his water off on you? That's essentially what the city has done to us; they have just ignored the downstream. As far as the pond, it acts as a containment pond, even before the city corps said we had to have a containment pond. Ms. Sexton gave a date of 1960, but he really thinks it goes back to the time when the Conservation Department paid for the ponds to be put in. He does not know that for sure, but that's what he suspects. The culverts he thinks were original, he does not know that either. The city did come in at some point around 1996 and load rock on top to stabilize the soil because it was washing over the culverts. About 40 feet of the dam is already impacted and at the end of the culverts the backflow is washing out the back side as well. Dan has all sorts of fixes from the flood in March of last year. At one point across the stream, which is part of his property, he keeps a dog in a kennel, that dog was standing in 16 inches of water. The stream is blocked by trees, there's no doubt about it. Charlie Brown sat down there one day and said they could come in sometime and clean those out, okay, sometime. At one time Mr. Squires was putting together some sort of an estimate for what costs might be to do some of these things we are talking about. He has been in contact with Mike Wilson at various times about BMP (best management plan) to prevent erosion. At one time it took a man from the state to get some erosion protection in Timberleaf because the water was just coming across. He has also been involved in Hamilton Estates. Ms. Sexton indicated it should be engineered, that's what you have a city engineer for, what else is he doing?

**Council Member Craig** indicated he understands their pain; a lot of people in this town have water in their backyards. What he is looking for is if there is an engineering solution, if so, that should be sought out. Who pays for it is still up in the air as far as he is concerned. The thing is do you have any plausible solution to it as far as an engineering solution?

**Dan Ingram** indicated they had not, not with an engineer. He worked on dams when he was younger and we need a box type culvert.

**Mr. Scovel** pointed out you have to look at what's up stream dumping water to us to assess how much water you're going to see. Ms. Sexton says it takes a significant rain, sometimes he thinks a dog could raise a stream until it floods. It's starting to come out of the stream bed today and we didn't have significant moisture yet today.

**Council Member Craig** stated that he thinks John Lauber probably put that pond in there and it was free.

**Mr. Scovel** indicated it went way back before John Lauber.

**Council Member Craig** agreed it goes way back but the thing is it was there before the residents were there and obviously some decisions were not made a long time ago that maybe should have been in the best interests.

**Mr. Scovel** stated that many people have said it shouldn't have been paid for by the homeowners. They could have made it a containment pond at that point without a problem. Now, you are going to affect every assessment along that stream bed if we don't take care of it.

**Council Member Horyna** asked if there has been any dredging or maintenance of that pond.

**Mr. Scovel** indicated there has been none that he is aware of.

**Mr. Ingram** advised there is an island in the middle that is slowly disappearing because the water level has gotten so high. It's a horseshoe shaped pond, there's a deeper side on one side and a deeper side on the other.

**Mr. Scovel** advised it is a peninsula really; it's not isolated as an island itself.

**Mr. Ingram** explained the island connects back towards the creek.

**Council Member Horyna** asked when the problem started becoming a nuisance for the residents.

**Mr. Ingram** advised it was about 2-3 years ago.

**Mr. Scovel** added it was about when they started Timberleaf and stripped all the woods out and straightened up the stream. That is when we started getting our first real water problems. He has been working with the state since then.

**Council Member Horyna** asked how long ago that was.

**Mr. Scovel** indicated it was 2004. He doesn't know of anything before that, he moved there in 1998.

**Mayor Avello** stated that we are coming to the end of the rainy season hopefully. They are going to build that holding pond in 45 days or so. He asked how deep that pond will be and what it will hold? How much help will it be?

**Dan Squires**, City Engineer stated he did not know off the top of his head the size of that pond but the detention/storage ponds that are put in are designed to mitigate the change in runoff of the development. Awhile back in The Oaks, we built a really big pond and the city participated in that and that actually more than compensated for what was coming off of it. Typically the developments require that a pond be put in to mitigate the change due to the development. This pond is not anticipated to improve it beyond what existed prior to the medical campus project going in. What it was 6 months ago, it's not going to improve it beyond that, it's going to be the same as it was last year.

**Mayor Avello** asked about the 24-inch culverts.

**Mr. Squires** advised there are two 24-inch culverts. It was not a city project, but it is his understanding there are two culverts.

**Mayor Avello** asked what would happen if the city went in and put in bigger culverts. No matter what we do are we going to solve it or is it going to be status quo or what?

**Mr. Squires** advised the solution to the problem is to hire an engineering consultant to look at the overall drainage system. The truth is, the entire way is a floodway, the water has drained there for a long time. You have to figure out what's going down there, how high it's going to get. If you build the dam up it will back water up further before it overtops the dam. Right now it's overtopping the dam before it gets into backyards. You have to be very careful, and he said this when they started over in Hila and Oak Ridge, that if you take on a drainage project you better be ready to take on a drainage project. After we touch it as a city we are expected to do it competently and anybody who has a drainage problem anywhere near that after that is going to say they didn't have this problem before. It needs to be engineered and designed, and drainage calculations and flood routing need to be looked at and topography, where does it go if we do a project?

**Council Member Warren** advised the question before us tonight is not, what is the solution? You need engineers and a lot more studies to come up with what the solution is going to be. The question before us is "Do we want to take on new responsibility?" and new debt as a city to be a part of it. Of the ideas that came forward, the only one that even remotely appealed to him would be the aspect of offering our skills, services and talents to come up with a solution of which the payment would be by virtue of special assessments. Had this area when it was first developed been engineered, there would have been costs associated with building the pond and doing it a certain way. There would have been culverts that would have had a study indicating how much it would hold and there would have been costs either associated with the development or put into special assessments as other subdivisions do. There are a lot of costs in other subdivisions when they do retention ponds, a lot of the cost of that is put into a special assessment. This area did not have that cost put in on the front end so from a standpoint of

fairness, if we are going to go in and do that it would have to be done by virtue of special assessments, otherwise other parts of town are going to be picking up the cost and he doesn't see that as being a fairness issue of putting that back on the city as a whole. If the residents in the area are open, and he agrees with Ms. Sexton that the scope of the project becomes huge, it's not a simple thing from that standpoint, but if the owners are willing to do the improvements and we could come up with a plan by helping them out with our facilities, talents and skills and they would be willing to pay for that by virtue of special assessment, that would be something that would be worth taking a look at. That is the only thing he would see that would be fair for the rest of the city.

**Council Member Horyna** sympathizes with the residents; it has to be quite the area to live in during rainy season. He asked, if problems were arising around 2004, wasn't that about the time a storm water ordinance was passed by the city?

**Ms. Sexton** advised that is correct.

**Charlie Brown**, Director of Community Development, advised that the city does have a storm water management ordinance. It was adopted by the City Council in September 2004. That ordinance is part of the requirements that were part of the Clean Water Act passed by Congress years ago and implemented through the EPA and various agencies. The City of Derby is considered a phase II city. Phase I was cities over 100,000, they had to participate in that program first and to this day they also have more stringent rules. They have to monitor, report and do water quality testing and meet water quality standards. Phase II cities, cities over 10,000, we have to have the ordinance in place, which we have had for 5 years almost. Our permit is expiring this fall and we have applied for a new permit. We anticipate probably the same requirements; there may be new requirements, we don't know until that comes. We are participating very actively in that program, as opposed to other cities in this area and other government entities that are not yet there.

**Council Member Horyna** questioned if we did have these programs in place, would it be the city's liability that possible silting was going on at this location or would it be the developer's liability that this was going on?

**Mr. Brown** explained that the BMP's that are required as part of our storm water program; they do a pretty good job. They don't solve all the problems. They are designed for about a 1¼ inch rain; that's about all they can handle. That, by the way, takes care of about 85% of the storms. When we get a big storm over that amount, in most cases those BMP's don't do the quality of job that they would on a smaller rain, simply because you have so much runoff, so much sediment back behind those silt fences and hay bales that the additional rain goes over the top, or in some cases, it erodes with pressure and finds a way to go under. They don't solve all the problems, but they do a pretty good job. The ordinance we have and the requirements we have state that we are to "remove pollutants to the maximum extent practical," whatever that is. They do not solve every issue on every storm, but they do a pretty good job. Perhaps there was some sediment in that pond prior to. There probably has been some since the 2004 enactment of our ordinance. Who is liable for that? He thinks it will take legal action to figure out who's liable for it.

**Council Member Meidinger** stated we are realizing that large quantities of water or in some cases a lack of water is going to be an ongoing debate. We have had a debate with the State of Colorado for years over water. We had one with Nebraska for water, now it's two states getting in a squabble over water. Most of us don't really care about those two issues; what we do care about is the water running down the backyards of our neighbors and our friends. He doesn't have an answer for this obviously, some of the things we are going to have to address are, when we build to the north and to the east that puts a major strain on the drainage systems. The drainage systems as Mr. Craig pointed out are the creeks. The creeks are getting deeper and wider. At one time we tried to straighten out Spring Creek between the City of Derby and Hila. At that time, Hila was in the county and the people wouldn't cooperate. That would have helped the water get through, but there was no cooperation and he guesses it never happened. Just recently we completed a drainage area east of the Hila addition, who paid for that?

**Mr. Brown** advised that is Oak Ridge, it was a city-at-large project.

**Council Member Meidinger** advised that is a great example of how the city, everyone else except the people in Hila, paid for that. If that would have been arranged properly, the people in Oak Ridge would have paid for that drainage. They created the problem, the people in Hila sure didn't, they were down there minding their own business. The City of Derby annexes that property and builds up there creating a tremendous amount of water coming down there. That is one example of how we are going to have to get more stringent on some of these developments we put in. Otherwise we're going to have helter skelter water issues. That's the best example he can see of how we could have done something differently. With this issue he doesn't know because it's a privately owned pond and if we open that Pandora's Box he's not sure where we would end up. There are people on Dry Creek, Spring Creek; there are people in Spring Creek that have lost 40-50 feet of their backyard. He doesn't know whose responsibility that is. It is an issue when you get more people in a congested area, you have more flooding, you have more traffic problems, you have more of the bad stuff. He doesn't have an answer, but he does know there is more water going down your backyard, just as people on Dry Creek and Spring Creek will tell you, but he doesn't have the answer.

**Council Member Haynes** stated that unfortunately this is one of those situations where the answers won't come easily. As a governing body, we have to be concerned with everything associated with the City of Derby and all concerns from all citizens. We understand these concerns. Mr. Warren brought up the fairness issue, he too believes we need to think about this long and hard so we can be fair to all. He asked if there were any idea about cost for special assessments, including city staff, city engineers working with whomever we need to work with to come up with a plan or a solution to present to the homeowners, so the homeowners may have some idea of cost they may be made to pay in special assessments if they decide to go that way?

**Ms. Sexton** agreed it would be great to know the numbers. She doesn't have any numbers and she knows this is a project or idea whose scope is not defined. As you know we have a CIP full of drainage, streets and all kinds of projects that our two engineers in house don't even dream of having time to do. We routinely hire outside engineers on specific projects. She would suggest that on this, that this be a specific engineer. The reason she said in her presentation that the

engineer be hired by the private property owners is because there is no city interest. She doesn't mean we aren't concerned, that means there is no city-owned land involved, there is no drainage or any kind of city easement involved. The best thing for the property owners would be that they have their own engineer that they know and can trust. If we are doing it in house, first of all we have to figure out where it stands in the priority list of everything else our in-house engineers are doing, but certainly hiring an outside engineer would be a cost just for the engineering. As far as what the cost of the actual solution is, she has no idea. We threw a lot of ideas around in house these past couple of weeks. We didn't come up with anything we really thought would solve the problem. If the problem is defined as the pond itself; she doesn't think it's going in anyone's basement, she doesn't think we have property damage, she has not heard that from anybody. It's more that it's out of its banks so the dam is damaged. If the scope is defined broader, then it is the entire floodway area all the way up to Madison or near Madison that when the heavy rains come the water comes into the backyards so to speak, then that's a much bigger scope.

**Council Member Craig** likes the fact that Mr. Warren, the city manager and Mr. Haynes have put the ball in the homeowner's court. We have to have more information and it is incumbent upon them since it is private property for them to provide that. As far as a combined effort, this is way beyond the scope of our engineers, their plate is full. It would be a consultant with the specialty of flood and water that they would have to find. To move on, the folks in this area would need to consult with a reputable engineer to find out what they feel the actual engineering solution is to their situation. Our engineering department can at least offer a list of engineers to help them find the proper person. We can't take any action because it's not in our best interest right now to do that, because we don't know the scope of it. It could be small, it could be huge and he encouraged the homeowners to find their own engineering consultant.

MOTION: Warren moved to take the options under advisement and direct staff to communicate further with property owners. Craig seconded.

**Mayor Avello** indicated he sympathized with the homeowners. He owns a business in Wichita that's on a street that floods with 2 inches of rain. He has been after the City of Wichita for 13 years to put sewers in. There is no easy answer. Regarding Mr. Meidinger's comments, he was involved with a homeowner and got him as far as the federal government, the federal government sent it back to the state and the state said it wasn't their problem. Water is a problem all the way up to the federal government; they just don't want to get involved with it. We are going to do what we can do without hurting our budgets. It's a major problem in this community.

VOTE: Motion carried 6-0, Staats absent, Bannon abstain.

**Ms. Sexton** indicated to the homeowners in the audience that we will be sending a letter in the mail to set up a meeting where we can talk about this some more.

**Mr. Ingram** asked if they have to drain the pond if the city would help them fill it up.

**Mayor Avello** indicated that would probably be looked at as an option.

**FINAL PLAT OF DERBY  
MARKETPLACE 3<sup>RD</sup>**

## **ADDITION**

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

### **Background:**

- This property is 32.66 acres in size and is located on the northeast corner of the Rock Road and Meadowlark Boulevard intersection and is a replat of the Derby Downs Addition.
- The replat was undertaken to reconfigure the lots to accommodate the layout of Derby Marketplace (new Dillon's Store, etc.).
- Lying to the east of the subject property are the Amber Ridge Addition and the Amber Ridge 2<sup>nd</sup> Addition, both of which are single family residential developments. On the south side of Meadowlark are the Rib Crib restaurant and some suburban residential properties. West of this site are several businesses located on property zoned B-3 and on the north is Derby Marketplace 2<sup>nd</sup> Addition which is being developed together with the subject property as the Derby Marketplace.
- The current B-3 "General Business District" zoning was established in 1996 and is the most appropriate for the uses proposed for the property.
- On November 1, 2007, the Planning Commission approved this Final Plat (9-0).

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

- Development of this property is already providing a positive impact on the City's tax base and will continue to have an impact as the remaining vacant lots are developed and new businesses are added.
- As required by the Derby Subdivision Regulations, the developer has submitted petitions as guarantees for construction of required street improvements (accel/decel lane, left turn lane, major entrance drives) and a sidewalk along Meadowlark. The estimated cost of these improvements is \$200,000. Of that amount, \$175,430 will be paid by the benefit district and \$24,570 by the city-at-large, based on the City's policy for payment of over sizing arterial sidewalks.
- Other infrastructure projects (sewer, water, drainage, and Rock Road improvements) are already constructed as a part of the Derby Marketplace commercial development.

### **Legal Considerations:**

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

### **Policy Considerations:**

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

DISCUSSION:

**Council Member Meidinger** asked if this was close to the new Dillon's store.

**Mr. Newberry** advised it was. The Dillon's store is actually on the east part of Derby Marketplace.

**Council Member Meidinger** asked which way the water is going to drain.

**Mr. Newberry** advised he thinks most of the drainage from Derby Marketplace 3<sup>rd</sup> goes to the pond on the backside.

**Mr. Brown** advised the bulk of the Derby Marketplace development drains into ponds in the new Tall Tree Addition that goes directly into Spring Creek. The southern portion of this by Dillon's drains into a pond by Amber Ridge, then drains south down through Glen Hills and into the tributary we just talked about.

**Council Member Meidinger** asked if this will be 32 acres of concrete and asphalt.

**Mr. Brown** indicated it already is.

**Council Member Meidinger** clarified this won't be another impact on the area we just talked about.

**Mr. Brown** advised the storm water detention ponds that we design are designed to control the flow rate out of those properties. Whenever we have new development we do put in new roofs and new paving, the volume of water increases that runs off. Our job is to make sure that we impound some of that increased volume of water and release it at a rate that is at or below existing rates. Our criteria is flow rate, not volume. The volume does increase, we couldn't build anything without increasing volume of water so we are looking at flow rates and all of our detention ponds accomplish that. The pond at Amber Ridge, when it was constructed and designed was done with Derby Downs in mind and that was all accounted for. Even though that was 80 acres of farm ground at that time it was designed with the pavement in mind at that time.

**Council Member Meidinger** asked if city staff was comfortable that this won't create more problems down stream that we just talked about.

**Mr. Brown** indicated he was very confident of that.

MOTION: Haynes moved to approve the Final Plat of Derby Marketplace 3<sup>rd</sup> Addition and authorize the Mayor to sign the plat and Developer's Agreement; approve the petitions submitted as security for construction of required improvements; and instruct staff to record the Developer's Agreement, Certificate of Petitions, and Final Plat. Warren seconded.

VOTE: Motion carried 7-0, Staats absent.

**RESOLUTION  
ESTABLISHING  
FRANCHISE FEE FOR  
COLLECTION OF  
RESIDENTIAL REFUSE,  
RECYCLABLES AND  
SOLID WASTE**

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

**Background:**

- The Council recently adopted an ordinance regulating collection and transportation of solid waste within the City.
- The ordinance authorizes the City to contract for such services by means of a franchise and to require that the franchisee pay the City a fee for the privilege of conducting such business within the City.
- Kansas law concerning municipal franchises generally limits such fee to 5% of gross revenue.
- The City is currently negotiating with Waste Connections of Kansas, Inc. (“WCI”), the firm recommended by the advisory committee and selected by the Council.
- WCI has included the proposed franchise fee in its proposed pricing of \$38.25 and \$44.25 per quarter.

**Financial/Sustainability Considerations:**

- The franchise fee would be payable by WCI to the City at such interval as the parties may agree upon in a contract. Current negotiations anticipate quarterly payments based on actual collections.
- It is estimated that the proposed franchise fee will produce about \$60,000 in 2010 revenue for the City.
- The proposed franchisee fee will be available for budgeting and appropriation within the City’s general fund or as otherwise directed by the Council.

**Legal Considerations:**

- State law (K.S.A. 12-2101 et seq.) and city ordinance authorize the City to franchise or contract for collection and transportation of solid waste and to establish such a fee.

**Policy Considerations:**

- Franchising collection of residential solid waste, including refuse and recyclables, is advisable to:
  - Provide for a uniform level of service throughout the City
  - Standardize rates for comparable services throughout the City
  - Reduce wear and tear on City streets and infrastructure by reducing the number of collection vehicles operating in the City

- Imposition of a reasonable franchise fee is advisable to underwrite the cost of monitoring the franchisee's performance and offset costs incurred by the City in moving to this new system.

RESOLUTION NO. 26-2009

A RESOLUTION ESTABLISHING A FRANCHISE ADMINISTRATION FEE TO BE PAID TO THE CITY AS CONSIDERATION FOR GRANTING OF A FRANCHISE FOR COLLECTION OF RESIDENTIAL REFUSE, RECYCLABLES AND SOLID WASTE WITHIN THE CITY.

DISCUSSION:

**Council Member Craig** stated that next year is going to be a difficult year as far as budget goes. Franchising has imbedded in it the idea to be more environmentally friendly and reduce the amount going in the landfill and recycling and all those good things. He suggested that when we work the budget that we direct the funds from the franchise fee to do green things for Derby. He thinks that is appropriate since we have asked the people of Derby to wholeheartedly participate in this effort of franchising. Not only for the standardization of rates and helping with our streets but the fact is that it will help our environment tremendously.

**Council Member Meidinger** asked if there is a sales tax on this.

**Ms. Sexton** advised that trash collection is not subject to sales tax.

**Council Member Bannon** agreed with Mr. Craig and thinks it's a great idea. Maybe something similar to what we do with our fireworks money each year. So much of it is designated for this particular item, so much another. In years past we have been looking for a nice chipper/shredder that we could use at public works so local homeowners could make use of some of the tree limbs that get delivered out there and shredded up. The current system is a little large for that and maybe some of this money each year could be designated in the budget to be used for those types of items.

MOTION: Craig moved to adopt the resolution. Meidinger seconded.

VOTE: Motion carried 7-0, Staats absent.

**CONSENT AGENDA**

**Kathy Sexton**, City Manager presented the consent agenda.

**Bids for Street Improvements to serve Derby Medical Campus Addition**

**Background:**

- A bid letting for the construction of Street Improvements for Derby Medical Campus Addition was conducted on Tuesday, May 5, 2009 at 2:00 P.M. An invitation for bids was disseminated to qualified contractors. The following bids were received by the City Engineer's office and witnessed by the City Clerk:

| <u>Contractor</u>     | <u>Bid</u> |
|-----------------------|------------|
| APAC – Kansas         | \$146,178  |
| Kansas Paving         | 140,436    |
| Lafarge North America | 140,167    |
| Cornejo & Sons, Inc.  | 137,643    |

Engineer’s Estimate\* \$159,071

\*Engineers estimate prepared by Baughman Company, P.A.

**Financial/Sustainability Considerations:**

- Funds for the construction work will be included in the 2009-1 temporary note issue.
- Costs for the improvements will be paid 100% by the benefit district and none by the City-at-large.
- Special assessments will be spread against the benefit district 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:**

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

**Recommendation:**

- Accept the bid of \$137,643 and authorize execution of a contract with Cornejo & Sons, Inc. for construction of street improvements to serve Derby Medical Campus Addition.

**Annual Revision of Derby City Code**

**Background:**

- Pursuant to an ordinance adopted by the Council, staff contracted with Lexis-Nexis to prepare a comprehensive supplement updating the Derby Municipal Code.
- Preparation of this supplement has taken longer than normal due to the number of ordinances and pages to be changed.
- Passage of the proposed ordinance is necessary to adopt the new code; adoption does not change the substance of ordinances already in force.
- The city code is available on the City’s website and is used by stakeholders of the city, so it is important to keep it current.

**Financial Considerations:**

- None.

**Legal Considerations:**

- The City’s code should be kept current to provide easy access to all ordinances.
- Adoption of the new code repeals all ordinances of general application unless they are included in the code itself, or otherwise excepted from repeal.
- Charter ordinances are unaffected by adoption of the new code.

**Policy Considerations:**

- The new city code will be easier to access and use, for both staff and the public, because the ordinances are incorporated into one document.

**Recommendation:**

- Adopt an ordinance providing for recodification of the Derby Municipal Code to incorporate all ordinances of general application effective on or before November 5, 2008.

ORDINANCE NO. 1984

AN ORDINANCE PROVIDING FOR RECODIFICATION OF THE DERBY MUNICIPAL CODE; PROVIDING GENERALLY FOR THE REPEAL OF CERTAIN OTHER ORDINANCES OF THE CITY NOT INCLUDED IN SUCH CODE; EXCEPTING SPECIAL AND CERTAIN GENERAL ORDINANCES OF THE CITY FROM REPEAL; SAVING RIGHTS, DUTIES, FORFEITURES AND PENALTIES; AND PROVIDING RULES FOR CONSTRUCTION THEREOF.

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

VOTE: Motion carried 7-0, Staats absent.

**ADJOURNMENT**

MOTION: Meidinger moved to adjourn at 8:03 p.m. Nun seconded.

VOTE: Motion carried 7-0, Staats absent.

ATTEST:

\_\_\_\_\_  
Dion P. Avello, Mayor

\_\_\_\_\_  
Jean Epperson, City Clerk