

**APPROVED
REGULAR COUNCIL MEETING
October 13, 2009
6:30 PM**

Mayor Dion Avello presiding.

ROLL CALL:

WARD I
WARD II
WARD III
WARD IV

COUNCIL MEMBERS PRESENT:

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

Flag salute was led by Council President Mark Staats.

The invocation was led by Pastor Tom Wilson, St. Andrew's Episcopal Church

**CONSIDERATION OF
MINUTES**

Minutes of the September 22, 2009, Regular Council Meeting.

MOTION: Haynes moved to approve minutes of September 22, 2009 Regular Council Meeting. Bannon seconded.

VOTE: Motion carried 6-2, Horyna and Staats abstain.

PUBLIC FORUM

Council Member Warren thanked everyone for their support, city staff, the council, family and friends. The support has been overwhelming. A week ago Sunday he experienced some chest pains that led to a triple bypass. The surgery was very successful. The next time you go to your doctor and he says you have a little bit too much weight and you need to exercise a little bit more, feel free to ignore him and maybe, like me you'll be lucky and get a second chance. You might not. He is quite motivated now to listen and implement many of the things that his doctor has been telling him for a number of years. He gave a special thanks to his wife Pam for being there every step of the way.

Eleanor Underwood advised that in draft three of the vacated library space it shows a shared space which is labeled the training room. They are grateful for that and understand the senior center would have access to that five days a week in the mornings and then to serve the birthday/anniversary meals and the covered dish dinners, that would be on a regular basis with other activities as needed. They are grateful to have that space because that was one of the things they had asked for was to have the space to do that. Although that is indicated as shared space and a training room they have been assured that we would be able to use that five days a

week in the mornings. They do have classes at this time scheduled but they conflict with other issues, the council room is one of the places we have weight training class on Thursday mornings. Draft 3 also shows a fitness room listed at 425 sq. ft. that is an increase. The fitness room they are using right now is 243 sq. feet. Draft 2 was an increase in square footage but only by 37 feet. They were grateful for the increase to 425 sq. ft. The fitness room with the treadmills and recumbent bikes is so small people would have to stop exercising for you to go to another part of the room, that's how crowded it is now. People who use the room have told her that the 425 sq. feet simply allows for the equipment they now have. We had talked about purchasing some more equipment with money from the breakfasts and other things but there is no need because there is no room for any more equipment. It makes it where people can exercise, someone can walk through the room and we can possibly add the resistance bands. They are grateful to have that amount of space but it is simply to meet what they now need. They have some medical rehab facilities, one of them may even be ready to open on Madison and it would be a 60-70 bed skilled nursing facility. The skilled nursing patients would not be able to come to the senior center but the next phase was to include the assisted living and possibly an independent living unit. There are also two other facilities that are proposed, Lake Point with skilled bed nursing and possibly a second phase involving assisted living. Then there is a 20-acre plot close to 63rd Street that is patio homes that is for senior citizens. The reason she wants the council to be aware of that is, in looking at the report you will receive is that the senior population that could be using the senior center will increase at a faster rate than it would, even ordinarily. Kansas is increasing at a faster rate than the nation, Sedgwick County is increasing at a faster rate than other counties in Kansas and Derby will be increasing at a faster rate than any of those. When they wanted to have a new library, it was advertised on all of the brochures that this would be space for the senior center. In the newspapers in 2007 it did include that city hall would be needing space as well. She understands that as the city grows then there would need to be increase in staff. She added that we share this building but do not add an outside entity, we need all the space we have.

Lucy French Andra advised she got married two weeks ago. If you don't keep the seniors corralled and busy we get into all kinds of mischief. She walked through the exercise room today, even with the additional space that is projected for us to have, when we get that equipment in there it will then meet what she considers safety standards. Right now, with the lack of agility that many of us have as we age, it is just a safety hazard. We are continuing to grow at a rate of at least 15 members per month, in a year's time we could conceivably have an additional 180 people in our membership. Some people use canes and walkers and don't have the budget to go to the DRC.

Council Member Meidinger asked if Waste Connections has provided any information on their local participation for their consumer points.

Kathy Sexton, City Manager advised that RecycleBank people were here today having a merchant's meeting sponsored by the Chamber of Commerce where they had invited all the businesses in town that we could get an invitation to to come in and learn about this free advertising opportunity. When you start recycling with this program, you rack up points. You get an email the next day after the truck comes that tells you how many points you have, you then go on their website and choose coupons, gift cards, etc., from online merchants, Wichita

merchants, national merchants and Derby merchants. We had about 8 businesses at the meeting today and the RecycleBank representative is in town tomorrow and Thursday and will be back next week as well, calling on various businesses to make sure people can keep those dollars here and give Derby businesses a leg up. If anyone is interested call her at city hall or Rhonda at the Chamber and we will get you hooked up with a RecycleBank representative.

Council Member Horyna thanked Kathy Sexton, Allison Moeding, Dean Acker, the Mayor and Mark Staats. They participated in the chili cook-off and took 3rd place, regardless of how many were in the competition. He added that a few weeks ago he was in Olathe visiting his sister, and her neighbor was in the hospital with pneumonia, that neighbor has since passed away. Please take care of yourself, see your doctor regularly, and get check ups and immunizations. If anything can be prevented, please do it, there is nothing more important than your health.

Council Member Bannon advised the Foghat concert was a great success. With this weather, what's better than spending the day in, reading a book? The library will be closing at its current location this Saturday at 5:00 p.m. sharp. Go down and pick up all the books you want, they don't want to have to move them. When you get ready to bring them back, take them to the drive-thru drop off at the new library. The new library will open on November 14th at 9:00 a.m. with a ribbon cutting at 10:00 a.m. This Saturday is the cutoff to get all your library books for the next month.

Council Member Staats thanked the DRC for putting on a great concert. There were estimates of 2,000 to 4,000 attendees, and it was a great turnout. It says a lot for our community when we can pull off an event like that here at High Park. He thanked the DRC and everyone who showed up. He is sure there were a lot of people from Wichita that came down and got to see our great city.

Mayor Avello showed off their 3rd place trophy from the chili cook-off. They feel they did not win because not enough Derby people came to vote. Next year we will advertise and bring home the big trophy. He mentioned the bridge on Woodlawn to Mr. Mendoza; he wants it looked at for repairs.

DEFEASANCE OF GENERAL OBLIGATION BONDS SERIES 2003-B

Joe Norton, Gilmore & Bell presented information to the council.

Background:

- In 2003, the City issued bonds on behalf of the Derby Recreation Commission (DRC) for the purpose of making improvements to the Derby Recreation Center on Market Street.
- The bonds were issued as General Obligation Series 2003-B for \$1,150,000. The DRC makes rental payments to the city to reimburse the semi-annual debt service requirement.
- Currently, bonds of \$650,000 (principal amount) remain outstanding.

- The Derby Recreation Commission requested redemption of the bonds maturing between 2010 through 2013, which total \$530,000. The bond payment of \$120,000 due December 1, 2009 will be paid with interest as originally scheduled.
- The proposed resolution directs the call for redemption of the bonds and authorization of the subsequent notice.
- The Notice of Call for Redemption will be provided to the State Treasurer and Salomon Smith Barney, underwriter of the bonds, 45 days prior to the redemption date of December 1.

Financial/Sustainability Considerations:

- Redemption of the bonds and any associated costs will be paid by the DRC. This early redemption will save the taxpayers interest costs of \$45,338.78.
- Redemption of the bonds will have a small but favorable effect on the available debt capacity of the City and a key debt ratio of Statutory Direct Debt as a Percentage of Assessed Valuation.

Legal Considerations:

- The instruments pursuant to which the bonds were issued authorize the City to undertake this redemption and establish the procedure for doing so.

Policy Considerations:

- Redemption of the bonds will result in prudent cash management by the DRC due to the interest rate on the bonds, which ranges between 3.0% and 3.5%, and the current short-term interest rates available for DRC reserves, which is a lower rate.

RESOLUTION NO. 33-2009

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF DERBY, KANSAS, DIRECTING THE CALL FOR REDEMPTION OF CERTAIN OUTSTANDING BONDS AND PROVIDING FOR NOTICE OF SAID REDEMPTION.

MOTION: Horyna moved to approve a resolution directing the call for redemption of bonds as presented. Haynes seconded.

VOTE: Motion carried 8-0.

**REQUEST FOR INCENTIVES –
DERBY HEALTH &
REHABILITATION CENTER**

Fred Hermes, Physician’s Development Group presented a video to the council as well as information regarding their request. He advised they hope to start taking patients early next week, depending on when the Kansas Department on Aging comes in; they are expected Monday or Tuesday. Currently 75% of their interest is coming from outside the Derby community, 38% of the people who attended our open house a couple of weeks ago were from outside of Derby. Currently 16 people want to be admitted as soon as we open. Of those 16 people, 12 of them do

not come from the Derby community; they are coming from Wichita, Mulvane, places like that. It took us a little bit of time to get our healthcare provider hat off and start thinking about the City's concerns and what was being asked and why. This facility provides services to both Medicaid and Medicare people. After a lot of discussion, we understand that part of the thought here is, where is the money coming from and are we rolling money over in the Derby community or is there some fresh money coming in? We are looking at taking 20 Medicaid people, the majority of that money comes from the state, it's not coming into Derby at all now, it's somewhere else. Those people are getting care in other places and the state is paying that money to places other than the Derby community. Our budget is \$1.4 million a year in Medicaid money, that's money that is not coming here now. In addition, Medicare is 100% money that is not coming into Derby now, it's going somewhere else. There are a couple of people at the Family Health and Rehab on the west side who are from Derby, we've always since we've been open had 2-3 people from Derby in that facility; that money is going somewhere else. There is another \$1.5 million a year that will be coming into the Derby community. If you add those two together, \$2.9 million is fresh, injected money into Derby every year.

He explained they are designed in four houses, each house has 16 rooms, allowing a lot of secured access in the future. In addition to skilled nursing, we can put in long term acute care, a hospice house and things like a sleep lab. Twenty years from now if things change, we can change with it simply because of the design. What we really want to talk about is memory care, that's something Derby doesn't have. You provide care to some people with dementia and Alzheimer's, but you don't have a true memory care unit. There are not a whole lot of them really in Sedgwick County. There's a great need in this area for a memory care unit. Because of the way we are designed, with a house specifically set up and staff trained for individuals with memory care, with secured entry, it gives us the ability to really focus on memory care. We have done a lot of study and research in that; this is really kind of the elite model for memory care.

Because we have four houses and staff each of those houses with professional nurses and because we have a nurse practitioner on staff under the medical director, we are able to take some pretty heavy care people that other facilities don't. We work with bariatrics, cardiac rehab, multiple IV's, wound care, tracheotomy care, etc. Because of our investor pool, we have a great deal of expertise, ranging from cardiologists, nephrologists, oncologists, orthopedists, general practitioners, etc, that we have the ability to lend their expertise to our facility so when we have somebody at the hospital that the majority of other facilities will turn down because it's a heavier care situation, that is something that we end up often times taking. He commented about the competing use issue in the criteria for IRB's; they are here and taking patients next week. By the end of the month they will have 16-30 people in the facility and will be up and operating.

We know that there is another facility out there that has some blessing for tax abatements but they have yet to put a shovel in the ground. We would like you to consider that and even the playing field a little bit for us and help us to succeed. This will be Derby's first complete campus. We have underway wanting to build assisted living, independent living, medical office and medical retail. We will take individuals from independent living all the way through rehab or long term care, including memory care. There's not another piece of senior care campus that you will be wanting, it will all be on this campus.

He addressed the concern of the “but/for” principle. Physician’s Development and our group of investors have three campuses currently. The Derby campus at 14 acres, the campus in west Wichita with 17 acres, and some land in northeast Wichita that we own. Where do we focus our attention? We can’t focus it everywhere at one time. What we really would like is for the city to consider that we have synergy and energy here now, what we want to do is come in and complete this full campus in the next year, year and half, and get it done before we move on to the next one. We have pressures from investors; several of them are in the audience tonight. They want to see if we can develop a good partnership with the City of Derby or is it something that we need to move to another campus and focus there for awhile and come back. We really want to get this done and we want you to work with us to get that done.

On this 14 acres we are looking at a \$4.5 million assisted living, \$1.8 million in independent living that we actually have drawn on the board ready to go. We also have made great efforts in terms of the medical office building and medical retail, those things are coming together very quickly and with your help we can polish them off. The assisted living has had a little bit of a slow down in the last month or so in terms of investor interests and waiting to see what happens tonight. When we are all said and done we are looking at another 115 jobs, not including this facility, and another \$11 million in building. When we got that land it was zoned farm land with very little tax dollars on it. The additional phases of this project that we are not asking for anything on represent \$375,000 to \$400,000 in property taxes a year, plus whatever we may pay. If we get an 80% abatement, just between that campus will push it over \$400,000 a year where it was farm ground just a year ago.

We think we bring something to the table and really ask for help. Our original plan was not to do a whole lot of Medicaid but there is a great need for that in this community so we revamped the plans and budget and added some rooms and square footage in order to take some Medicaid and we are looking at taking 30-35% of our building as Medicaid provided we can get this partnership going. That is not something we do at the Family Health and Rehab, we have four Medicaid patients and the administrator was directed to take no more than six so we are looking at a great deal more.

On the cost benefit analysis, at 80% we are 1.41, that does not include the \$2.9 million in cash injection I talked about earlier because it’s not something they typically work with and deal with. Those monies come from the state and federal government and they come straight into Derby, and that could be a big help. You are not giving up any tax dollars here, based on the straight cost benefit analysis you are actually gaining 40%, not including the \$2.9 million I have talked about or the \$400,000 in additional development we hope we can partner with and do. We have currently hired about 20 people but plan to hire about 103 people by the time we are said and done over the next six months. The neighbors seem to be excited about us coming in and we worked really hard to solve their drainage issues. We have allowed them to drain their water onto our property and to tie into our sewer drainage. We have built and designed our drainage pond bigger so the neighbors could drain their water onto our property because they were having a great deal of issues. When we first started getting some meetings together that was the number one topic and we have worked with them very hard to solve as much of that as we can and have really tried to be a good neighbor.

Derby Health and Rehab is a visionary design, you will only find one like it in the state and it sits on the west side of Wichita. It will bring people to the City of Derby; it is bringing people to the City of Derby just in the 16 people that are ready to move in today. It gives Derby something they can be proud of, it will be a high quality senior care campus with all components on one campus. Memory care is important to us and we want to keep it. It does take some additional time and money in order to run it properly. We wanted to do it at the west campus but could not due to budget constraints. We believe it will work wonderful here, it's in our plans to do and we don't want that to be in jeopardy at all.

The thing you need to know about this facility that differs so much is that this facility is designed for people to live in and to love life in. It's why it was conceived and built. It's what brings us partners together, whether it is Physician's Development Group or all of our investors, it's something that we talk about, quality of life, in our meetings. It was not built to be as efficient as it can possibly be in order to drive revenues. It's mainly all private rooms, it has the warmth and feel of home and that's why we did it.

The ownership of the Derby Health and Rehabilitation Center is comprised of six legal entities and thirty individuals. We together have put in \$1.8 million in cash and have guaranteed another \$7.3 million in personal guarantees. We believe that Derby is growing and believe there is a huge need for people to have this kind of service in Derby. We believe that even with the existence of another facility that the need still won't be met, just from the demographics and what we are seeing out there. We believe there is room for another facility and we'll both be fine and strong. I have some people here who want to speak on our behalf:

Jeff Peebler has been a social worker for about 20 years. He has always had to make the commute to Wichita. He sees this as a very exciting opportunity for Derby. Working in the medical field for the last 7 years at Wesley Hospital has allowed him to see a lot of similar facilities and what this is going to bring to Derby is very important. It will bring a lot of jobs to Derby and will be a wonderful opportunity for people that live in Derby to be able to work at a facility like this. He has had quite a few friends who work in the same field and live in the Derby area who have been inquiring about it. He is very excited from the standpoint that it encompasses all the levels of care people will need from independent living all the way to long term care and memory care. You don't see that a lot in the communities around the Wichita area. The families he has worked with at the hospital struggle with where they are going to put mom or dad and they will have to move them every few years as they move on with their level of care. From that standpoint it's really a great thing for Derby.

Mary Calin advised her husband is in memory care. When she heard this facility was coming to Derby she was ecstatic. Her husband has been in the area his whole life and will be 84 years old next month. His family homesteaded where this building sets. He is now in St. Joseph's hospital in the senior behavioral unit and is basically homeless. The place he was says he doesn't fit into their plans anymore. They are looking at sending her to Augusta, Clearwater or Newton because there are not memory care units anywhere close.

Bob Brooks advised he built Sterling House in 1992 near the corner of Rock Road and Walnut Grove. It has been operating very well for the past 17 years. We have had about 300 citizens

from Derby that have spent time there over the years and have about 250 man years of employment during that period as well. From a business perspective the project was always successful; it was full within the first year and has been full for the better part of 17 years. While that is good from a business point of view it's not necessarily good from a Derby point of view because there is not enough room for the Derby residents. People that are looking for a place to stay, who need assisted living are forced to go elsewhere, mostly Wichita or Mulvane. As we were looking at the demographics again it was very clear that Derby was ripe for another assisted living and he was very fortunate to run into the gentleman with Derby Health and Rehab who had enough land and was willing to talk to him about doing assisted living. He visited their nursing home in west Wichita, it's more than visionary, it's a beautiful facility, one that you would be extremely proud to have in the community. There's a tremendous amount of synergy between their nursing home and our assisted living. People migrate between assisted living and nursing homes all the time. We have people that are in nursing homes, get better and come back to assisted living and vice versa. It is a very exciting opportunity to be right next door to a facility as fine as this. He is here in support of their proposal and is in the process of financing his building right now, it's a \$4 million building. They have raised a little bit in excess of \$1 million, which is remarkable in these economic times. He would like to be able to tell the other investors how supportive the City of Derby is in healthcare in this campus.

Vicki Rockhill has lived in Derby since 2000, coming from Sacramento. She and her husband looked very cautiously and carefully to decide where to build their home and chose Derby, they love Derby. Derby has the things that a lot of other places don't have; the Foghat concert, the library, the senior center. We have a great city here. I am one of the city's best cheerleaders, she loves Derby and everyone should live here, but she doesn't want everyone as her neighbor. We are one of the first families to have moved into Timberleaf and are very happy to have Family Health and Rehab Center as our neighbors. They have a beautiful building on the inside and the outside is nicely landscaped. More importantly, Derby has been so underserved for health services for seniors. There is only one option for those who want to stay in Derby and with Derby's growing population it's nice to have choices. She saw on the news tonight that every baby born this year has a really high chance of living to be 100, we need something here. As health care changes so must the delivery change. The center is clean, modern and able to meet those changes. The system is current and effective to meet the needs of seniors that want to stay in Derby. It's going to be a place that will add special uniqueness to our city; it is going to be a place like none other. A campus that will offer a skilled center, assisted living and independent living is a need that needs to be part of Derby. She has been a nurse since 1982 and was director of nursing at Alterra Sterling House Derby. It's painful to sit down with a family member and tell them that we cannot keep their loved one in our center anymore because they need skilled nursing care. There is only one choice in Derby, Westview. That's a painful decision to make, she wouldn't want to make that decision as a daughter, we need another building in Derby. She has had a personal relationship with Dr. Greg Lakin and the other physicians in the group for almost 5 years. They are fine doctors and great givers of care. As a neighbor she is proud to have the center in her neighborhood. As a taxpayer in Derby she would support the council to give this group a tax abatement.

Ed Fehrman advised that in January 2006 his wife had a major stroke. She went to Wesley hospital, you know how those things go, if you can sit up you have to get out. They went to Our Lady of Lourdes Rehab Center and she wasn't strong enough to stand the six hours of therapy so

they were told they had to find a nursing home with skilled nursing and some rehab. His son did some research and found Halstead Health and Rehab which was designed, built and ran by Mr. Hermes. They took her in and for today she is home. She would have been here tonight except for the weather. They live ½ mile south of Webb and Harry; they love Derby and actually tried to find a home here. They would live here if they had the opportunity probably but they have a nice home. When he has to go to a nursing home, it's going to be this kind of nursing home. They went over to west Wichita and looked at that facility. He has two sisters that spent some time there and it's like no other nursing home. The best way to find out is to go see for yourself, it's a whole new concept. Mr. Hermes came and spoke to our Wichita East Lion's Club and we have two members now looking for this type of home for their mothers. The fact that this facility is opening he knows that is where he is going to be with his long term care money and that is where his wife will be. He can assure you this place will be filled up before you know it. Anything the council can do to support it will most certainly be appreciated by the seniors in Wichita as well as in Derby.

Dr. Lakin, Physician's Development Group explained that you have to buy enough land that will support the different medical entities to provide a lot of comprehensive medical services, so that's what we have done basically. You get enough land, 14 acres so you can build skilled nursing, assisted living, independent living and provide other medical support services. You create enough synergy so that no matter what a person's needs are, chances are we can handle it. Even as their needs change, it may involve a move across the street, to another room but they will be able to keep the same physical therapists, they will have the same neighbors, they'll have the same neighborhood. Also to do this we have to collect enough of the local health care providers and we've done that. Not only do we have primary care providers from Derby and the local communities but all of our health care providers are from the greater Wichita area. They are oncologists, neurologists, nephrologists and cardiologists, very prominent specialists that have all been excited about this senior campus project. We have two other locations that are perhaps more convenient but he has taken it upon himself to sell them on the fact that Derby is the initial primary sight that we should develop, partly because the community is very supportive and the people are supportive, but also because the needs are the greatest here. You do not have a memory unit here; you do not have enough skilled nursing beds and you certainly don't have a comprehensive campus, because no one here does. His hope is that even though the economy has changed and even though Medicare has slashed \$19 billion off, which directly affects us, his hope is the City will step up and help us complete this campus. You will be the first in the region to have a senior medical campus.

Butch Nuss, Physician's Development Group has been in the development business for 15 years. He has worked for Fortune 100 companies, Fortune 1000, very rapidly growing companies. One thing he has been fortunate, or unfortunate, is to travel the country and speak in a lot of city councils and planning commissions and such. He has also had to listen to a lot, a lot of times he was the last person to speak. Part of the thing that baffled him the most is how did we have such a disconnect in this situation in Derby. It occurred to him that we probably didn't do a very good job of informing you what our product is. We spend a lot of our time in the operations mode and providing that care, we understand our vision, but does everyone else? It was exciting for him to become part of this company because of their vision, it's very easy to get up and speak about this, much easier than any of his past jobs. We have talked about the cost-benefit analysis, in our

last meeting we attended, the Economic Development Board, they heard it at 100% tax abatement. Since that time it has been re-run at 80% tax abatement and the staff felt it was important enough to be presented in this meeting as opposed to going back to an economic development meeting. Something the public may not understand is that a tax abatement does not take any money from the community. By virtue of applying for it, the cost-benefit analysis is performed and that's what helps give you the comfort knowing that they have a minimum requirement ratio, return on investment on your dollar. We believe that approval this evening would send a positive message to the Derby community that the city council supports a senior care campus. As many have said this evening this is one of a kind and we are fortunate to be a part of that campus. The campus includes independent living, assisted living, skilled nursing and medical offices. No other place in Derby offers memory care. They are able to dedicate a house with 16 rooms and specialized staff to meet the needs of Alzheimer's and dementia patients, which quite honestly isn't offered anywhere but on the west side of Wichita right now in our other facility. Part of what we are asking for this evening is an IRB tax abatement, the reason is, we would really like to include the Medicaid beds that we have budgeted and redesigned the facility for. He explained how the ownership is comprised, including 30 individuals and 6 corporations. Of that, 23 of the 30 individuals are all practicing physicians, ranging in disciplines from oncologists, neurologists, dentists, cardiologists, nephrologists, ER doctors, surgeons, anesthesiologists, ear specialists and family practitioners. All of them reside within 50 miles of this location, 90% live within 15 miles of this location. We are not a corporation from outside the State of Kansas, nor are we outside of this community. Not only do our investors specialize in Medicare, we do lean to them for advice in how we structure and provide care to our patients and residents. That is something we pride ourselves in and he is willing to bet there are very few organizations that are structured that way. Even by approving the tax abatements, the city council has the ability to discontinue the incentives and require them to be paid back. We are asking the council to approve alternative option one, which is 80% of the tax abatement, or approving alternative option two, which is 100% tax abatement. If you feel like there is not enough information given to you this evening we would really like the opportunity to have you consider the possibility of a workshop if there is not enough information for you to vote in the positive for us this evening.

DISCUSSION:

Council Member Haynes asked Mr. Hermes if the goal was to have the complete campus done within a year and a half.

Mr. Hermes advised that was correct.

Council Member Haynes asked if they were on track for that.

Mr. Hermes advised they were and would like to stay on track.

Council Member Haynes clarified that the request for tax abatements was only for the one property that is now up and running.

Mr. Hermes advised that was correct.

Council Member Haynes commented that it's a given you are in business to make money. We are also in business to build and maintain relationships. If we build and maintain those relationships the bottom line will take care of itself. That's a fine line when the council has to address issues like these. Building those relationships from an aspect of what's proposed as far as the business of a senior center, health and rehabilitation center, it's a positive move for Derby. The hard question comes back to the tax abatement. The other thing is job creation, we have to create jobs. It doesn't start in Washington; it starts in Derby, Kansas, what little we can do here to create jobs. That's a positive thing, looking towards the future. It was mentioned a good percentage of the physicians associated with the investors live within a 15-mile radius of Derby. Are there any Derby physicians, practicing in Derby that are currently associated with this group?

Dr. Lakin advised there are Derby investors.

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

Background:

- Representatives of Physicians Development Group (PDG) met with City staff in March 2009 to discuss their interest in a second request for incentives. On July 29, 2009, PDG submitted a written request for incentives for the Derby skilled nursing facility at 731 Klein Circle. Following the review and recommendation against the request by Derby's Economic Development Board, PDG amended the request. This third request is for industrial revenue bond (IRB) financing and 80% property tax abatement for a ten-year period (5+5 years).
 - The skilled nursing facility is the first phase of a development on a 14-acre site located just east of Derby High School on Madison Ave. The nursing facility occupies 4 acres on the property, with the remaining land planned for uses that include an assisted living complex, independent living units, senior wellness center and related medical/retail space.
 - PDG previously requested tax incentives in February 2008. Their first request was considered simultaneously with a request from LakePoint Nursing Centers. The Economic Development Board and City Council voted against the PDG request. Both groups' decisions were based on multiple factors related to the city's policy, including the cost-benefit ratio (last year, the ratios were 1.12:1 for PDG and 1.82:1 for LakePoint), the operating history and reputation of each company, the number of Medicaid patients to be admitted, and the overall need for skilled nursing services in Derby.
- PDG indicates that the re-application for incentives came about after re-evaluating the need for senior medical services and changes in the economy. In that process, the need for additional Medicaid capacity was identified. Because Medicaid does not reimburse for the full cost of patient care, the owners are requesting the property tax abatement to ensure profitability if Medicaid patients are to be admitted.
- The ownership group for this project, and the group to which the tax abatement would be granted, is DHRC Property Development LLC. This group is comprised of 6 legal

entities and 30 individuals. Together, these parties will contribute \$1.8 million in cash, which represents 20% of the total project cost, plus \$7.3 million in personal guarantees.

- The Economic Development Board (EDB) reviewed the original proposal, which was for IRB financing and a 100% abatement, at its August 17 meeting and again at a special meeting on August 31. A second meeting was needed to receive and review the results of the required cost-benefit analysis and to consider additional information and financial data provided to staff after the original request was submitted. The standard financial statements and audited annual reports typically reviewed for incentive projects are not available for this applicant, which is a newly created legal entity with no financial history to review.
- The EDB discussion focused largely on the policy implications of the PDG request and the need for the incentives. Board members agreed that the lack of financial information, even if more could be obtained, would not affect their view of the policy issues. Based on several factors, including the “but-for” principle and cost-benefit ratio discussed later in this report, the board voted unanimously to recommend against the requested incentives. Two board members abstained from the vote. One member was absent. The minutes from the meetings are attached for reference.
- Other attachments to this agenda report include:
 - Incentives Application
 - PDG Proposal
 - Pre-Qualification Questionnaire (non-confidential portions)
 - Cost-Benefit Analysis Report (80% abatement amount)
 - Derby Incentives Policy
 - EDB meeting minutes

Financial/Sustainability Considerations:

- The total cost of the skilled nursing facility (SNF) project is \$9,350,000. This amount includes all project costs including land, construction, furniture & equipment, working capital, project development costs, financing fees, interest and offering costs.
- Based on the cost-benefit analysis, the total value of a 100% property tax exemption is \$1,804,737 over the 10-year period. The 80% property tax exemption is estimated at \$1,443,790.
 - If incentives are approved, the developer does not intend to request incentives for any future phases of the project. If incentives are not approved, the company has indicated that future phases may be delayed.
- As presented, the project will create 82 new FTE jobs at startup (75 full-time positions and 14 part-time positions) and grow to 100 by year 10. Based on data from the cost-benefit analysis, total payroll over 10 years is anticipated to be \$45,052,573.
- Because the entities owning and operating the facility are new companies, no annual reports or audited financial data is available. PDG has provided confidential anticipated profit-loss information for the Derby facility and a confidential 6-month profit-loss statement from Jan-June 2009 for its West Wichita facility.
- After the EDB’s recommendation, PDG agreed to complete a Pre-Qualification Questionnaire in lieu of the usual financial data. From this completed questionnaire, a background check of the five largest shareholders in DHRC Property Development LLC

returned no reports of bankruptcies, liens, collections or civil judgments filed. No delinquent property taxes were on file in Sedgwick County as of October 7, 2009 for any of the five largest shareholders. The five largest shareholders represent 54% of total ownership in DHRC Property Development LLC.

- The bonds would likely be sold in a private placement arrangement. Central National Bank has provided a letter indicating interest in purchasing the bonds, but has not made a commitment to do so.

Legal Considerations:

- The issuance of industrial revenue bonds (IRBs) and tax abatement is authorized by Kansas law. State law permits the issuance of IRBs to fund projects already under construction. While this is not common in Derby, it is allowed.
- The City has adopted a policy for consideration of IRB financing and tax abatement requests. Analysis of whether this request adheres to the policy is presented below.

Policy Considerations:

- The city's current policy was written to closely reflect the policy followed by Wichita and Sedgwick County. This helps to ensure consistency in the region, reflects good partnership with our neighbors, and reinforces the principle of working together. Our policy involves a number of steps that determine if, and to what degree, a project qualifies for an incentive. Those steps include: 1) consideration of the project's compatibility with the general purpose of incentives; 2) application of the fiscal model (or cost-benefit analysis); 3) determination of eligibility; 4) evaluation of additional criteria; and, 5) utilization of the job creation and capital investment matrix.
- First, this project represents a significant number of new jobs and a large amount of capital investment in the community, which meets the general purpose and intent of economic development incentives.
- Second, the fiscal model returned a ratio of 1.13 to 1 for this project, which does not meet the minimum ratio of 1.30 to 1 required by City policy. However, when the incentive is lowered to 80% abatement, the ratio rises to 1.41 to 1, which does adhere to the policy. Derby has not previously issued any abatement for less than 100%. This project is unusual because it does not achieve the minimum cost-benefit ratio, but does meet, and exceed, the job creation and capital investment requirements for a full abatement. Neither past practice nor the policy addresses the practice of manipulating the cost-benefit model to return the required minimum ratio. Realistically, any incentive for any project can be reduced to a point at which it will meet the required cost-benefit ratio. Wichita and Sedgwick County will apply partial abatements, but the partial abatements are considered after first completing the cost-benefit analysis, then determining eligibility and calculating the abatement amount using the job creation & capital investment tables. The future effect of applying a "backward" approach is unknown, but it could result in more requests from businesses for smaller incentive amounts.
- Third, the DHRC project is in an eligible category, qualifying for incentives through the "Medical Services" category.
- Fourth, among the additional criteria in the City's incentives policy is the "but-for principle" stating that the incentive must make such a difference in determining the

establishment or expansion of the business that the business would not otherwise be established or expanded in the City, if not for the availability of the incentive.

- In this case, it is evident that the incentive was not a factor in the decision to build the Derby facility, as the company chose to proceed with the project after denial of the first request.
- Also, in recent conversations with PDG representatives, City staff was informed that the skilled nursing center would open and be successful regardless of receipt of the incentive.
- Also within additional criteria, the policy states that no incentive shall be granted if the incentive would create, in the judgment of the governing body, an unfair advantage for one business over another competing business within the City. In some cases, this may be tempered by the overall need or benefit from the business to the community if its service is not already being provided to the extent needed. With the LakePoint project pending and with changes underway at Westview of Derby that include new management and renovation of some semi-private rooms to private rooms, is it difficult to measure the need for skilled nursing beds at this time.
- Fifth is job creation and capital investment. The project meets the required job creation and capital investment threshold, qualifying for 100%, 5 + 5 year tax abatement.
- With DHRC Property Development LLC as the formal recipient of the incentives, there is no financial history upon which past performance or a prediction of future success can be evaluated.

FURTHER DISCUSSION:

Council Member Meidinger thanked Mr. Hermes, Mr. Brooks, Mr. Nuss, Mr. Lakin and Allison for all of the information provided. He asked if the facility would take younger patients as well.

Mr. Hermes advised they would. In fact Family Health and Rehab had an 18-year-old patient for awhile. We can take patients from 16 years old and up.

Council Member Meidinger advised that at this point we need to be talking about a quality of life issue for the City of Derby. With the motel we gave away tax abatements, we gave away the transient tax. In looking at the motel business and the added dollars that Mr. Hermes mentioned that would be coming in. New dollars for Derby, \$1.4 million, is that correct?

Mr. Hermes advised it was \$1.9 million.

Council Member Meidinger advised when you look at the motel business that we subsidized that is a quality of life issue for Derby. If that motel was full at 40 rooms a night, 365 days a year that would generate about \$1.4 million. He seriously doubts if the motel is doing that kind of business. He doesn't think the motel is going to generate the amount of employment that this facility will generate, not even close; the motel probably has 5-6 employees at the most. Mrs. Underwood in her early comments talked about the increase in the senior center population. Are we going to have one policy for senior citizens and one policy for motels? He strongly favors

the equality of life for everybody in the city of Derby. He would support the 80% tax abatement on this program.

Council Member Bannon advised she has toured the facility and it's a wonderful facility. She hopes she never has to be in one, chances are some of us will and if she has to be in one it's very nice. It's a great addition to Derby with a great design. She has no doubt that they will have many residents very soon, you have 16 waiting and of those, 25% are already Medicaid. We welcome you to Derby. As far as tax abatements, a lot of this comes down to choices. The city chose, based on a number of factors to go with a different company. They are still going forward, she was always taught to dance with the one that brought you. We made a deal, you don't go back on a deal and she doesn't want to see the city start doing that. We did learn something from that, timetables, etc, but there was a reason we picked that company that night. Your group chose to build knowing we had picked another company, you didn't go into it blind, you weren't both building and it wasn't a contest after the point. You chose, knowing the city had already put our tax dollars behind another company. Mid-design, you stopped and redesigned again, at your choice in order to take Medicaid patients, those are the choices it comes down to. As far as your underlying message that you might choose to build someplace else, it wasn't very subtle. The dollars drive the market and if your choice as a business is to not finish out the front part of that property, so be it. It's your choice, your business, you own the land and get to do what you want. There is no bad guy here, she has sat up here this evening and is feeling like people are going to think Derby is being mean, we're not putting out enough senior facilities, why are you people being so mean? That's not the case; this is a win for everybody. We are getting a wonderful state-of-the-art facility for seniors that will offer a lot of care whether you add or finish out the front of your land or not. We have another facility on the north end of town that will be built soon. We will have a lot of rooms. A year ago, or a little over a year ago you opened your west facility, the timing for you may not have worked out great but that's when we wanted your best proposal. We weren't looking for it tonight. The race has already been decided. It's a win/win, Derby is going to be getting two great skilled facilities and we are going to draw from both Derby and the surrounding areas.

MOTION: Bannon moved to deny the request for incentives because an adequate case has not been made for making exception to Derby city policy. Nun seconded.

Council Member Craig commented that this is the third request from the applicant. He clarified the applicants changed their business plan to allow for more Medicaid rooms.

Matt Lillie, Physicians Development Group explained that when you look at the list, what you are looking at are scheduled admits, only four of them are from Derby, the other 12 are from outlying areas.

Council Member Craig pointed out documents suggest that 25% of patients are Medicaid.

Mr. Lillie explained that some of the mental health patients are not necessarily noted as Medicaid, but they are Medicaid. Most of the ones that need memory care are Medicaid.

Council Member Craig asked what the ratio is right now.

Mr. Lillie advised it is over 50% on the list provided. Some of these are coming into the facility from a hospital but they will be Medicaid. That is what is happening in our existing facility.

Mr. Hermes indicated part of that is ramp up and how we license and certify. When we start taking patients next week we will be taking Medicaid and private pay patients. We don't get our Medicare certification until November.

Council Member Craig asked the applicants if this does not pass tonight if their business plan will change.

Mr. Hermes advised it would.

Council Member Craig asked if it would go back to the original plan.

Mr. Hermes stated it would go close to the original plan. The state does not reimburse heavy enough so we will have to go harder to private pay.

Council Member Craig clarified that is because of the vast difference in rehabilitation rate for private because it's either our own personal money or health insurance company money. You have built an incredible facility but this is kind of after the fact. He agrees with Mrs. Bannon, if this was the focus at the beginning you had a winner out of the gate, before the gate opened. Your business plan right now is a flexible plan based upon our approving these abatements. He believes that if this had been presented at the get go you would have had a real strong contender and he hopes to see it after the fact.

Council Member Warren advised he would be voting in favor of Mrs. Bannon's motion. She did a very good job in laying out the reasons for that. It's difficult to go back in and change the rules in the middle of the game. It would be putting us on a precedent that if we were to do this then would any business in town that was successful have the right to come before us and say "this is how much income I bring to the city, I should be eligible for tax abatements." He thinks it would be a precedent that would be very difficult for us to overcome in the future. He read the portion of the incentive policy that explained the "but for" principle. The bottom line is, as a city we have tried to be frugal as we have approached incentives. Some people will look at things and say "we weren't very frugal in that one" and we have turned some things down he thought were worthy of some incentives. To come back in at this point would be a bad precedent for this council to set and he cannot go forward with that. Having said that, it is his hope the applicants are very successful. There is \$9.1 million at risk, that is a huge investment. Big risk deserves a big reward and he hopes they are very successful. He would be open to considering, as the other phases come in, that there might be some possibility to look at some abatements. He is not saying he will vote for that but thinks the door should be left open and he would be willing to take a look at some additional investments that are going to be made in that area that we take a look at some incentive if the numbers work.

Council Member Meidinger asked when the other rehab center is going to open.

Mrs. Moeding advised they are scheduled to get final approval for their bonds at our first meeting in December and break ground in early 2010. They would probably be opening at the end of next year.

Council Member Meidinger stated that he guarantees we have a winner here. Who wants to roll the dice with “Obamacare?” Right now Congress is debating the major issues of what they are going to be doing. He doesn’t think anyone has a clue what they are going to be doing. Here we have the opportunity to get this completed now. You are trying to tell me that we all have this wisdom up here, that the new healthcare plan is going to be suitable for the new program for this next possible issue. He thinks we should go with this one.

Mayor Avello stated that as a son of a mother who is going to be 97 in April, he is very proud of that, living on her own with some daycare help, as the son-in-law of a woman who’s got two broken hips and an elderly father-in-law living on their own, someday he will be faced with where do I put them? This is going to be a wonderful facility, but for him it’s not an issue of the facilities, it an issue of what we have put down and are going to abide by. If we change the rules tonight we will be inundated down the road with other companies coming in, changing the rules after the fact again. He owns a little printing company and if we lose a bid or get a bid and somebody comes back and says “I didn’t see that can we rebid the job”, it just doesn’t sit will with him that way. If he had to break a tie he would vote no and take another look at it down the line after you are operational and the ratio can do it. I would not be adverse to you coming back and having another look at it.

RESTATED MOTION: Bannon moved to deny the request for incentives because adequate case has not been made for making an exception to City policy. Nun seconded.

VOTE: Motion carried 6-2, Meidinger nay, Haynes nay.

Mayor Avello thanked the applicants for their presentation, as well as all who spoke, especially those with people in care centers now. We all feel for you, when you get those ratios up, come on back because he is sure we will do something.

The council took a 10 minute recess at 8:11 p.m.

SECOND STATUS REPORT ON USE OF OLD LIBRARY SPACE

Kathy Sexton, City Manager presented the staff report.

Background:

- At the August 11 Council meeting, a report was made concerning the City's future use of the current library space between City Hall and the Senior Center after the library moves to its new building in November.
 - As previously approved by the Council in its Capital Improvement Plan, the space is to be used for expansion of the senior center and city hall, as well as creation of a large room to be shared to meet various City needs for training, meetings, and Senior Center programs.
- In February 2009, a first draft of a floor plan was developed and shared with the Senior Services Advisory Board and on display in the Senior Center.
- In May 2009, the City received a proposal from the Derby Chamber of Commerce to repurpose a small part of the space to create a Derby Welcome Center to serve as the front door to the community and to be staffed by the Chamber staff.
 - Essentially, the proposal is to exchange city-owned office space for services rendered by the Chamber and for a lease payment.
 - Services would include responding to requests from visitors and residents for information about community events and business opportunities.
 - A Derby Welcome Center would serve the role that is typically in many cities served by a Travel & Tourism Department of the City or a Convention & Visitors Bureau (which is funding with public tax dollars). The City of Derby has neither such office, rather relies on the goodwill of the Chamber to provide an uncompensated service.
- In July 2009, the City received a letter from the Derby Community Foundation indicating its desire to be involved with the Chamber and the City in discussing the Welcome Center concept and possibly consideration of a small office space for the Foundation.
- In August 2009, a second draft of a floor plan was developed to include the Welcome Center in the City Hall expansion area. Concerns about this floor plan were expressed at the August 11 City Council meeting.
- In September 2009, a special committee of volunteers and staff was established to ensure the project addresses the concerns raised by Senior Center patrons and City Council members at the August 11 Council meeting. The committee includes Jim Meidinger and Vaughn Nun (City Council), Eleanor Underwood (Senior Services Advisory Board), Dee Williams (Senior Services Director), Stephanie Knebel (Assistant City Manager), Ted Austin (Director of Operations), and Kathy Sexton (City Manager).
 - The committee met on Sept. 9 and 23 to review all issues raised at the Council meeting, develop Floor Plan Draft 3 (attached), compare the size of Derby's senior center to those of similarly sized cities, and begin to understand the Welcome Center concept.
- Draft 3 addresses all issues raised regarding the Senior Center:

- Movable walls: ad-alt between 2 new classrooms, but not between multi-purpose room and classrooms (2-hour fire wall--too expensive)
- Kitchen: no remodeling in this project; replace dishwasher & water sprayer
- Ventilation, crowding & noise in game room: expand game room & modify ventilation system
- Fitness room size: expand to 425 sq. feet (currently 210 sq. feet)
- Start from scratch: too expensive and not needed—minor modifications to current Senior Center will suffice
- Total size of the Senior Center increased to 11,181 square feet in draft 3 (compared to 9,000 square feet currently).
- As for the shared space, additional work is underway by the committee before its recommendation on the north end of the floor plan is ready to present to the Council. Draft 3 shows a larger training room and less room for City staff offices, but it has not yet been determined if this plan is preferable to draft 2.
- The special committee reviewed comparisons of senior center facilities in similarly sized cities in Kansas, as follows:

<u>City</u>	<u>Square footage</u>
a. Garden City (27K pop.)	28,000
b. Dodge City (26K pop.)	8,177
c. Derby (22K pop.)	9,000
d. Hays (20K pop.)	5,000
e. Liberal (20K pop.)	15,000
f. Newton (18K pop.)	3,387
g. 4 in Wichita: share space w/rec centers	
h. Downtown Wichita: old church & run by non-profit	

Draft 3: 11,181+4,337 shared = 15,518

Financial/Sustainability Considerations:

- The remodeling project is planned and budgeted for 2010 for \$800,000 using a mix of federal grant revenue and City tax revenue.
- The south end of the Floor Plan Draft 3, which is devoted solely to the Senior Center, is recommended to the Council to approve as a part of the grant application tonight.
- Additional work needs to be done to finalize the north end floor plan including the size of the training room, whether the City will contract with the Chamber to staff a new Welcome Center, and other details.
- Once a final floor plan is determined and we hear back from the federal government about the grant, a project cost estimate can be developed.

Legal Considerations:

- None at this time.

Policy Considerations:

- Consideration of the Welcome Center proposal is underway. No decisions have been made by staff or Council regarding the Chamber or the Community Foundation. We have plenty of time to do this work as we await word about whether the grant is approved.

- This expansion and remodeling of both the Senior Center and City Hall are anticipated to meet the needs of the growing population for approximately 8-10 years, at which time additional facility planning will need to occur.
- The City has previously obtained CDBG funds and is familiar with the procedures required for recordkeeping of the project funds.

DISCUSSION:

Council Member Craig asked about the two large classrooms, there aren't any entrances coming from the multi-purpose room, is that on purpose?

Ms. Sexton explained that is the fire-rated solid wall. We are not intending to connect those rooms. You want to have separate rooms so separate programs can be going on at the same time.

Council Member Craig indicated he understood that but is looking for flow of access. In order to get to that room you have to exit and go down a hallway to get into the classroom. Maybe that's the way you want it.

Ms. Sexton advised that is the way we want it. Think about the DRC for a minute, when you think about noise issues and trying to have programs in two different rooms that are beside each other, connected with doors with people going in and out of doors making it harder to hear. She says the DRC just because they have that kind of situation between the community room and that smaller room where they wish they had a vestibule between there, there is so much noise between those rooms. We are trying to prevent that.

Council Member Craig stated that as you look at that area he would look at the flexibility and the use of the open area. When you create large spaces like we have out front here, it's good for gathering but that's about it. He would have run that wall straight over to that coat area to make that room larger. That would cut down on the lobby area but he hates to see big open areas. We have a lot of those with no way to use the space. Once you create a lobby it's a lobby usually forever.

Ms. Sexton agreed that was a good point. Anytime you have a big meeting room, if you are going to invite 100-300 people into a room, you need to have a lobby. Having the coat closet out in the lobby is about milling space, maybe a couple of chairs, maybe a coffee pot. People want the social time; you want to encourage them to do the talking and the hanging of the coats outside the meeting. It is kind of a necessary evil, anytime you have a big room you need to have the gathering space to have people milling about and exiting out of the rooms and such.

Council Member Bannon stated that if you take the two classrooms at 878 sq. ft. each and 425 sq. ft. for the fitness center, that's 2,181 sq. ft., as opposed to the 2,103 sq. ft. on the staff report.

Stephanie Knebel, Assistant City Manager explained part of that is because of the calculation of the fitness room. The senior center has an existing fitness room and we are adding to that, so the difference is the net gain between current size and new size.

Council Member Bannon asked if we were taking away from the current exercise room.

Ms. Knebel advised they were not.

Council Member Bannon asked about when we say how much space the senior center is actually getting, wouldn't we be looking at the two large rooms and the fitness room.

Ms. Knebel added that part of that calculation is addition of some storage space as new space going toward the senior center. Right now that space is a furnace room in the senior center itself. We are able to convert that and make it new usable space for them as storage.

Council Member Bannon pointed out she is still coming up with more square footage than what you are showing.

Ms. Sexton advised that is correct. There were some differences in some addition and we need to redo some of our numbers. She doesn't think it's very much different but the idea is sometimes when we were doing math we were thinking about how much bigger is it as opposed to adding up all the square footage being added. We do need to update a little bit.

Council Member Bannon commented about conversations that took place back when the library was being built that this space would be divided and decided by the city manager, but with equality towards both. She took the number of square footage the senior center is getting, 2,181 sq. ft and took city stuff of 2,192, counting the welcome center space if it's done, figuring electrical, mechanical, vending machine, table and chairs area as well as the flex room (training room), and the serving kitchen, taking all of those out of the equation the city comes out with 2,192 and the senior center 2,181. That's pretty darn close. This will basically take both entities through the next 8-10 years.

Ms. Sexton agreed. We will be sharing the big room and the little conference room. We fully intend and we have talked to the senior services director about the use of the new conference room for senior services board meetings and other small meetings that they have. That frees up another one of their rooms for other programs. There will be a lot of shared usage. Nothing is ever perfect in terms of planning but she believes this will see us through the next 8-10 years fine.

Council Member Nun agreed that the division of this space will provide us with about 8-10 years of growth for both the city and the senior center which is kind of critical from a financial standpoint. We have a big liability from a tax standpoint with the library that will last for 10 years, that gives us time to do some planning on what will be senior center and city hall needs once we get closer to that 7-8 year point in time. Regarding the door between the multi-purpose room and the new classrooms, as Ms. Sexton said, that's a two-hour fire rated wall. If you put a door in, you destroy that fire rating. To get a door that would have the two-hour fire rating would be very expensive, or possibly you would even have to move that rated wall to the new wall for the senior center which would be much more expensive. It's kind of a cost issue. He's on the committee that's looking at these options and have had a couple of really good meetings. He enjoys the input although he's not totally sure he agrees with everything that has been said. He is looking at the 8-10 year life span that both the senior center and city hall needs.

MOTION: Nun moved to receive and file the report. Horyna seconded.

Council Member Meidinger stated that if you look at the percent the senior center got it was 18%, then the flex room at about 30%, city hall gets the remaining 52%. He understands we are going to talk about the other issue later but he does not think you can really separate them. We really have to talk about any outside agencies that are proposing to come in to city hall. What that is in effect doing is taking away perhaps some senior space, additional city space. If we were to come up with the brand new library and said “seniors, if you support this and vote for it you get 18% of the current library”, that essentially is what is happening. The training room may or may not be used for senior activities. He asked if the training room could have additional treadmills in it.

Ms. Sexton indicated anything is possible at future dates but she doesn't see that happening.

Council Member Meidinger advised that once we okay this plan everything else is pretty inflexible.

Ms. Sexton noted that as far as dedicated space for the senior center, her calculations show it's probably about a 24% increase in dedicated space. It's not unreasonable to talk about the shared space and the training room is a significant addition to the available space as opposed to needing to be dedicated. The need to talk about dedicated space is a need for tonight's next agenda item. The grant only allows us to apply for dedicated space remodeling that can't be used by anybody else. That is one of the important things about having flexible space. We are the local tax payers, the feds may not want to fund a grant for anything but dedicated space but most of the money is coming from the city anyway, if we can use facilities in flexible ways it really does benefit the city.

Council Member Craig asked once this is turned in, are you just showing the portions that are applicable to the senior center?

Ms. Sexton clarified he meant when we apply for the grant.

Council Member Craig advised that was correct.

Ms. Sexton advised the diagram shows just the senior center and that is what is being used for the grant.

Council Member Craig stated that once we apply for the grant and receive it, the dimensions on the diagram are set, correct?

Ms. Sexton advised that was correct. The feds don't like it if you say you are going to do one thing and do something else, this is the plan.

Council Member Craig clarified that we are asking them for \$92,000 and we are paying \$104,000. If the grant doesn't happen then all the bets are off and you can still modify it however you want to.

Ms. Sexton advised that is part of the issue for our critical path of what needs to happen. She didn't put any other numbers in here but certainly the city is looking to commit a whole lot more than \$104,000 for the entire remodel project, we are only putting the numbers in the staff report that apply to these several new rooms, the air conditioning and remodeling of the current senior center because that is all that is applicable to the grant. We need to wait about three months to see if we get the grant. If we do great, we proceed on, finish the design for the rest of it and put it out to bid and do the project. If we don't get the grant there could be different decisions made.

Council Member Craig asked if we set aside \$800,000 in the CIP.

Ms. Sexton explained that we estimated in the CIP a total project of \$800,000. That was an estimate and that's going to be different when we get this all done. We do need to decide on a floor plan so we can get better estimates and put out for bid.

Mayor Avello made it clear for those watching, we are not voting on this plan.

Ms. Sexton explained the council is receiving and filing the report. Only two members of the council are on the remodeling committee and many of you are interested in how that committee is going. Draft 3 is not being voted on; the committee is not even ready to say it's the final version yet.

VOTE: Motion carried 8-0.

PUBLIC HEARING AND COMMUNITY DEVELOPMENT BLOCK GRANT RESOLUTIONS

Stephanie Knebel, Assistant City Manager presented the staff report.

Background:

- The federal government's Community Development Block Grant (CDBG) program provides annual grants on a formula basis to state and local governments to address a wide range of community needs. In Kansas, the CDBG program is administered by the Kansas Department of Commerce.
- Grant applications are ranked according to criteria designed to measure community need, project impact, and project readiness, and to assure benefit to low- and moderate-income persons.
- Application for a Community Facility Grant is proposed to assist in making improvements to the existing Senior Center (9,000 square feet) as well as expanding the Senior Center by approximately 2,103 square feet.

- Improvements include:
 - Addition of 2 new multipurpose classrooms
 - Relocation and expansion of a new fitness room
 - Removal of existing furnaces and conversion into storage space
 - Removal of a portion of a wall to increase the size of the game room
 - Replacement of HVAC units and installation of a new control system
 - Re-working of the electrical system
 - Increase of ventilation in the existing game room
- This plan of improvements has been reviewed in detail and approved by a committee of volunteers and staff to ensure the project addresses the concerns raised by Senior Center patrons at the August 11 Council meeting and meets the needs of most Senior Center patrons. The committee includes Jim Meidinger and Vaughn Nun (City Council), Eleanor Underwood (Senior Services Advisory Board), Dee Williams (Senior Services Director), Stephanie Knebel (Assistant City Manager), Ted Austin (Director of Operations), and Kathy Sexton (City Manager).
- Only space dedicated solely to the Senior Center usage qualifies for this grant. This application does not include remodeling of other vacated library space for other City functions. Planning for that space continues.
- Three actions are required of the City Council:
 1. Hold a public hearing to allow citizens input and discussion of the proposed project. As required, a notice of public hearing was published in the September 30th Derby Informer and included a description of the proposed project, project location, scope of work, grant amount being requested, and the total estimated project budget.
 2. Submit a resolution with our application to (a) provide assurance of the City's legal authority under Kansas law to apply for CDBG funds, (b) authorize the mayor to sign documents related to this application, and (c) state the city's funding match.
 3. Submit a second resolution to provide assurance that the city will provide on-going funding for operating and maintaining the expanded Senior Center.

Financial/Sustainability Considerations:

- The CDBG program requires a minimum 25% match. Our application includes a match of 50% to increase the total points for our project application, which increases our chances of approval. In addition, the City is responsible for a \$12,000 administrative fee.
- If the grant is awarded, the project budget will be funded from the 2010 approved budget as follows:

Senior Center improvements & expansion (city-funded)	\$104,000
Senior Center improvements & expansion (grant funded)	<u>\$ 92,000</u>
Total	\$196,000

Legal Considerations:

- The City is authorized to enter into such agreements as are necessary to qualify for grant funding and implement projects for which a grant is awarded.
- The City Attorney has approved both proposed resolutions as to form.

Policy Considerations:

- This expansion and remodeling of the Senior Center is anticipated to meet the needs of the growing population for approximately 8-10 years, at which time additional facility planning will need to occur.
- The City has previously obtained CDBG funds and is familiar with the procedures required for recordkeeping of the project funds.

RESOLUTION NO. 34-2009

A RESOLUTION CERTIFYING LEGAL AUTHORITY TO APPLY FOR THE 2010 KANSAS SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM FROM THE KANSAS DEPARTMENT OF COMMERCE AND AUTHORIZING THE MAYOR TO SIGN AND SUBMIT SUCH AN APPLICATION.

RESOLUTION NO. 35-2009

A RESOLUTION ASSURING THE KANSAS DEPARTMENT OF COMMERCE THAT FUNDS WILL BE CONTINUALLY PROVIDED FOR THE OPERATION AND MAINTENANCE OF IMPROVEMENTS TO THE DERBY SENIOR CENTER TO BE FINANCED WITH COMMUNITY BLOCK GRANT FUNDS.

DISCUSSION:

Council Member Craig clarified that we are looking for \$92,000, we have to match \$92,000 and there is a \$12,000 administration fee. The \$12,000 administration fee doesn't really buy us anything does it?

Ms. Knebel advised that was correct.

Council Member Craig asked if we had a good feeling that the \$184,000 is going to cover all these expenses.

Ms. Knebel advised it does. Because we have this floor plan and because it's been agreed on, our architect was able to do a really detailed estimate on this floor plan specifically.

Council Member Bannon agreed that we aren't approving the floor plan with everything else but we are approving this one exactly the way it is because it's part of the grant. She wants everyone to know that we are not indicating or discussing tonight the idea of the chamber room or anything else. This is strictly the senior center that applied for with the grant.

Ms. Knebel agreed.

Council Member Horyna asked how long the application approval process takes.

Ms. Knebel advised the schedule that has been published; the application is due to be sent off to Topeka on October 30th. According to the schedule we should hear the end of January. However, last year with this same grant, with the state budget issues that were going on, awards were not made until April.

Council Member Warren stated that the changes we are looking at for the grant primarily are the new rooms that are to the north of the existing multi-purpose room. If we wanted to make some changes to the south of that room that weren't involving any of the money that came from the grant, this proposal would not prohibit us from doing that, would it?

Ms. Knebel advised it shouldn't. There are all sorts of caveats because the existing space used for the senior center was also paid for by CDBG funds and there is an ongoing understanding that depending on the funding source and costs that are used, we need to be careful.

Council Member Warren stated that there is some square footage in that area that could be used that is not part of this proposal and he doesn't want to slow this proposal up. When he talks with some folks and shows them his idea and if it makes economic sense we could do it, we would just have to find another way of funding it.

Ms. Sexton added that it depends on what it is. Once the feds pay for space they don't want you to come in after the fact and change it to something so they feel like it's a bait and switch. I know that's not your intent but it depends on what the change is.

Council Member Warren advised he would be looking at expanding the space the way it's used now, eliminating some hallways and coming up with some additional space.

Council Member Haynes advised he had that question also, if we could make changes after the fact. He didn't want to tie us in to something we couldn't change if a better idea came along.

Council Member Meidinger stated he is between a rock and a hard place on this issue. He thinks the senior center should have had more space but the plan is pretty well taken care of. If he votes no then it appears he is voting against the grant and that sure is not the issue. If he votes for it then he is voting that he doesn't think the senior center has enough space. He'll vote for it because the council should be unanimous on this issue when we send a grant in. He does not agree with the plan and wants to make that real clear. He thinks the center should have more space.

Council Member Craig asked if the \$104,000 portion the city is putting in comes out of the \$800,000 CIP.

Ms. Sexton advised it comes out of the \$500,000 that was budgeted from city money for this remodel project in 2010.

Council Member Craig asked where the \$800,000 came from.

Ms. Sexton indicated he was thinking about the total project. At that time we thought maybe we could get \$300,000 from federal money. This grant requires 75/25, 25% match. Our grant writer who is really familiar with this stuff recommended we go 50/50 if we want to get the money. The match is different than what we thought. A couple of years ago when we made up the \$500,000 and \$300,000, those were estimates and obviously we were off. It may be that we will need more city money to do the whole project; we basically need to get a floor plan so we can do those estimates and figure that out.

Mayor Avello is glad Ms. Sexton cleared up the \$300,000.

Ms. Sexton advised it is part of a 5-year CIP process that you have to make up numbers sometimes 2, 3, 5 years in advance. You do the best you can but we were trying to do it without a floor plan. We spent months on this floor plan. Everybody is not always going to be happy but at some point you have to make a decision. At the point we do that is when we put the architects to work estimating and when we can put it out to bid and get the contractor to tell us what the cost really is.

Mayor Avello opened the public hearing at 9:02 p.m.

Bill Mulford, Senior Center Advisory Board gave a thumbs up from the board to proceed.

Eleanor Underwood stated they are for going ahead with the grant and hoping to get started and hoping it doesn't take several months to approve it so we do have the funding from the grant. We are very supportive and very grateful for that. We hope at some point there might be more space but we are glad to have the space that is proposed and want to get on with it because the deadline is now.

Mayor Avello closed the public hearing at 9:04 p.m.

MOTION: Craig moved to conduct the public hearing and approve a resolution certifying the City's authority to apply for CDBG funds, authorizing the Mayor to sign documents related to this application, and providing matching funds; and approve a resolution assuring that the City will provide on-going funding for operating and maintaining the expanded Senior Center. Haynes seconded.

VOTE: Motion carried 8-0.

BIDS FOR BICYCLE AND PEDESTRIAN PATH, PHASE 7

Dan Squires, City Engineer presented the staff report.

Background:

- The City applied for and was subsequently awarded funding by the Kansas Department of Transportation (KDOT) for construction of a bicycle and pedestrian path along Woodlawn Boulevard and Chet Smith Avenue from Market Street to Garrett Park.
- The project has been designed and a bid opening for the construction of the bicycle and pedestrian path was conducted on September 22, 2009 at 2:00 P.M. An invitation to bid was previously submitted 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>
Lafarge North America	\$369,318.20
Cornejo & Sons, Inc.	348,900.00
Dondlinger & Sons, Inc.	311,460.85
Bryant & Bryant Construction	271,719.60
Major, Inc.	264,230.50
Barkley Construction	197,000.00

Engineer’s Estimate* \$429,021.73

*Engineer’s estimate prepared by Young & Associates, P.A.

Financial/Sustainability Considerations:

- The eligible construction costs will be paid 75% by KDOT and 25% by the City.
- The KDOT portion of the construction cost is estimated to be \$147,750 (0.75 x \$197,000 = \$147,750)
- The City share of the construction cost is estimated to be \$49,250 (0.25 x \$197,000 = \$49,250) plus 100% of any non-participating costs.
- The approved 2009 budget includes \$120,000 for the City share of the construction cost.

Legal Considerations:

- The City has followed all statutory procedures in securing financing, and in planning the project.
- The State Transportation Engineer has concurred in the award of the contract to Barkley Construction.
- The contractor has submitted all appropriate bonds and certifications for this project.

Policy Considerations:

- The project connects the Derby Sixth Grade Center, Derby Middle School, and Derby Recreation Center with the existing bike path system in Garrett Park.
- Barkley Construction has completed several bike path projects in Derby and has done satisfactory work. Staff recommends approval of the bid of Barkley Construction.

DISCUSSION:

Council Member Bannon stated that she occasionally walks at High Park and this particular contractor has poured a lot of the sidewalk out there and after they had done so there were a number of broken sections. What is the kind of warranty we get on a sidewalk like this?

Mr. Squires explained that typically we get two years.

Council Member Bannon asked if Mr. Squires knows if these cracked within two years.

Mr. Squires advised he did not. There is a lot of activity at High Park and a lot of equipment out there from time to time and that certainly is not what bike paths are made for, they are made for pedestrians and bicycles. We have had an excellent working relationship with Barkley Construction; they have bent over backwards to make us happy in the past. They just did the project last winter in Stone Creek Park, so we are very comfortable with them.

MOTION: Horyna moved to accept the bid of Barkley Construction in the amount of \$197,000 to construct Phase 7 Bicycle and Pedestrian Path improvements. Craig seconded.

Council Member Meidinger asked if there were any land acquisition concerns with this project.

Mr. Squires advised there is no land acquisition required for this project.

Council Member Staats asked about the large disparity between the low bid and high bid.

Mr. Squires speculated that there is a lot of competition in the construction industry right now with the economy the way it is. There is a large spread, not just from the high to the low but throughout the bids as you go through this. Similarly, Barkley Construction, the same contractor had a low bid on Stone Creek Park last year. We have talked to Barkley and they are comfortable with their price and we are comfortable with them doing the work and are very pleased with the pricing we are getting.

VOTE: Motion carried 8-0.

TRAFFIC SIGNAL AT INTERSECTION OF ENGLISH ST. & WOODLAWN BLVD.

Dan Squires, City Engineer presented the staff report.

Background:

- After hearing concerns from residents regarding the safety of Swaney Elementary students crossing Woodlawn Boulevard at English Street, the City requested a traffic study through the Traffic Engineering Assistance Program (TEAP) administered by the Kansas Department of Transportation (KDOT).
- The TEAP study recommends installation of a traffic signal at this location, along with related signing and pavement marking adjustments.

- Staff proposes to begin design of the improvements immediately with installation of the signal and related improvements next summer.
- At the City's request, the engineering firm that completed the TEAP study (TranSystems) offered to design the improvements for a fee of \$15,000. Since TranSystems has the data and background knowledge already, staff believes this fee is the best value to the City.

Financial/Sustainability Considerations:

- Design and installation of signal improvements to the intersection of English Street and Woodlawn Boulevard are anticipated to cost approximately \$200,000.
- Funding will come from savings on other projects. Several recent projects have bid at costs below budget as a result of increased competition in the construction industry and reduced material cost. These projects include the Phase 7 bike path, Madison Avenue resurfacing, and the intersection of Buckner & Meadowlark.

Legal Considerations:

- The City may enter into a contract for professional services without using competitive bidding or other formal selection procedures.

Policy Considerations:

- The project results in improved safety for elementary school students and others crossing Woodlawn Boulevard at English Street.

DISCUSSION:

Council Member Meidinger asked if this was a regular traffic signal light.

Mr. Squires indicated it is a full traffic signal. The study justifies it through the pedestrian movement. Typically you don't want to put under current standards a pedestrian crossing immediately adjacent to an intersection without signaling the intersection.

Council Member Meidinger asked if there were more traffic at that intersection than there is at Woodlawn and James where we put the four-way stop.

Mr. Squires advised there is significantly more pedestrian traffic at this location.

Council Member Meidinger asked, even with El Paso School right there?

Mr. Squires stated they were both counted for pedestrian movement, and at James and Woodlawn the pedestrian counts were at 6 or 7 in the afternoon and when they counted this there were 40. There is a number of factors that contribute to that, the number of students that are on the other side of Woodlawn from Swaney Elementary is one of them. The location of the DRC where a number of them may be heading afterwards is another one. There was quite a disparity between the pedestrian movements.

MOTION: Horyna moved to modify the approved Capital Improvement Plan to include \$15,000 for design in 2009 and \$185,000 for the installation of a

traffic signal and related improvements at the intersection of Woodlawn Boulevard and English Street in 2010, and authorize staff to contract with TranSystems in an amount not to exceed \$15,000 for design of the improvements. Staats seconded.

VOTE: Motion carried 8-0.

2009 RECLAMITE PAVEMENT SEALER APPLICATION

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

Background:

- Reclamite is a surface seal that binds small aggregate into the porous asphalt surface. This seals the surface from water infiltration and lengthens the lifespan of the asphalt by protecting the base material.
- The Pavement Management Plan identifies the need to seal existing and recently repaired streets to prolong the life span and to maintain an acceptable level of repair. The designated streets are identified through annual pavement inspections.
- Reclamite sealant will be applied to 115,800 sq. yards of asphalt surface. This includes the following areas: Circle Dr. from Market to Woodlawn, Cottonwood Rd. from Willow to Brookwood, Crestway Ave. from Westview to Woodlawn, Derby Ave. from Kay to Lincoln, El Paso Dr. from Walnut to James, Farmington Dr. from Madison to Crestway, Georgie Ave. from Madison to Maryland, Kokomo Ave. from Walnut to Lincoln, Lakeview Dr. from Britain to James St., Lauber Ln. from Mary Etta to Market, Lincoln St. from Woodlawn to Morningview, Mary Etta St. from Woodlawn to Market, Meadowhaven Ln. from Woodlawn Heights to Chet Smith, Morningview St. from Woodlawn to Sunrise, Overlook Dr. from Derby Hills to Baltimore, Pinion Rd. from Ridgecrest to Rock Road, Spring Creek Dr. from Kay to Woodlawn, Sunrise St. from Woodlawn to Morningview, Walnut St. from K-15 to Derby, Walnut St. From Westview to El Paso, Wedgewood Dr. from Westview to Woodlawn and Westview Dr. from Britain to Crestway.
- Staff continues to work with Proseal, Inc., which is the only Reclamite vendor working in the South Central Kansas and Oklahoma area.
- The Derby Bid Board met on September 30, 2009 to review the Reclamite quote and bid process. The board approved the sole source bid from Proseal.

Financial /Sustainability Considerations:

- The 2009 revised budget includes \$67,037 to accomplish this work.
- The total bid received from Proseal is for \$66,006. The project is within budget constraints.

Legal Considerations:

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

Policy Considerations:

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

- This project is in accordance with the adopted and approved Pavement Management Plan.

DISCUSSION:

Council Member Craig asked if there were any temperature restrictions on this since we are entering the cold weather and you are going to finish this up in 2009.

Mr. Mendoza advised the ambient temperature has to be around 45 degrees to make sure that the product does adhere correctly. Our weather patterns have been a little bit out of the ordinary so we anticipate in the next couple of weeks to be able to do this without a problem whatsoever.

MOTION: Craig moved to authorize the City Manager to enter into a contract with Proseal Inc. for \$66,000 for application of Reclamite pavement sealer to selected City streets. Horyna seconded.

VOTE: Motion carried 8-0.

Mayor Avello asked if Proseal is the only one we have ever used on this.

Mr. Mendoza advised that Proseal is the proprietary owner of Reclamite in the state of Kansas. We would have to go out of state to find another vendor.

**RESOLUTION FOR SANITARY
SEWER EXTENSION – PRAIRIE
ACRES 2ND ADDITION**

Dan Squires, City Engineer presented the staff report.

Background:

- Prairie Acres 2nd Addition is located west of Rock Road and south of Chet Smith Avenue.
- Several residents in this addition have approached the City to extend sanitary sewer service to their properties due to several septic system failures.
- Several meetings were held with property owners to determine which properties would be included in the benefit district for this sewer extension.
- A petition was prepared and distributed for signature to all four property owners in the benefit district. All four property owners have signed the petition for this improvement.
- The corresponding resolution for Council consideration has now been prepared by the City's bond counsel, Gilmore & Bell.

Financial Considerations:

- The resolution amount is \$76,000. The benefit district will be assessed 100% of the cost of the improvements.
- Special Assessments will be spread against the benefit district properties over a 15-year period.

Legal Considerations:

- The resolution has been prepared in accordance with Section 12 6a of the Kansas Statutes.

Policy Considerations:

- The Council has made a practice of financing such proposed improvements through the use of special assessments.

RESOLUTION NO. 36-2009
SANITARY SEWER IMPROVEMENTS/PRAIRIE ACRES 2ND ADDITION -
UNPLATTED TRACT.

DISCUSSION:

Council Member Horyna asked what the process is once they get connected to the city for the septic tanks.

Mr. Squires advised they would have to be collapsed.

MOTION: Staats moved to approve a resolution for sanitary sewer extension to serve Prairie Acres 2nd Addition. Horyna seconded.

Council Member Nun asked where the sewer interceptor line comes in.

Mr. Squires advised the southeast sewer interceptor actually starts at Rock Road, so that is north and east of this location. This will not go in to the southeast interceptor.

Council Member Nun asked if the properties to the west of these are already on sewer or are they still on septic.

Mr. Squires advised west is Park Hill on the east side they are not on. Typically we try to provide sanitary sewer by gravity flow and would try to set an elevation on this consistent with them being able to tie into in the future.

Council Member Nun asked about the houses on the west side of Pointer Lane.

Mr. Squires advised the houses on the west side of Pointer Lane are already connected to the sanitary sewer in Park Hill.

VOTE: Motion carried 8-0.

**POLICE DEPARTMENT
BARGAINING UNIT –
MEMORANDUM OF
AGREEMENT 2010-2012**

Phil Alexander, City Attorney presented the staff report.

Background:

- In 2005, the City and the Fraternal Order of Police Lodge No. 16 agreed to formation of a bargaining unit to include patrol officers, master patrol officers, and detectives.
- In 2006, the FOP was recognized as the designated representative for the bargaining unit.
- In June 2007, the City Council approved a Memorandum of Agreement (“MOA”) to be effective through December 31, 2009.
- Pursuant to the MOA, the FOP and the City began negotiations on a new MOA to be effective January 1, 2010.
- The bargaining teams met regularly through April, May and June.
- While many significant issues were resolved, most of those involving money were not and impasse was declared on June 24, 2009.
- A state-appointed federal mediator met with the parties on August 12, 2009 and September 2, 2009. At the conclusion of the second mediation session, the parties reached tentative agreement.
- Major changes, based on current MOA (financial impacts are totals for the full three-year term of the MOA, compared with 2009 cost):
 - Compensation
 - General pay adjustments of 2% in 2011 and 2% in 2012 (none in 2010)
 - Merit increases will be based on the same performance evaluation system used for other City employees
 - Financial impact: \$53,300 increase
 - Longevity
 - Freezes longevity pay for employees currently receiving it and eliminates it for other employees
 - Financial impact: \$8,300 decrease
 - Special Duty Pay
 - For School Resource Officers, increases from \$25 per pay period to \$50 per pay period (only applies when working in schools)
 - Financial impact: \$4,500 increase
 - Standby Pay
 - Increases from \$0.75 per hour to \$1.00 per hour
 - Financial impact: \$7,600 increase
 - “Event” Pay
 - Additional \$2 per hour for employees when working at scholastic sporting events, dances, races, and other events as determined by the Chief of Police
 - Financial impact: \$1,600 increase
 - Promotions
 - Eliminates education and years of experience requirements and includes both in the point system used to evaluate candidates for promotion

- Financial impact: none
- o Family Medical Leave Act
 - Modified to reflect new federal FMLA requirements and procedures
 - Financial impact: none
- o Major Discipline
 - Provides for Chief of Police to determine whether a disciplined employee may take an unpaid leave of absence or forfeit vacation hours in lieu of suspension from duty
 - Financial impact: none
- The FOP signed the proposed MOA on October 7, 2009.

Financial Considerations:

- The proposed MOA will increase the City's cost approximately \$58,700 over its three-year term:
 - o \$3,600 in 2010
 - o \$29,000 in 2011
 - o \$26,100 in 2012
- All costs are approximate, based on expected number of employees affected and anticipated work schedules.

Legal Considerations:

- The City's election to be subject to the Kansas Public Employer-Employee Relations Act (PEERA) was made during the 1980s and is effective unless rescinded by Council action.
- In negotiating the proposed MOA, the parties complied in all respects with PEERA.

Policy Considerations:

- It is in the interest of both the City and those employees in the bargaining unit to reach agreement on the terms and conditions of their employment.
- The parties negotiated in good faith.
- The 2010 compensation provisions of the proposed MOA can be accommodated within the parameters of the approved 2010 budget.

DISCUSSION:

Council Member Meidinger asked about the School Resource Officers, when this contract came into effect their pay was adversely affected wasn't it?

Mr. Alexander advised that was correct. Having been also involved with the negotiations at that time, it was a little surprising that the negotiators thought that was an appropriate agreement to make but it was made in the context of negotiating on a whole number of monetary items. This particular agreement will in effect restore what was lost to the school resource officers at that time.

Council Member Meidinger clarified that those officers have made up the difference that they would have gotten.

Mr. Alexander advised they will not make it up for the last 2.5 years but this contract will restore what was given back.

Council Member Meidinger advised that troubles him a little bit. Because there was an oversight on their part, he understands a contract is a contract, but he doesn't think it was fair to those officers that go into the schools and do a great job. It wasn't too long ago we had a sheriff's officer that was killed in the line of duty. These guys do the same amount of work and because there was an oversight in that contract he would like to see us restore that money that they lost. He thinks that is only fair and has heard many times on this council if you treat people fairly they will respond in kind. He can cite some examples where the city has forgiven contracts, forgiven people and said "that's okay, but from now on". He would like to see us restore that money, he doesn't know what it's going to cost but thinks it's only fair to those police officers.

Mr. Alexander doesn't dispute the authority of the council to make whatever decision it finds appropriate, he can say the negotiators have never hinted this was an oversight on their part. The city has always, both that time and this time, have always taken the position at the risk of sounding crass, that all the dollars are the same color. They all have the same value and it doesn't make a lot of difference to us where they go. He has always assumed that was a conscious choice, not for him to make but for the bargaining unit to make that that is the way they wanted their money distributed. He can't prove that but that has been his assumption.

Council Member Meidinger advised that answered his question but he doesn't think it's right.

MOTION: Meidinger moved to reimburse the School Resource Officers lost income during that period of time.

Motion died for lack of second.

MOTION: Craig moved to authorize the Mayor and City Manager to execute a Memorandum of Agreement between the City and the Fraternal Order of Police Lodge No. 16, as presented. Horyna seconded.

VOTE: Motion carried 8-0.

CONSENT AGENDA

MOTION: Bannon moved to remove the 2009 Millings Reclamite Application. Staats seconded.

VOTE: Motion carried 8-0.

MOTION: Meidinger moved to remove the amendment for reducing/releasing developer's financial guarantees. Horyna seconded.

VOTE: Motion carried 8-0.

Ms. Sexton presented information on the remaining consent agenda item, the Madison Avenue resurfacing agreements.

Madison Avenue Resurfacing Agreements

Background:

- In February 2009, the American Recovery and Reinvestment Act (ARRA) was enacted (commonly known as the federal stimulus bill). The ARRA is intended to stimulate the economy by providing funding for transportation and other construction projects.
- In April 2009, the City was awarded a grant of up to \$472,500 (90% of the estimated construction cost) for resurfacing Madison Avenue from K-15 to Rock Road.
- Design of the project is complete and KDOT received bids for the project on September 16, 2009. The low bidder on the project is Cornejo & Sons, Inc. with a total bid of \$355,666.20.
 - Construction of the project is anticipated to begin next spring.
 - Construction will be administered by KDOT with the City partnering with Sedgwick County to provide construction engineering (CE) services for testing and inspection.
- Several agreements must be approved to proceed with construction.

Construction Engineering (CE) Agreements

- KDOT requires that the City enter into an agreement and commit funds to provide for CE Services. KDOT has transmitted a Force Account Construction Engineering Inspection Services Agreement to the City for execution.
- KDOT requires that projects of this scope be inspected by inspectors certified by KDOT. Sedgwick County Public Works has KDOT-certified staff available to perform these services, and we have had good experience with them on similar projects in the past.
- A proposal to perform CE services has been received by the City and approved by KDOT. The proposed agreement with Sedgwick County provides for reimbursement to the County for CE services, based on the actual staff hours and expenses used on the project, in an amount not to exceed \$21,648.50.

Authority to Award Contract and Commitment of City Funds

- KDOT requires the City to sign a document accepting Cornejo's bid and committing the City's matching funds to the project.
- Due to the low bid being significantly below the anticipated construction cost and the specifics of the ARRA funding, the City's funding commitment required by KDOT has been reduced to zero.

Financial/Sustainability Considerations:

- Resurfacing of Madison Avenue was included in the City's pavement management plan for construction in 2011 at an estimated cost of \$525,000, and was moved to 2009 when ARRA funding for the project became available.
- The revised 2009 budget includes \$52,100 for the City portion of the Madison Avenue Resurfacing Project.
- As a result of the bids received and ARRA funding, the City will have no out-of-pocket expense for construction or construction engineering.

Legal Considerations:

- The KDOT Agreement for CE Services includes standard KDOT language addressing the City's responsibilities for construction engineering.

- The Sedgwick County Grant Agreement contains language addressing the respective responsibilities of the City and Sedgwick County for construction engineering.
- The City, the State, and Sedgwick County are authorized to enter into agreements required to obtain federal financial aid for construction of public improvements.

Policy Considerations:

- Resurfacing Madison Avenue will extend the pavement life of the corridor and reduce future maintenance costs to the City.

Recommendation:

- Approve the proposed Force Account Construction Engineering Inspection Services Agreement with KDOT and authorize the Mayor to execute an agreement with Sedgwick County for Construction Engineering Services.
- Authorize the Mayor to sign the Authority to Award Contract and Commitment of City Funds document allowing KDOT to award the contract for resurfacing of Madison Avenue from K-15 to Rock Road to Cornejo and Sons, Inc. and committing City funds in the amount of \$0.00 to the project.

MOTION: Craig moved to approve the consent agenda item as presented. Bannon seconded.

VOTE: Motion carried 8-0.

**2009 MILLINGS RECLAMITE
PAVEMENT SEALER APPLICATION**

Background:

- Reclamite is a surface seal that binds small aggregate into the porous asphalt surface. This seals the surface from water infiltration and lengthens the lifespan of the asphalt by protecting the base material.
- The City of Derby has a small number of unimproved streets that are surfaced with asphalt millings. The City treats this type of surface with Reclamite to prolong the life span and to maintain an acceptable level of repair. The designated streets are identified through our pavement inspection process.
- This type of Reclamite application reduces the amount of maintenance that is generally required by an unimproved street surface.
- The Reclamite sealant will be applied to 20,852 sq. yards of asphalt surface. This includes the following areas: Madapalla Ct. North from Woodlawn Blvd to Madapalla Ct South and back to Woodlawn Blvd., Krista Ln. from North Madapalla Ct. to South Madapalla Ct., Black Dog Trail from Madapalla Ct. to its termination, Hila St. from Chet Smith Ave. to Springdale St., Springdale St. from Sharon Dr. to the cul de sac, Sharon Dr. from Chet Smith Ave. to Partridge, and Pointer Ln. South of Chet Smith.
- Staff continues to work with Proseal, Inc., which is the only Reclamite vendor working in the South Central Kansas and Oklahoma area.
- The Derby Bid Board met on September 30, 2009 to review the Reclamite quote and bid process. The board approved the sole source bid from Proseal.

Financial /Sustainability Considerations:

- The total bid received from Proseal is for \$15,413.48. Funds for this project are provided in the 2009 revised street materials budget.

Legal Considerations:

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

Recommendation:

- Authorize the City Manager to enter into a contract with Proseal, Inc. for \$15,413.48 for application of Reclamite pavement sealer to selected unimproved City streets.

DISCUSSION:

Council Member Bannon asked about the Reclamite in Farborough Estates, what is Black Dog Trail? It appears to be between two separate lots and it's a road that goes nowhere.

Mr. Mendoza advised that is correct. It is a right-of-way and primarily being used for parking in those residential areas, however it is our right-of-way for future expansion and does require maintenance which is why we have included it in this project.

Council Member Bannon indicated that is not a piece that is ever going to be used until that is developed.

Mr. Mendoza agreed. The problem is where do you stop, if you don't do it then we have a lot of pushing and moving and destroying what we have just done. It makes better sense to spend a little bit of time and money on it now to protect it and keep it in place, which is what our goal is so we don't have any moving and pushing in the future. At least it's protecting what it's butting up against and really that's why we've included that there. Otherwise it's just hardened against a soft edge and just like a soft shoulder it's going to push right in to that space.

Council Member Bannon asked if we don't touch that 200 ft, we still keep our right of way but don't touch it for 40 years and in 40 years when that 80 acres finally develops and we have to go in at that time and pave it and do something to it, which way is our money better spent? The citizens of Derby are paying to maintain a parking strip that is being used by two homeowners is basically what we are coming down to.

Mr. Mendoza understands what Mrs. Bannon is saying. The pavement was a dirt road that became a gravel road that over time became an asphalt and millings road which now ruts and pots just like everything else does. The goal, by installing the Reclamite, we are creating a better millings pavement by binding the aggregate together, hardening it and keeping it from running out. The goal with that whole area is to decrease the amount of maintenance time that city staff and city equipment has to do out there. It may just be a little bit of a loop but it's the primary driveway for all those residents and that does take its wear and tear on the street which requires future maintenance for us.

Council Member Bannon pointed out it's the primary driveway for two residents.

Mr. Mendoza advised he is talking about the whole thing. That one little piece was included to protect the work to the west of it. It doesn't sound like a whole lot of anything. It does have

value to the project as far as maintaining Madapalla once we get the Reclamite down, otherwise that will be the first place there is a weak spot that will start to destroy itself again and we will be back out maintaining that edge.

MOTION: Horyna moved authorize the city manager to enter in to a contract with Proseal, Inc. for \$15,413.48 for application of Reclamite pavement sealer to selected unimproved City streets. Staats seconded.

VOTE: Vote 8-0 motion carried.

**AMENDMENT TO RESOLUTION
NO. 31-2009, POLICY FOR REDUCING/
RELEASING DEVELOPER'S
FINANCIAL GUARANTEES**

Background:

- On September 8, 2009, the City Council adopted Resolution Number 31-2009, approving proposed revisions to the City's Public Improvement Finance policy.
- Resolution Number 31-2009, as published, omitted a proposed change in section 7 adding subsection c.1. This addition would establish a minimum time period between reviews of letters of credit or surety bonds.
- The proposed revision to Section 7 would require that at least six (6) months elapse between requests for reduction or release of the same security instrument.

Financial Considerations/Sustainability Considerations:

- There is no direct effect on the City's budget, but approval of this item should result in a decrease in staff time required for frequent reviews requested by developers.

Legal Considerations:

- The City Council is empowered to established reasonable policies and procedures for implementation of its authority to finance infrastructure improvements through issuance of bonds and levy of special assessments under K.S.A. 12-6a01 *et. seq.*

Recommendation:

- Approve an amendment to Resolution Number 31-2009, establishing the City's policy for financing of public improvements, as presented.

DISCUSSION:

Council Member Meidinger advised we voted on this last week, he even voted for it but he got to thinking that we didn't have any input from our fiscal agent. He would like to get a recommendation from our fiscal agent, Joe Norton or somebody in the financial world that says if it's a good deal or not. All of a sudden we are starting to give away letters of credit and he has an uneasy feeling about it. He would like to have Joe Norton come in and explain this to us in a little better fashion. To him there is no great big rush to give this letter of credit back to the developer.

Ms. Sexton explained that this is actually not returning a letter of credit to anybody. It's actually updating the policy that allows the developers to come in fewer times to request these changes. This change today she would characterize as a more conservative policy than what we have on

the books now. It's simply asking developers to not constantly request a recalculation. Every six months we will do it but we won't do it more frequently than that and save a lot of time and effort.

MOTION: Bannon moved to amend the policy for reducing/releasing developer's financial guarantees. Horyna seconded.

VOTE: Vote 8-0, motion carried.

EXECUTIVE SESSION:

MOTION: Staats moved to recess to a five minute break at 9:40, followed by an executive session for 25 minutes to consider acquisition of real estate and other matters of attorney/client privilege. Craig seconded.

VOTE: Vote 8-0, motion carried.

The council returned at 10:12 p.m. and Council Member Staats advised there was no binding action taken.

ADJOURNMENT:

MOTION: Bannon moved to adjourn at 10:13 p.m. Craig seconded.

VOTE: Vote 8-0, motion carried.

ATTEST:

Dion P. Avello, Mayor

Jean Epperson, City Clerk